
CAPITAL ONE, NATIONAL ASSOCIATION
as Administrative Agent and as a Lender

**THE PERSONS WHO ARE OR HEREAFTER
BECOME PARTIES TO THIS LOAN AGREEMENT AS LENDERS,**
as Lenders,

THE PARTIES LISTED ON EXHIBIT B-1 ATTACHED HERETO
as Borrowers

and

HOSPITAL HILL MEDICAL OFFICE BUILDING, LLC

with

CAPITAL ONE, NATIONAL ASSOCIATION
as Lead Arranger and Bookrunner

LOAN AGREEMENT

Dated as of: * _____, 20__

DOCUMENT PREPARED BY:

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LOAN AGREEMENT

This Loan Agreement (this “**Agreement**”) is entered into as of *_____, 20__ by and among CAPITAL ONE, NATIONAL ASSOCIATION (“**CONA**”), as administrative agent and collateral agent for the Lenders (as defined herein) (in such capacity and together with its successors and permitted assigns, “**Administrative Agent**”), **THE PERSONS WHO ARE OR HEREAFTER BECOME PARTIES TO THIS AGREEMENT AS “LENDERS”** (together with their successors and permitted assigns, each a “**Lender**” and collectively, the “**Lenders**”), **THE PARTIES LISTED ON EXHIBIT B-1 ATTACHED HERETO** (each a “**Borrower**” and collectively, the “**Borrowers**”) and HOSPITAL HILL MEDICAL OFFICE BUILDING, LLC, a Delaware limited liability company (“**Kansas City Master Lessee**”).

Reference is made to (i) Section 12.3 of this Agreement which addresses the personal liability of LCRA under this Agreement, and (ii) Article 13 of this Agreement which sets forth, *inter alia*, the obligations of Kansas City Master Lessee with respect to certain representations, warranties and covenants of Borrower under this Agreement.

ARTICLE 1 **DEFINITIONS**

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

“**Acceptance Notice**” has the meaning assigned in Section 11.39.

“**Acknowledgment of Property Manager**” means the Acknowledgment and Agreement of Property Manager executed by Property Manager in favor of Administrative Agent (on behalf of itself and the Lenders), as amended, restated, supplemented, or otherwise modified from time to time.

“**Actual Rental Revenue**” means revenues and rental payments received by Borrowers or Kansas City Master Lessee under Qualifying Leases, but excluding (a) nonrecurring income and non-property related income (as determined by Administrative Agent in its sole discretion) and income from Tenants that is classified as “bad debt” under GAAP, and (b) late fees and interest income.

“**Adjusted Expenses**” means actual operating expenses related to the Projects, on an accrual basis for the immediately preceding twelve (12) month period, unless indicated otherwise (in all circumstances, as the same may be reasonably adjusted by Administrative Agent), including: (a) recurring expenses as determined under GAAP, (b) real estate taxes, (c) management fees (whether paid or not) in an amount not less than four percent (4%) of effective gross income (or the actual management fee paid, if higher) and (d) a replacement reserve (whether reserved or not) of not less than \$0.10 per rentable square foot per annum; but excluding non-cash operating expenses such as: (a) straight line ground rent (but specifically including actual ground rent), (b) depreciation, and (c) amortization of lease intangibles. If operating statements for the period of

time in question are not available, the operating statements covering any lesser period of time will be annualized to determine Adjusted Expenses.

“**Adjusted Net Operating Income**” means Adjusted Revenue less Adjusted Expenses, based upon the financial reports provided by Borrowers under Article 6 and approved by Administrative Agent in its reasonable discretion.

“**Adjusted Revenue**” means Actual Rental Revenue for the three (3) month period immediately preceding the testing date multiplied by (b) four (4); *provided, however*, if actual occupancy of the Projects, taken as a whole, exceeds 97%, Adjusted Revenue shall be proportionately reduced based on an assumed occupancy of 97%.

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

“**Advanced Amount**” has the meaning assigned in Section 10.15(d).

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

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls or is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person. Each Borrower Party (other than LCRA) shall be deemed an Affiliate of each Borrower (other than LCRA).

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

“**Agent Parties**” has the meaning assigned in Section 10.14.

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

“**Allocated Loan Amount**” means, with respect to each Project, the applicable “Allocated Loan Amount” set forth on Exhibit E.

“**Anti-Terrorism Laws**” has the meaning assigned in Section 5.18(f).

“**Applicable Margin**” means (a) when the Contract Rate is determined using the LIBOR Rate, 1.65% per annum, or (b) when, in accordance with the terms of Section 2.10 below, the Benchmark Replacement Rate is used, 1.65%, or (c) when the Base Rate is used, a spread (which may be positive or negative or zero), which spread plus the Base Rate will approximate the Contract Rate calculated based on the LIBOR Rate or the Benchmark Replacement Rate immediately prior to the implementation of the Base Rate.

“**Approved Bank**” shall mean a bank the long term unsecured debt obligations of which are rated at least (i) “A+” by S&P, (ii) “A+” by Fitch (and the short term deposits or short term unsecured debt obligations or commercial paper of such depository institution are rated no less than “F1” by Fitch) and (iii) “A1” by Moody’s.

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

“**Assignment and Assumption**” means an assignment and assumption agreement duly executed by the parties thereto in connection with the assignment of all or any portion of the Loan in accordance with Section 11.3, to be in the form attached hereto as Exhibit D.

“**Assignment of Hedge Agreement**” means any collateral assignment by one or more Borrowers in favor of Administrative Agent of any Hedge Agreement obtained by one or more Borrowers in connection with the Loan, as the same may be amended, restated, supplemented and otherwise modified from time to time.

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

“**Assumed Debt Service Coverage Ratio**” means the ratio of (a) Adjusted Net Operating Income calculated as of the specified Determination Date (or other specified testing date), to (b) the annual debt service payable on a hypothetical loan with a principal amount equal to the outstanding principal balance of the Loan as of the Determination Date (or other specified testing date) plus any amount which remain available to be disbursed under this Agreement multiplied by the greatest of: (i) 6.4%, (ii) a debt constant based on the then-current Contract Rate and a 30-year amortization schedule, and (iii) a debt constant based on the then-current 10-year Treasury Note, plus 2.50 and a 30-year amortization schedule.

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

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

“**Base Rate**” means, the rate of interest from time to time announced by CONA at its principal office as its prime commercial lending rate, it being understood that such prime commercial rate is a reference rate and does not necessarily represent the lowest or best rate being charged by CONA to any customer and such rate is set by CONA based upon various factors including CONA’s costs and desired return, general economic conditions and other factors. Any change in such prime rate announced by CONA shall take effect at the opening of business on the day specified in the announcement of such change.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the LIBOR Rate with an Unadjusted Benchmark Replacement Rate for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Administrative Agent and Borrowers giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the

LIBOR Rate with the applicable Unadjusted Benchmark Replacement Rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the LIBOR Rate with the applicable Unadjusted Benchmark Replacement Rate for U.S. dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement Rate, any technical, administrative or operational changes (including changes to the definition of “Contract Rate,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest and other administrative matters) that Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement Rate and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if Administrative Agent determines that no market practice for the administration of the Benchmark Replacement Rate exists, in such other manner of administration as Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to the LIBOR Rate:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the LIBOR Rate permanently or indefinitely ceases to provide the LIBOR Rate; or
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein.

“Benchmark Replacement Rate” means the sum of (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by Administrative Agent and Borrowers in accordance with the terms of Section 2.10, giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the LIBOR Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement Rate as so determined would be less than 1.00%, the Benchmark Replacement will be deemed to be 1.00% for the purposes of this Agreement.

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the LIBOR Rate:

- (1) a public statement or publication of information by or on behalf of the administrator of the LIBOR Rate announcing that such administrator has ceased or will cease to provide the LIBOR Rate, permanently or indefinitely, provided that, at the time of

such statement or publication, there is no successor administrator that will continue to provide the LIBOR Rate;

- (2) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the LIBOR Rate, a resolution authority with jurisdiction over the administrator for the LIBOR Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the LIBOR Rate, which states that the administrator of the LIBOR Rate has ceased or will cease to provide the LIBOR Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the LIBOR Rate; or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of the LIBOR Rate announcing that the LIBOR Rate is no longer representative.

“Benchmark Transition Start Date” means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by Administrative Agent or the Required Lenders, as applicable, by notice to the Borrowers, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

“Benchmark Unavailability Period” means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the LIBOR Rate and solely to the extent that the LIBOR Rate has not been replaced with a Benchmark Replacement Rate, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement Rate has replaced the LIBOR Rate for all purposes hereunder in accordance with Section 2.10 and (y) ending at the time that a Benchmark Replacement Rate has replaced the LIBOR Rate for all purposes hereunder pursuant to Section 2.10.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Borrower” and **“Borrowers”** have the meaning assigned in the preamble to this Agreement.

“Borrower Formation Documents” has the meaning assigned in Section 5.1(b).

“Borrower Party” means each Borrower, Kansas City Master Lessee and any Guarantor.

“Borrower’s knowledge” means the actual knowledge of each of the Borrowers (excluding LCRA) and Kansas City Master Lessee, individually and collectively, after diligent inquiry. All phrases relating to the knowledge of Borrower or Borrowers or the lack thereof shall have a meaning consistent with this definition regardless of the exact wording of such phrase.

“Borrowers’ Agent” has the meaning assigned in Section 6.6.

“Brandon Declarations” means, collectively, (i) the Easement Agreement, Warranty Deed and Covenants dated July 11, 2000, recorded in Book 10430, Page 1908, Official Records of Hillsborough County, Florida, as may be further amended or modified from time to time, (ii) the Easement Agreement, Warranty Deed and Covenants dated November 19, 2004, recorded in Book 22965, Page 404, Official Records of Hillsborough County, Florida, as may be further amended or modified from time to time, and (iii) the Shared Access Easement Agreement dated January 7, 2015, recorded in Book 23042, Page 1116, Official Records of Hillsborough County, Florida, as may be further amended or modified from time to time.

“Brandon Ground Lease” means the Ground Lease dated as of October 1, 2015, between Brandon Ground Lessor, as lessor, and TG Brandon Healthplex, LLC, as lessee, as evidenced by Memorandum of Ground Lease dated as of October 1, 2015, recorded on December 16, 2015, in Official Records Book 23749, at Page 86, in the Office of the Clerk of Court of Hillsborough County, Florida, as amended or modified from time to time.

“Brandon Ground Lessor” means FHSC Real Property Holding Company, LLC, a Florida limited liability company, and any successor in interest thereto.

“Brandon Land” means the real property described in Exhibit A-1 attached hereto.

“Brandon Project” means the Brandon Land and Improvements located on the Brandon Land, and all related facilities, amenities, fixtures, and personal property owned by any Borrower.

“Brandon Recognition Agreement” means that certain Ground Lessor’s Estoppel, Consent, and Non-Disturbance Agreement of even date herewith executed by and among Administrative Agent, TG Brandon Healthplex, LLC and Brandon Ground Lessor relating to the Brandon Ground Lease.

“Business Day” means a day other than a Saturday, a Sunday, or a legal holiday on which national banks located in the State of Illinois are not open for general banking business. If such day relates to the determination of the Libor Rate, **“Business Day”** means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank Eurodollar market.

“Cash Flow Requirements” has the meaning assigned in Section 7.13.

“Cash Sweep Threshold” means (i) prior to * _____ 1, 20__ [FIRST DAY OF MONTH 25], 7.00%, (ii) on or after * _____ 1, 20__ [FIRST DAY OF MONTH 25], but

prior to * _____ 1, 20__ [FIRST DAY OF MONTH 49], 7.50%. and (iii) on or after * _____ 1, 20__ [FIRST DAY OF MONTH 49], 8.00%.

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

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation 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, issued or implemented.

“**CIP Regulations**” has the meaning assigned in Section 10.18.

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

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

“**Collateral**” means all real and personal property with respect to which Liens in favor of Administrative Agent (for the benefit of Lenders) are executed, identified or purported to be granted pursuant to the Loan Documents and which secure the Obligations described in the Loan Documents and the Secured Hedge Agreement, and includes all of each Borrower’s right, title and interest in, to and under all personal property, real property, and other assets that arise from, are used in connection with, are related to or are located at the Projects, whether now owned by or owing to, or hereafter acquired by or arising in favor of any Borrower (including all personal property and other assets owned or acquired under any trade names, styles or derivations thereof), and whether owned or consigned by or to, or leased from or to, a Borrower, and regardless of where located; and for the avoidance of doubt, excluding, personal property and other assets of Tenants other than Kansas City Master Lessee; provided, however, at any time that LCRA is a “Borrower” hereunder, the Collateral, with respect to LCRA, is limited to LCRA’s interest in the Kansas City Project only and shall not apply, or in any manner be deemed to apply, to assets of LCRA other than the Kansas City Project.

“**Commitment**” means as to each Lender, the obligation of such Lender to make a portion of the principal amount of the Loan, in an aggregate amount up to but not exceeding the amount set opposite the name of such Lender on Exhibit C attached hereto or as specified in the respective Assignment and Assumption pursuant to which such assignment is effected, in either case, as such percentage may be modified by any Assignment and Assumption.

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

“Compliance Authority” has the meaning assigned in Section 5.18(f).

“Compliance Certificate” means the compliance certificate in the form of Schedule 6.2 attached hereto.

“CONA” has the meaning assigned in the Preamble to this Agreement.

“Condemnation” has the meaning assigned in Section 3.3.

“Contest” has the meaning assigned in Section 12.1(b).

“Contract Rate” means (a) prior to a Benchmark Replacement Date, a floating rate of interest equal to the LIBOR Rate, plus the Applicable Margin and (b) following a Benchmark Replacement Date, then the Contract Rate will be (i) the Benchmark Replacement Rate or (ii) during a Benchmark Unavailability Period, the Base Rate plus the Applicable Margin; provided, however, if, in accordance with the terms of Section 2.8(c), the Libor Rate or Benchmark Replacement Rate is not being utilized with respect to the Loan (or a portion thereof), then the Contract Rate will be a floating rate of interest equal to the Base Rate, plus the Applicable Margin, as determined in accordance with the terms of Section 2.8(c).

“Control” or **“controls”** means, when used with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract, by its position with such Person as general partner or managing member, or otherwise (and Control shall not be deemed absent solely because one or more non-managing members, partners or shareholders shall have veto rights with respect to major decisions or the right to direct certain matters specifically enumerated in such Person’s governing documents); and the terms “Controlling” and “Controlled” have the meanings correlative to the foregoing.

“Covered Entity” has the meaning assigned in Section 5.18(f).

“Covered Entity Advisor” has the meaning assigned in Section 5.18(f).

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

as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

“Debt Service” means, as of a particular date, for the 12-month period immediately preceding (or, if specified in the applicable provision, following) such date, the aggregate interest, fixed principal, and other payments due under the Loan and under any other permitted Debt relating to the Projects expressly approved by Administrative Agent but not including payments applied to escrows or reserves required by Administrative Agent or the Lenders. If Debt Service for a period of twelve (12) months (or other calculation period), if applicable, is not available, Administrative Agent shall annualize the Debt Service for such period of time as is available.

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

“Declarations” means, collectively, the Brandon Declarations, the Petoskey Declaration, the Jacksonville Declaration, the Kansas City Declaration and the Lafayette Declaration.

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

“Defaulting Lender” has the meaning assigned in Section 10.5(a).

“Deposit Account Control Agreement” means, individually or collectively, as context may require, any control agreement, each in form and substance reasonably satisfactory to Administrative Agent and the applicable Borrower or Kansas City Master Lessee, among CONA (or another depository institution reasonably acceptable to Administrative Agent), one or more Borrowers and Administrative Agent, sufficient to grant Administrative Agent “control” (for purposes of Article 9 of the UCC) of the Deposit Account described therein.

“Determination Date” means the last day of each calendar quarter commencing with the calendar quarter ending on *, 20 .

“Division Transaction” means, with respect to any Restricted Party that is a limited liability company, the adoption of a “plan of division,” the filing of a certificate of division” or the taking of any other action such that such Restricted Party (a) divides into two or more Persons (regardless of whether such Restricted Party survives such division) or (b) creates or reorganizes into one or more “series LLCs.”

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

“DSCR Paydown Amount” means an amount, as reasonably calculated by Administrative Agent that, if applied to the outstanding principal balance of the Loan as of the most recent Determination Date would have resulted in a Debt Service Coverage Ratio equal to 1.25:1.00.

“Early Opt-in Election” means the occurrence of:

- (1) either (i) a determination by Administrative Agent or (ii) a notification by the Required Lenders to Administrative Agent (with a copy to Borrowers) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in this Section 2.10 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the LIBOR Rate, and
- (2) either (i) the election by Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to Borrowers and the Lenders or by the Required Lenders of written notice of such election to Administrative Agent.

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

“Environmental Indemnity Agreement” means that certain Environmental Indemnity Agreement dated of even date herewith, in favor of Administrative Agent (for itself and on behalf of the Lenders) executed by Borrowers (other than LCRA), Kansas City Master Lessee and Guarantor with respect to the Projects, as amended, restated, supplemented, or otherwise modified from time to time. The parties expressly acknowledge that LCRA is not a party to the Environmental Indemnity Agreement and that, notwithstanding any other provisions of this Agreement, any other Loan Document or the Environmental Indemnity Agreement to the contrary, LCRA shall have no obligations or liability whatsoever under the Environmental Indemnity Agreement.

“Environmental Laws” means any federal, state or local law (whether imposed by statute, ordinance, rule, regulation, administrative or judicial order, or common law), now or hereafter enacted, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including such laws (a) governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, release, discharge of, or exposure to, Hazardous Materials, (b) governing or regulating the transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of such property, or (c) requiring notification or disclosure of releases of Hazardous Materials or other environmental conditions whether or not in connection with a transfer of title to or interest in property.

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

“Event of Default” has the meaning assigned in Article 8.

“Excess Cash Flow” means, for any period, the amount by which the actual revenue of the Projects exceeds the actual expenses of the Projects.

“Excess Cash Flow Certificate” means a compliance certificate in the form of **Schedule 7.13** hereto.

“Excess Cash Flow Termination Date” means the date on which (i) Administrative Agent has determined that the Project Yield has equaled or exceeded the Cash Sweep Threshold for two consecutive Determination Dates (as reasonably determined by Administrative Agent based on the financial statements and Compliance Certificate delivered to Administrative Agent in accordance with **Article 6** of this Agreement), and (ii) no Potential Default or Event of Default then exists.

“Excluded Hedge Agreement Obligation” means, with respect to any Loan Party Guarantor, any guarantee of any Swap Obligations under a Secured Hedge Agreement if, and only to the extent that and for so long as, all or a portion of the guarantee of such Loan Party Guarantor of, or the grant by such Loan Party Guarantor of a security interest to secure, such Swap Obligation under a Secured Hedge Agreement (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 Loan Party Guarantor's failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the guarantee of such Loan Party Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation under a Secured Hedge Agreement; provided, however, that if any Loan Party Guarantor that was not an “eligible contract participant” at the time any such guarantee of a Swap Obligation under a Secured Hedge Agreement was entered into thereafter becomes an “eligible contract participant,” such Loan Party Guarantor shall, by virtue of the guaranty or security agreement or joinder thereto and without any further action by any Person, be deemed to have guaranteed the Swap Obligations under Secured Hedge Agreements and granted a security interest to secure such Swap Obligations under Secured Hedge Agreements, and such Swap Obligations under Secured Hedge Agreements shall no longer constitute Excluded Hedge Agreement Obligations with respect to such Loan Party Guarantor. If a Swap Obligation under a Secured Hedge Agreement arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation under a Secured Hedge Agreement that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“Excluded Taxes” has the meaning assigned in **Section 2.16(a)**.

“Executive Officer” means any executive officer as set forth on a proxy statement filed with the U.S. Securities and Exchange Commission.

“Extension Period” means, as applicable, the First Extension Period or the Second Extension Period.

“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 (whether final, temporary or proposed) or official interpretations thereof, 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 and implementing such Sections of the Code.

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

“**Federal Flood Insurance**” means, for any Improvements (including any personal property Collateral) located in a Special Flood Hazard Area, Federal or private insurance reasonably satisfactory to Administrative Agent, in either case, that (a) meets the requirements of FEMA and other applicable federal agencies, (b) includes a deductible not to exceed \$50,000 and (c) has a coverage amount equal to the lesser of (i) the insurable value of the buildings and any personal property Collateral located at the Project as determined by Administrative Agent or (ii) the maximum policy limits set under the National Flood Insurance Program.

“**Federal Funds Rate**” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/32 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, provided that (a) if such day is not a Business Day, the Federal Funds Rate at the immediately preceding Business Day shall be applicable, as reasonably determined by Administrative Agent, or such other commercial bank as selected by Administrative Agent.

“**Federal Reserve Bank of New York’s Website**” means the website of the Federal Reserve Bank of New York at <http://www.newyorkfed.org>, or any successor source.

“**Fee Letter**” means the letter agreement, dated the date hereof, among Borrowers, Administrative Agent, Sole Lead Arranger and Sole Bookrunner with respect to certain fees payable by Borrowers in connection with the Loan, as the same may be modified or amended from time to time.

“**FEMA**” means the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security that administers the National Flood Insurance Program.

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

“**First Extension Period**” means the twelve (12) month period commencing on *_____, 20___, and ending on *_____, 20___.

“**Financing Notice**” has the meaning assigned in Section 11.39.

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

“**Forfeiture Rights**” has the meaning assigned in Section 5.12.

“**Funds**” means the Replacement Escrow Fund.

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

“**Government Lists**” means (a) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (b) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Administrative Agent notified Borrowers in writing is now included in “Governmental Lists”, or (c) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Administrative Agent notified Borrowers in writing is now included in “Governmental Lists”.

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

“**Governmental Authority**” means any federal, state, county or municipal government or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body (including the State Regulator), or any court, administrative tribunal, or public body.

“**Ground Leases**” means, collectively, the Jacksonville Ground Lease, the Kansas City Ground Lease, the Lafayette Ground Lease the Old Bridge Ground Lease, the Petoskey Ground Lease, the Rochester Ground Lease and the Brandon Ground Lease.

“**Ground Lessors**” means, collectively, the Jacksonville Ground Lessor, the Kansas City Ground Lessor, the Lafayette Ground Lessor the Old Bridge Ground Lessor, the Petoskey Ground Lessor, the Rochester Ground Lessor and the Brandon Ground Lessor.

“**Guarantor**” means, individually and collectively, as the context may require, Welltower Inc., a Delaware corporation, and each other Person (excluding another Borrower) who from time to time is party to a Recourse Guaranty Agreement or otherwise guarantees the Obligations or any portion thereof.

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

concentration or physical or chemical characteristics, exposure is limited or regulated by any Governmental Authority having jurisdiction over human health and safety, natural resources or the environment, or which poses a significant present or potential hazard to human health and safety, or to the environment, if released into the workplace or the environment.

“Healthcare Investigations” means any inquiries, investigations, probes, audits or proceedings with respect to any Project, any Borrower Party (excluding LCRA) or any Property Manager concerning alleged or actual violations of Healthcare Laws.

“Healthcare Laws” means all provisions, rules and regulations pursuant to or promulgated under the False Claims Act (31 U.S.C. Section 3729 et seq.), the Anti-Kickback Act of 1986 (41 U.S.C. Section 51 et seq.), the Federal Health Care Programs Anti-Kickback statute (42 U.S.C. Section 1320-7a(b)), the Ethics in Patient Referrals Act of 1989, as amended (Stark Law) (42 U.S.C. 1395nn), the Civil Monetary Penalties Law (42 U.S.C. Section 1320a-7a), or the Truth in Negotiations (10 U.S.C. Section 2304 et seq.), Health Care Fraud (18 U.S.C. 1347), Wire Fraud (18 U.S.C. 1343), Theft or Embezzlement (18 U.S.C. 669), False Statements (18 U.S.C. 1001), False Statements (18 U.S.C. 1035), Patent Inducements Statute, and equivalent state statutes and regulations, and any and all rules and regulations promulgated by Governmental Authorities, including the Centers of Medicare and Medicaid Services (CMS), with respect to any of the foregoing.

“Hedge Agreement” means any and all swap agreements (as such term is defined in Section 101 of the Federal Bankruptcy Code) designed to provide protection against fluctuations in interest or currency exchange rates and any other agreements or arrangements designed to provide such protection.

“Hedge Obligations” means any and all obligations of any Borrower Party (other than LCRA), whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Hedge Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any such Hedge Agreement transaction.

“Hypothetical Project Yield” means, as of any Determination Date, the Project Yield that would exist on such date if the outstanding principal balance of the Loan on such date was reduced by (a) amounts on deposit in the Project Yield Fund on such date, and (b) the face amount of any Special Letters of Credit outstanding on such date.

“Improvements” means the buildings and other improvements now or hereafter located on the Land.

“Indebtedness” means all payment obligations of Borrowers or any other Borrower Party to Administrative Agent or to any Lender under the Loan or any of the Loan Documents, including any and all interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding.

“Indemnified Matters” has the meaning assigned in Section 11.5.

“Indemnified Person” has the meaning assigned in Section 11.5.

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

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

“Interest Period” means (a) initially, the period commencing on the Closing Date and ending on (but excluding) the first Business Day of the first calendar month thereafter, and (b) thereafter, the period commencing on (and including) the first Business Day of such calendar month and ending on (but excluding) the first Business Day of the following month; provided, any Interest Period that would otherwise extend beyond the Maturity Date of the Loan shall end on the Maturity Date.

“Jacksonville Declaration” means the Easement Agreement dated July 10, 2013, recorded in Book 16475, Page 1475, Public Records of Duval County, Florida, as may be further amended or modified from time to time.

“Jacksonville Ground Lease” means the Ground Lease dated as of March 1, 2013, as amended by (i) First Amendment to Ground Lease dated May 17, 2013, (ii) Second Amendment to Ground Lease dated as of July 10, 2013, and (iii) Third Amendment to Ground Lease dated as of June 29, 2015, executed between Ground Lessor, as lessor, and Jacksonville Medical Office Building LLC, as lessee, as evidenced by Memorandum of Ground Lease dated as of March 1, 2013 recorded on May 29, 2013 in OR Book 16387, Page 1503, in the Office of the Clerk of Court of Duval County, Florida, as amended by Amendment to Memorandum of Ground Lease dated July 10, 2013, recorded on July 31, 2013 in OR Book 16475, Page 1470, in the Office of the Clerk of Court of Duval County, Florida, as may be further amended or modified from time to time.

“Jacksonville Ground Lessor” means Shands Jacksonville Foundation, Inc., a Florida nonprofit corporation, and any successor in interest thereto.

“Jacksonville Land” means the real property described in Exhibit A-2 attached hereto.

“Jacksonville Project” means the Jacksonville Land and Improvements located on the Jacksonville Land, and all related facilities, amenities, fixtures, and personal property owned by any Borrower.

“Jacksonville Recognition Agreement” means that certain Ground Lessor’s Estoppel, Consent, and Non-Disturbance Agreement of even date herewith executed by and among Administrative Agent, Jacksonville Medical Office Building LLC and Jacksonville Ground Lessor relating to the Jacksonville Ground Lease.

“Kansas City Declaration” means the Easement Agreement dated July 25, 2014, recorded as Document No. 2014E0062554, Records of Jackson County, Missouri, as amended by

Amendment To Hospital Hill Documents dated October 14, 2015, recorded as Document No. 2015E0094023, Records of Jackson County, Missouri, as may be further amended or modified from time to time.

“Kansas City Ground Lease” means the Ground Lease dated as of March 4, 2014, as amended by (i) First Amendment to Ground Lease dated as of July 1, 2014, and (ii) Amendment to Hospital Hill Documents dated October 14, 2015, recorded as Document No. 2015E0094023 in the Public Records of Jackson County, Missouri, as evidenced by Memorandum of Ground Lease dated as of July 25, 2014, recorded on July 30, 2014, as Document No. 2014E0062508 in the records of Jackson County, Missouri, as amended by Amendment to Hospital Hill Documents dated October 14, 2015, recorded as Document No. 2015E0094023 in the Public Records of Jackson County, Missouri, as amended or modified from time to time.

“Kansas City Ground Lessor” means Truman Medical Center Incorporated, a Missouri non-profit corporation, and any successor in interest thereto.

“Kansas City Land” means the real property described in Exhibit A-5 attached hereto.

“Kansas City Master Lease” means the Master Lease dated as of July 25, 2014, between LCRA, as landlord, and Kansas City Master Lessee, as successor-in-interest to the tenant named therein, as evidenced by Memorandum of Master Lease dated as of July 25, 2014, recorded on August 1, 2014, as Document No. 2014E0063360 in the records of Jackson County, Missouri, all as amended by Amendment to Hospital Hill Documents dated October 14, 2015, recorded as Document No. 2015E0094023 in the records of Jackson County, Missouri, as the same may be further amended or modified from time to time, as affected by the Kansas City Master Lease NDA. Unless earlier terminated pursuant to a LCRA Termination Right, the term of Kansas City Master Lease expires at 11:59 p.m. on July 24, 2039.

“Kansas City Master Lease Documents” means the Kansas City Master Lease and the Kansas City Master Lease NDA.

“Kansas City Master Lease NDA” means the Non Disturbance, Recognition and Attornment Agreement dated as of July 25, 2014, recorded on August 4, 2014, as Document No. 2014E0063992 in the records of Jackson County, Missouri, relating to the Master Lease, as amended by Amendment to Hospital Hill Documents dated October 14, 2015, recorded as Document No. 2015E0094023 in the records of Jackson County, Missouri.

“Kansas City Master Lessee” has the meaning assigned in the preamble of this Agreement.

“Kansas City Project” means the Kansas City Land and Improvements located on the Kansas City Land, and all related facilities, amenities, fixtures, and personal property owned by any Borrower or by Kansas City Master Lessee.

“Kansas City Recognition Agreement” means that certain Ground Lessor’s Estoppel, Consent, and Non-Disturbance Agreement of even date herewith executed by and among

Administrative Agent, LCRA, Kansas City Master Lessee and Kansas City Ground Lessor relating to the Kansas City Ground Lease.

“Kansas City Redevelopment Contract” means the Sale/Leaseback and Redevelopment Contract by and between LCRA and Kansas City Master Lessee dated as of July 25, 2014, and recorded as Document No. 2014E0062716, in the records of Jackson County, Missouri.

“Lafayette Declaration” means the Easement Agreement dated February 6, 2009, recorded at Registry No. 2009-00083042, Records of Lafayette Parish, Louisiana, as amended by First Amendment to Easement Agreement dated June 29, 2009, recorded at Registry No. 2009-00030316, Records of Lafayette Parish, Louisiana, as may be further amended or modified from time to time.

“Lafayette Ground Lease” means the Ground Lease dated as of February 6, 2009, as amended by First Amendment to Ground Lease dated as of April 30, 2009 and Second Amendment to Ground Lease dated as of June 29, 2009, as evidenced by Memorandum of Ground Lease dated as of February 6, 2009, recorded on March 5, 2009 under Registry No. 2009-8341, as amended by First Amendment to Memorandum of Ground Lease dated June 29, 2009, recorded July 17, 2009 under Registry No. 2009-30315, all in the office of land records in the Office of the Lafayette Parish Clerk of Court, as may be further amended or modified from time to time.

“Lafayette Ground Lessor” means Our Lady of Lourdes Regional Medical Center, Inc., a Louisiana non-profit corporation, and any successor in interest thereto.

“Lafayette Land” means the real property described in Exhibit A-6 attached hereto.

“Lafayette Project” means the Lafayette Land and Improvements located on the Lafayette Land, and all related facilities, amenities, fixtures, and personal property owned by any Borrower.

“Lafayette Recognition Agreement” means that certain Ground Lessor’s Estoppel, Consent, and Non-Disturbance Agreement of even date herewith executed by and among Administrative Agent, Lafayette Medical Complex I, LLC and Lafayette Ground Lessor relating to the Lafayette Ground Lease.

“Land” means, collectively, the Jacksonville Land, the Kansas City Land, the Lafayette Land, the Old Bridge Land, the Petoskey Land, the Rochester Land and the Brandon Land.

“Landlord Party” means the party to any Lease that grants to the other party the right to use or occupy any portion of the Projects, whether it be a Borrower or any Property Manager.

“LCRA” means Land Clearance for Redevelopment Authority of Kansas City, Missouri, a public body corporate and politic organized under the laws of Missouri and the ordinances of the City of Kansas City, Missouri, but not any successor or assign thereof other than the City of Kansas City, Missouri or other tax-exempt agency of the City of Kansas City, Missouri.

“LCRA Documents” means (i) the Kansas City Redevelopment Contract, and (ii) Funding Agreement dated as of July 25, 2014 by and among Kansas City Ground Lessor, LCRA and Kansas City Master Lessee, as the same may be amended or modified from time to time.

“LCRA Termination Right” means (i) the right of LCRA to terminate the Kansas City Master Lease and simultaneously transfer to Hospital Hill Medical Office Building, LLC all right, title and interest of LCRA under the Kansas City Ground Lease pursuant to Section 15.2 or Section 17.2 of the Kansas City Master Lease and Section 3.05 of the Kansas City Redevelopment Contract, and/or (ii) the right of Kansas City Master Lessee to terminate the Kansas City Master Lease and simultaneously cause LCRA to transfer all right, title and interest of LCRA under the Kansas City Ground Lease pursuant to Section 17.1 of the Kansas City Master Lease and Section 3.02 of the Kansas City Redevelopment Contract; provided however Kansas City Master Lessee shall provide Administrative Agent with at least 30 days prior written notice prior to Kansas City Master Lessee exercising a LCRA Termination Right. In addition, unless earlier terminated pursuant to a LCRA Termination Right, the Kansas City Master Lease shall terminate at 11:59 p.m. on July 24, 2039, and all of LCRA’s right, title and interest in the Kansas City Project shall be transferred to the Kansas City Master Lessee as provided in the Kansas City Master Lease and the Kansas City Redevelopment Contract.

“Leases” means all leases of, subleases of and occupancy agreements affecting the Projects or any part thereof now existing or hereafter executed and all amendments, modifications or supplements thereto (but excluding the Kansas City Master Lease).

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

“Lender Cash Management Agreements” means any and all cash management, overdraft, return items, treasury, foreign exchange, lockbox, sweep-to-line, controlled disbursement, credit or debit card, stored value card, interstate depository network service, EFT, ACH and other agreements entered into from time to time between any Borrower (but excluding LCRA) or Kansas City Master Lessee and Administrative Agent or any Lender in connection with the Loan.

“Lender Party Payments” has the meaning assigned in Section 7.13.

“Lender Transferee” has the meaning assigned in Section 11.3(b).

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon

or as a result thereof and reasonable out-of-pocket fees and costs of financial, legal and other advisors and consultants), whether joint or several, (excluding indirect, consequential, punitive or exemplary damages (including loss of use, loss of Rents or diminution in value) unless such damages were imposed upon such Person as a result of any claims made against such Person by a Governmental Authority or other third party).

“Libor Breakage Amount” means an amount, as reasonably calculated by any Lender, equal to the amount of any reasonable losses, expenses and costs that such Lender or any of its Affiliates may actually sustain as a result of any payment of the Loan (or any portion thereof) on any day that is not the last day of the Libor Interest Period applicable thereto (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise).

“Libor Rate” means the greater of (a) 1.00% per annum, or (b) with respect to each Interest Period, the rate for a Libor Reset Date which will be the rate determined by Administrative Agent to be the offered rate for deposits in Dollars for the applicable Interest Period appearing on the Reuters Screen LIBOR01 page as of 11:00 a.m. (London time) two (2) Business Days prior to the Closing Date (with respect to the determination of the initial Libor Rate) or the applicable Libor Reset Date. If such rate does not appear on the Reuters Screen LIBOR01 page at such time, the “Libor Rate” shall be determined by reference to such other comparable publicly available service for displaying the offered rate for deposit in Dollars in the London interbank market as may be selected by Administrative Agent and, in the absence of availability, such other method to determine such offered rate as may be selected by Administrative Agent in its reasonable discretion.

“Libor Reset Date” means the first day of each Interest Period following the Closing Date.

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

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

“Loan Documents” means: (a) this Agreement, (b) the Notes, (c) each Mortgage, (d) UCC financing statements, (e) such assignments of management agreements, contracts and other rights as may be required under the Term Sheet or otherwise requested by Administrative Agent or the Lenders, (f) the Recourse Guaranty Agreement, (g) [intentionally omitted], (h) the Acknowledgment of Property Manager, (i) Deposit Account Control Agreement, (j) [intentionally omitted], (k) any Secured Hedge Agreements, (l) all other documents evidencing, securing, governing or otherwise pertaining to the Loan, (m) any letter of credit provided to Administrative Agent (for itself and on behalf of the Lenders) in connection with the Loan, (n) any document that provides that it is a “Loan Document”, and (o) all amendments, modifications, renewals,

substitutions and replacements of any of the foregoing; provided however, in no event shall the term “Loan Documents” include the Environmental Indemnity Agreement.

“**Loan Party Guarantor**” means each Borrower (excluding LCRA), Kansas City Master Lessee and Guarantor.

“**Loan Year**” means (a) for the first Loan Year, the period commencing on the Closing Date and ending on the last day of the month in which the first anniversary of the Closing Date occurs (unless the Closing Date is on the first day of a month, in which case the first Loan Year shall commence on such Closing Date and end on the date twelve (12) months after the last day of the month immediately preceding the Closing Date) and (b) each consecutive twelve month calendar period after the first Loan Year until the Maturity Date.

“**LTV Ratio**” means the ratio, as reasonably determined by Administrative Agent, of the sum of the outstanding principal balances of the Loan to the “as-is” appraised value of the Projects as of the date of determination.

“**Major Lease**” means the Leases listed on *Exhibit F*, together with any guaranty thereof, any future Lease (or Leases to the same Tenant or to Affiliates), together with any guaranty thereof, that demises 10% or more of a Project or will represent more than 10% of the annual revenue of a Project.

“**Management Agreements**” means, collectively, those certain agreements between a Borrower or Kansas City Master Lessee and Property Manager for the management of a Project, in substantially the form approved by Administrative Agent on or before the Closing Date, (b) any subsequent management agreement, in form and substance approved by Administrative Agent in its reasonable discretion in accordance with Section 7.3, between a Borrower or Kansas City Master Lessee and a Property Manager and (c) all amendments, restatements, modifications and supplements to a Management Agreement approved by Administrative Agent in its reasonable discretion in accordance with Section 7.3.

“**Master Account**” has the meaning assigned in Section 5.17(c)(x).

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

“Material Adverse Change” or **“material adverse change”** means the business prospects, operations or financial condition of a Person or property has changed in a manner which is reasonably likely to impair the value of the Collateral, prevent timely repayment of the Loan or otherwise prevent the applicable Person from timely performing any of its material obligations under the Loan Documents or Environmental Indemnity Agreement. The term “Borrower” in this definition shall exclude LCRA.

“Material Adverse Effect” or **“material adverse effect”** means a material adverse effect on (a) the condition (financial or otherwise), operations, business, assets, liabilities or prospects of Borrowers taken as a whole, or any other Borrower Party, (b) the ability of Borrowers or any other Borrower Party to perform any material obligation required of them under the Loan Documents, (c) the rights and remedies of Administrative Agent and the Lenders under the Loan Documents, or (d) the ability of Borrowers or the Property Manager to operate all or a material portion of the Projects. The term “Borrower” in this definition shall exclude LCRA.

“Maturity Date” means, as applicable, the earlier of (a) *_____, 20__ [60 MONTHS], unless extended as provided herein, or (b) the date on which the entire Loan is required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents. In no event may the Maturity Date be extended beyond the scheduled expiration date of the Kansas City Master Lease.

“Maximum Commitment Amount” means \$288,894,100.00.

“Mortgage” means, individually and collectively, as the context may require, each Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, each Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, and each Deed to Secure Debt, Assignment of Leases and Rents, Security Agreement and Fixture Filing, each executed by the applicable Borrower (and if applicable Kansas City Master Lessee) in favor of Administrative Agent (for itself and on behalf of the Lenders), encumbering a Project, as amended, restated, supplemented, or otherwise modified from time to time.

“National Flood Insurance Program” means the program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994, and as the same may be further amended, modified or supplemented, and including the regulations issued thereunder, that, among other things, mandates the purchase of flood insurance to cover real property improvements and contents located in Special Flood Hazard Areas in participating communities and may provide protection to property owners through a federal insurance program.

“Non-Conforming Policy” has the meaning assigned in Section 3.1.

“Non-Pro Rata Advance” means a Protective Advance or a disbursement under the Loan with respect to which fewer than all Lenders have funded their respective Proportionate Shares in breach of their obligations under this Agreement.

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

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

“Notice of Default” has the meaning assigned in Section 10.9(a).

“Obligations” means the Indebtedness and any and all existing and future debts, liabilities and obligations of every kind or nature at any time owing by any Borrower Party to Administrative Agent and Lenders or any Secured Hedge Provider, whether under this Agreement or any other Loan Document, whether joint or several, related or unrelated, primary or secondary, matured or contingent, due or to become due (including debts, liabilities and obligations obtained by assignment), and whether principal, interest, fees, indemnification obligations hereunder or expenses (specifically including interest accruing after the commencement of any bankruptcy, insolvency or similar proceeding with respect to any Borrower Party, whether or not a claim for such post-commencement interest is allowed), including, without limitation, any extensions, modifications, substitutions, increases and renewals of the Loan; (provided that the Obligations of any Loan Party Guarantor shall not include any Excluded Hedge Agreement Obligations of such Loan Party Guarantor); the payment of all amounts advanced by Administrative Agent, any Lender or any Secured Hedge Provider to preserve, protect and enforce rights hereunder and in the Collateral; and all reasonable out-of-pocket expenses incurred by Administrative Agent, any Lender, any Affiliate of a Lender or any Secured Hedge Provider. Without limiting the generality of the foregoing, Obligations shall include any other debts, liabilities or obligations owing to Administrative Agent or any Lender in connection with (1) any Lender Cash Management Agreements, (2) any Secured Hedge Agreements and Hedge Obligations and (3) Treasury Services Agreements and Treasury Services Obligations, in each case, entered into in connection with the Loan; provided, however, that any obligations with respect to Secured Hedge Agreements or Lender Cash Management Agreements, as applicable, that are owing to a Lender other than Administrative Agent or its Affiliates shall only constitute “Obligations” hereunder if the applicable Secured Hedge Agreement or Lender Cash Management Agreement was entered into on or after the Closing Date and the applicable Lender gave written notice to Administrative Agent of the same within 10 days thereafter.

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

“Old Bridge Ground Lease” means the Ground Lease dated as of October 29, 2012, as amended by First Amendment to Ground Lease dated as of February 12, 2013, executed between Ground Lessor, as lessor, and Old Bridge Medical Office Building, LLC, as lessee, as evidenced by Memorandum of Ground Lease dated as of March 25, 2013, recorded on April 29, 2013 in Book 6449, Page 339 in the Office of the Clerk of Middlesex County, New Jersey, as amended or modified from time to time.

“**Old Bridge Ground Lessor**” means Raritan Bay Medical Center, a New Jersey nonprofit corporation, and any successor in interest thereto.

“**Old Bridge Land**” means the real property described in Exhibit A-3 attached hereto.

“**Old Bridge Project**” means the Old Bridge Land and Improvements located on the Old Bridge Land, and all related facilities, amenities, fixtures, and personal property owned by any Borrower.

“**Old Bridge Recognition Agreement**” means that certain Ground Lessor’s Estoppel, Consent, and Non-Disturbance Agreement of even date herewith executed by and among Administrative Agent, Old Bridge Medical Office Building, LLC and Old Bridge Ground Lessor relating to the Old Bridge Ground Lease.

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

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

“**Overpaying Borrower**” has the meaning assigned in Section 11.19(j).

“**Overpayment Amount**” has the meaning assigned in Section 11.19(j).

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

“**Partial Release Price**” has the meaning assigned in Section 2.17(a)(vii).

“**Participant**” has the meaning assigned in Section 11.3(d).

“**Participant Register**” has the meaning assigned in Section 11.3(d).

“**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56), as the same may be amended from time to time, and corresponding provisions of future laws related thereto.

“**Payment Date**” means the first (1st) day of each calendar month during the term of the Loan.

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

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

“Permitted Transfer” means (a) a Transfer expressly permitted under Section 7.1(c) or (b) a Prohibited Transfer approved by Administrative Agent and the Required Lenders. In no event shall a Division Transaction be considered a Permitted Transfer.

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

“Petoskey Declaration” means the Easement Agreement dated October 7, 2016, recorded in Liber 1189, Page 177, as amended by Amendment to Easement Agreement dated effective October 7, 2016, recorded in Liber 1201, page 684, in the Land Records of Emmet County, Michigan, as may be further amended or modified from time to time.

“Petoskey Ground Lease” means the Ground Lease dated as of October 7, 2016, executed between Ground Lessor, as lessor, and Petoskey Medical Office Building, LLC, as lessee, as evidenced by Memorandum of Ground Lease dated as of October 7, 2016, recorded on October 12, 2016 in Liber 1189, Page 175, in the Office of the Register of Deeds, Emmet County, Michigan, as amended or modified from time to time.

“Petoskey Ground Lessor” means McLaren Northern Michigan, a Michigan nonprofit corporation, and any successor in interest thereto.

“Petoskey Land” means the real property described in Exhibit A-4 attached hereto.

“Petoskey Project” means the Petoskey Land and Improvements located on the Petoskey Land, and all related facilities, amenities, fixtures, and personal property owned by any Borrower.

“Petoskey Recognition Agreement” means that certain Ground Lessor’s Estoppel, Consent, and Non-Disturbance Agreement of even date herewith executed by and among Administrative Agent, Petoskey Medical Office Building, LLC and Petoskey Ground Lessor relating to the Petoskey Ground Lease.

“Platform” means any electronic system, including Intralinks®, ClearPar® and any other internet or extranet-based site, whether such electronic system is owned, operated or hosted by Administrative Agent or any Lender, any of their respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Post-Closing Obligations” means the post-closing obligations described on Schedule 11.36.

“Post-Foreclosure Plan” has the meaning assigned in Section 10.9(e).

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

“Prepayment Fee” means with respect to any prepayment or acceleration occurring, (a) during the first Loan Year, an amount equal to 3.0% of the principal amount of the Loan being prepaid or accelerated, (b) during the second Loan Year, an amount equal to 2.0% of the principal amount of the Loan being prepaid or accelerated, (c) during the third Loan Year, an amount equal to 1.0% of the principal amount of the Loan being prepaid or accelerated; and (d) following the end of the third Loan Year, zero (0).

“Prepayment Premium” means an amount equal to the sum of (i) the Libor Breakage Amount and (ii) the Prepayment Fee.

“Prohibited Person” means any Person:

- (i) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the **“Executive Order”**);
- (ii) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;
- (iv) who is known to any Borrower to commit, threaten or conspire to commit or support “terrorism”, as defined in the Executive Order;
- (v) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list;
- (vi) that is named on the consolidated list of asset freeze targets by the United Nations, the European Union and the United Kingdom (maintained by the Asset Freezing Unit of the United Kingdom Treasury: <http://www.hm-treasury.gov.uk/financialsanctions>);
- (vii) that is named on the most current lists pertaining to EU-Regulations Nos. 2580/2001 or 881/2002;
- (viii) that violates any of the criminal laws of the United States of America or of any of the several states, or commits any act that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the

Money Laundering Control Act of 1986, as amended, (e) the Trading with the Enemy Act, as amended, (f) the International Emergency Economic Powers Act, or the (g) Patriot Act; or

- (ix) who is known to any Borrower to be an Affiliate of or affiliated with a Person listed above.

“**Prohibited Transfer**” has the meaning assigned in Section 7.1(a).

“**Project Yield**” means the ratio, as of any particular date, expressed as a percentage, of (a) the Adjusted Net Operating Income as of such date (as reasonably determined by Administrative Agent based on the financial statements and Compliance Certificate delivered to Administrative Agent in accordance with Article 6 of this Agreement), to (b) the outstanding principal balance of the Loan as of such date.

“**Project Yield – Cash Sweep Commencement**” means the ratio, as of any particular date, expressed as a percentage, of (a) the Adjusted Net Operating Income as of such date (as reasonably determined by Administrative Agent based on the financial statements and Compliance Certificate delivered to Administrative Agent in accordance with Article 6 of this Agreement), to (b) the outstanding principal balance of the Loan as of such date less the face amount of any Cash Sweep Prevention Letters of Credit outstanding on such date.

“**Project Yield Fund**” has the meaning assigned in Section 7.13.

“**Projects**” means, collectively, the Jacksonville Project, the Kansas City Project, the Lafayette Project, the Old Bridge Project, the Petoskey Project, the Rochester Project and the Brandon Project.

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

“**Property Manager**” means * [REDACTED], the manager of the Projects approved by Administrative Agent and any successor property manager approved by Administrative Agent.

“**Proportionate Share**” means, with respect to each Lender, the percentage set forth opposite such Lender’s name on Exhibit C attached hereto under the caption “Proportionate Share” or in the Assignment and Assumption (in accordance with the terms of this Agreement) pursuant to which such Lender became a party hereto, in any case, as such percentage may be modified in the most recent Assignment and Assumption (in accordance with the terms of this Agreement) to which such Lender is a party. The aggregate Proportionate Shares of all Lenders shall equal one hundred percent (100%).

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

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

“Protective Advances” has the meaning assigned in Section 10.9(b).

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

“Qualifying Leases” means (a) fully executed and delivered Leases with unrelated third party Tenants and with an initial term of three (3) years or more, entered into in accordance with the terms of this Agreement, for which the Tenant under such Lease has commenced rental payments; provided, however, (i) any Lease which is in material default (whether by landlord or tenant) as of the testing date will not be considered a Qualifying Lease and (ii) in no event will the Kansas City Master Lease be considered a Qualifying Lease.

“Qualified Manager” shall mean Welltower Property Manager or any other Person which is Controlled by Guarantor.

“Recognition Agreements” collectively, the Jacksonville Recognition Agreement, the Kansas City Recognition Agreement, the Lafayette Recognition Agreement, the Old Bridge Recognition Agreement, the Petoskey Recognition Agreement, the Rochester Recognition Agreement and the Brandon Recognition Agreement.

“Recourse Guaranty Agreement” means collectively, (a) that certain Guaranty of Recourse Obligations executed by Guarantor dated of even date herewith, as amended, restated, supplemented, or otherwise modified from time to time, and (b) each additional guaranty of recourse obligations executed and delivered to Administrative Agent by each Person who from time to time becomes a Guarantor hereunder, as the same may be, in each case, amended, restated, supplemented, or otherwise modified from time to time.

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

“Related Persons” means, with respect to any Person, each of such Person’s Affiliates, officers, directors, employees, agents, trustees, representatives, attorneys, accountants, and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

“Release Conditions” has the meaning assigned in Section 2.17(a).

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

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

“Replacement Treasury Yield” means the rate of interest equal to the yield to maturity of the most recently issued U.S. Treasury security as quoted in the Wall Street Journal on any prepayment date. If the remaining term is less than one year, the Replacement Treasury Yield will equal the yield for 1-Year Treasury’s. If the remaining term of the Loan is 1-Year, 2-Year, etc., then the Replacement Treasury Yield will equal the yield for the Treasury’s with a maturity equaling the remaining term. If the remaining term of the Loan is longer than one year but does not equal one of the maturities being quoted, then the Replacement Treasury Yield will equal the yield for Treasury’s with a maturity closest to but not exceeding the remaining term. If the Wall Street Journal (a) quotes more than one such rate, the highest of such quotes shall apply, or (b) ceases to publish such quotes, the U.S. Treasury security shall be determined from such financial reporting service or source as Administrative Agent shall determine.

“Reportable Compliance Event” has the meaning assigned in Section 5.18(f).

“Required Lenders” means Lenders holding at least 50.1% of the aggregate outstanding principal amount of the Loan or, if the Loan shall not have been made, at least 50.1% of the Commitments, provided that in determining such percentage at any given time, the Loan held by and Commitments made by all then-existing Defaulting Lenders will be disregarded and excluded, and the pro rata interests in the Loan and Commitments shall be redetermined, for voting or approval purposes only, to exclude the pro rata interests in the Loan and Commitments of such Defaulting Lenders; provided further, if there are only two (2) Lenders, Required Lenders shall mean all Lenders that are not Defaulting Lenders.

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

“Resize Amount” means an amount, as reasonably calculated by Administrative Agent upon the occurrence of any Resize Event, that, if applied to the outstanding principal balance of the Loan as of the most recent Determination Date would have resulted in a Hypothetical Project Yield equal to the Resize Threshold as of such Determination Date.

“Resize Event” means that, as of any Determination Date, the Project Yield for each of such Determination Date and the immediately preceding Determination Date is less than the Resize Threshold.

“Resize Threshold” means (i) prior to *_____, 1, 20__ [FIRST DAY OF MONTH 25], 6.50%, (ii) on or after *_____, 1, 20__ [FIRST DAY OF MONTH 25], but prior to *_____, 1, 20__ [FIRST DAY OF MONTH 49], 7.00%. and (iii) on or after *_____, 1, 20__ [FIRST DAY OF MONTH 49], 7.50%.

“Restoration Threshold” means, as of any date, the lesser of (a) five percent (5.0%) of the replacement value of the Improvements at the affected Project as of such date, and (b) \$1,000,000.00.

“Restricted Party” means (a) each Borrower, (b) any other Borrower Party, (c) any Affiliated Manager, (d) any Guarantor, and (e) any Person owning a direct or indirect legal or beneficial interest in any Person described in items (a) through (d) above; provided, however, for purposes of this definition, the terms “Borrower” and “Borrower Party” shall not include LCRA.

“Rochester Ground Lease” means the Amended and Restated Ground Lease dated as of October 1, 2009, between Rochester Ground Lessor, as lessor, and Rochester Hills Health and Wellness Building, LLC, as lessee, as amended by First Amendment to Amended and Restated Ground Lease dated as of December 4, 2009, and Second Amendment to Amended and Restated Ground Lease dated as of May 18, 2010, as evidenced by Memorandum of Lease dated as of October 1, 2009, recorded on October 21, 2009 in Liber 41564, Page 283 in the Office of Oakland County Register of Deeds, as amended or modified from time to time.

“Rochester Ground Lessor” means William Beaumont Hospital, a Michigan non-profit corporation, and any successor in interest thereto.

“Rochester Land” means the real property described in Exhibit A-7 attached hereto.

“Rochester Project” means the Rochester Land and Improvements located on the Rochester Land, and all related facilities, amenities, fixtures, and personal property owned by any Borrower.

“Rochester Recognition Agreement” means that certain Ground Lessor’s Estoppel, Consent, and Non-Disturbance Agreement of even date herewith executed by and among Administrative Agent, Rochester Hills Health and Wellness Building, LLC and Rochester Ground Lessor relating to the Rochester Ground Lease.

“Sanctioned Country” has the meaning assigned in Section 5.18(f).

“Sanctioned Person” has the meaning assigned in Section 5.18(f).

“Second Extension Period” means the twelve (12) month period commencing on * , 20 , and ending on * , 20 .

“Secured Hedge Agreement” means any (a) Hedge Agreement between a Borrower (or an Affiliate of a Borrower) and a Secured Hedge Provider or (b) any Hedge Agreement Administrative Agent has acknowledged in writing constitutes a “Secured Hedge Agreement” hereunder.

“Secured Hedge Provider” means (a) a Lender or an Affiliate of a Lender (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of a Hedge Agreement) who has entered into a Hedge Agreement with any Borrower, or (b) a Person with

whom any Borrower has entered into a Hedge Agreement provided or arranged by CONA or an Affiliate of CONA, or for which CONA or an Affiliate of CONA has provided credit enhancement through either an assignment right or a letter of credit in favor of such Person, and any assignee thereof.

“Secured Party(ies)” means, the holders of the Obligations from time to time and shall include (i) each Lender, (ii) the Administrative Agent, and the Lenders in respect of all other present and future obligations and liabilities of the Borrower Parties of every type and description arising under or in connection with this Agreement or any other Loan Document and the Environmental Indemnity Agreement, (iii) each Lender and Affiliate of such Lender that enters into a Hedge Agreements and Treasury Services Agreements with Borrower or Kansas City Master Lessee, (iv) each indemnified party under Section 11.5 in respect of the obligations and liabilities of the Borrower Parties to such Person hereunder and under the other Loan Documents and the Environmental Indemnity Agreement, and (v) their respective successors and (in the case of a Lender, permitted) transferees and assigns.

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

“Security Deposits” means any and all security deposits from any tenant or occupant of a Project collected or held by a Borrower, Kansas City Master Lessee or any Property Manager.

“Senior Loans” has the meaning assigned in Section 10.15(h).

“Single Purpose Entity” means a Person (other than an individual, a government or any agency or political subdivision thereof, which complies with the covenants set forth in Section 5.17 hereof.

“Site Assessment” means an environmental engineering report for a Project prepared at Borrowers’ expense by an engineer engaged by a Borrower or Kansas City Master Lessee, or by Administrative Agent on behalf of a Borrower, and approved by Administrative Agent, and in a manner reasonably satisfactory to Administrative Agent, based upon an investigation relating to and making appropriate inquiries concerning the existence of Hazardous Materials on or about such Project, and the past or present discharge, disposal, release or escape of any such substances, all consistent with ASTM Standard E1527-13 (or any successor thereto published by ASTM) and good customary and commercial practice.

“SOFR” with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York’s Website.

“Special Advance Lender” has the meaning assigned in Section 10.15(c).

“Special Flood Hazard Area” means an area that FEMA has designated as an area subject to special flood hazards, the current standard for which is at least a one percent (1%) chance of a

flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year as per the applicable flood maps.

“Specified Hedge Obligations” means any and all Hedge Obligations that, within at least ten (10) days (or such later date as the Administrative Agent may agree to in its sole discretion) from the date that any transaction relating to any such Hedge Obligation is executed, the Secured Party thereto (other than CONA) shall have delivered written notice to the Administrative Agent that such a transaction has been entered into and that it constitutes a Specified Hedge Obligation.

“Specified Treasury Services Obligations” means any and all Treasury Services Obligations that, within at least ten (10) days (or such later date as the Administrative Agent may agree to in its sole discretion) from the date that any transaction relating to any such Treasury Services Obligation is executed, the Secured Party party thereto (other than CONA) shall have delivered written notice to the Administrative Agent that such a transaction has been entered into and that it constitutes a Specified Treasury Services Obligation.

“Special Letter of Credit” means an irrevocable, unconditional, transferable, clean sight draft standby letter of credit having a term of not less than one (1) year and otherwise in form and substance reasonably satisfactory to Administrative Agent, issued to Administrative Agent, as beneficiary, for the account of an Affiliate of a Borrower, as customer, issued by an Approved Bank or another a depository institution reasonably acceptable to Administrative Agent, that includes an “evergreen” provision providing for automatic renewal, and that permits one or more drawings at any time by Administrative Agent. No Borrower shall have any reimbursement obligations under any Special Letter of Credit, and all costs and expenses incurred under any Special Letter of Credit shall payable by the applicant. A Cash Sweep Prevention Letter of Credit will be considered a Special Letter of Credit.

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

“SPV” means any special purpose funding vehicle identified as such in a writing by any Lender to Administrative Agent.

“State Regulator” means the applicable state department of health or other applicable state or local regulatory agency having jurisdiction over the operation of a Project.

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

“Survey” has the meaning assigned in Schedule 2.1.

“Swap Obligation” means, with respect to any Loan Party 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.

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

“**Taxes**” has the meaning assigned in Section 7.2.

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

“**Term Sheet**” means that certain letter agreement dated September 10, 2019, from Administrative Agent and accepted on behalf of Borrowers on September 10, 2019.

“**Term SOFR**” means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

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

“**Transfer**” means (a) a Division Transaction, or (b) any direct or indirect sale, transfer, conveyance, mortgage, grant of lien or other interest, bargain, installment sale, master lease, encumbrance, pledge, assignment, grant of any options with respect to, or any other transfer or disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) of all or any portion of the direct or indirect legal or beneficial ownership of, or any interest in, (i) the Projects or any part thereof or (ii) any Restricted Party including any agreement to transfer or cede to another Person any voting management or approval rights, or any other rights, appurtenant to such legal or beneficial ownership or other interest. A transfer of the Kansas City Project in connection with a LCRA Termination Right shall not constitute a Transfer requiring prior written consent of Administrative Agent or any Lenders (including the Required Lenders) and will be a Permitted Transfer hereunder.

“**Treasury Services**” means each and any of the following bank services provided to a Borrower or any Subsidiary by any Lender or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, commercial credit cards and purchasing cards), (b) debit cards, (c) stored value cards and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

“**Treasury Services Agreements**” means any and all agreements entered into by any Borrower in connection with Treasury Services.

“**Treasury Services Obligations**” means any and all obligations of a Borrower, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Treasury Services.

“**UCC**” means the Uniform Commercial Code as from time to time in effect in the State of Illinois; provided, however, that, if, by reason of mandatory provisions of any Requirements of Law, any of the attachment, perfection or priority of Administrative Agent’s or any other Lender’s security interest in any Collateral is governed by the Uniform Commercial Code of a jurisdiction other than the State of Illinois, “UCC” shall mean the Uniform Commercial Code as in effect in

such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of the definitions related to or otherwise used in such provisions.

“**Unadjusted Benchmark Replacement Rate**” means the Benchmark Replacement Rate excluding the Benchmark Replacement Adjustment.

“**Unpaid Amount**” has the meaning assigned in Section 10.15(d).

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

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

“**Welltower Property Manager**” means Healthcare Property Managers of America, LLC a Florida limited liability company.

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

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

“**Zoning Report**” a report verifying the zoning classification of a Project and such Project’s compliance with such zoning classification, in form and substance acceptable to Administrative Agent and sufficient for Title Company to issue a Zoning 3.1 (with parking) endorsement to the Title Policy. Each of the Zoning Reports delivered to Administrative Agent on or prior to the Closing Date have been approved by Administrative Agent.

Section 1.2 Definitions. All terms defined in Section 1.1 above or otherwise in this Agreement shall, unless otherwise defined therein, have the same meanings when used in any other Loan Document or Environmental Indemnity Agreement, or any certificate or other document made or delivered pursuant hereto. The words “hereof”, “herein”, and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole. The words “include” and “include(s)” when used in this Agreement and the other Loan Documents or Environmental Indemnity Agreement means “include(s), without limitation,” and the word “including” means “including, but not limited to.” The word “or” when used in this Agreement and the other Loan Documents or Environmental Indemnity Agreement has the inclusive meaning represented by the phrase “and/or”, unless the usage would clearly indicate otherwise. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other 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 or the Environmental Indemnity Agreement), (ii) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (iii) all references in a Loan Document or the Environmental Indemnity Agreement to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document

or the Environmental Indemnity Agreement in which such references appear, and (iv) 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.

Section 1.3 Phrases. When used in this Agreement and the other Loan Documents or Environmental Indemnity Agreement, the phrase “including” shall mean “including, but not limited to,” the phrases “satisfactory to Administrative Agent,” “satisfactory to Lenders,” and “satisfactory to Required Lenders” shall mean “in form and substance satisfactory to the applicable Person in all respects”, the phrases “with Administrative Agent’s consent,” “with the Lenders’ consent,” and “with the Required Lenders’ consent,” or “with Administrative Agent’s approval,” “with the Lenders’ approval,” and “with the Required Lenders’ approval” shall mean such consent or approval at such Person’s sole discretion, and the phrases “acceptable to Administrative Agent,” “acceptable to Lenders,” and “acceptable to the Required Lenders” shall mean “acceptable to such Person at such Person’s sole discretion” unless otherwise specified in this Agreement.

Section 1.4 UCC Terms. Unless otherwise specified herein, the following terms have the meanings ascribed to them in the UCC, provided that if such term shall be defined differently in multiple divisions or articles of the UCC, the definitions for such terms specified in Article or Division 9 of the UCC shall control: “**Accounts,**” “**Account Debtor,**” “**Chattel Paper,**” “**Contracts,**” “**Deposit Account,**” “**Documents,**” “**Equipment,**” “**Fixtures,**” “**General Intangibles,**” “**Goods,**” “**Health-Care Insurance Receivable,**” “**Instruments,**” “**Inventory,**” “**Investment Property,**” “**Letter-of-Credit Rights,**” “**Payment Intangible,**” “**Securities Account,**” “**Software**” and “**Supporting Obligations.**”

ARTICLE 2 **LOAN TERMS**

Section 2.1 The Loan. Upon satisfaction of all the terms and conditions of the Term Sheet and this Agreement (including the items listed on **Schedule 2.1** attached hereto), each Lender severally, but not jointly, agrees to make its Proportionate Share of the Loan in Dollars to Borrowers in the amount of such Lender’s Commitment, which shall be funded in one advance on the Closing Date and repaid in accordance with the terms of this Agreement and the Notes. Borrowers hereby agree to accept the Loan on the Closing Date, subject to and upon the terms and conditions set forth herein. The aggregate amount of all advances of the Loan on a cumulative basis shall not exceed the Maximum Commitment Amount. The Loan is not a revolving credit loan, and Borrowers are not entitled to any readvances of any portion of the Loan which they may (or are otherwise required to) pay or prepay pursuant to the provisions of this Agreement. Pursuant to Section 18 of the Kansas City Master Lease, Kansas City Master Lessee shall pay for any and all costs and expenses incurred by LCRA (including reasonable attorney’s fees) in connection with the Loan and any amendment, modification, extension or refinancing of the Loan or any Loan Document.

Section 2.2 Interest Rate; Late Charge. The outstanding principal balance of the Loan shall bear interest at the Contract Rate. If Borrowers fail to pay any installment of interest or principal within five (5) days after the date on which the same is due, excluding the final

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

Section 2.3 Terms of Payment. The Loan shall be payable as follows:

(a) **Interest**. *On the Closing Date, Borrowers shall pay to Administrative Agent for the account of the Lenders, a payment of interest only representing interest accrued from the Closing Date through the last day of the month in which the Closing Date occurs, computed at the Contract Rate. Thereafter, commencing on *_____, 1, 20____, and continuing on each Payment Date thereafter through and including the Payment Date immediately prior to the Maturity Date. Borrowers shall pay interest only computed at the Contract Rate on the outstanding principal balance of the Loan.

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

(c) **Extension of Maturity Date**. Borrowers shall have the right and option to extend the Maturity Date (i) to a date ending upon the expiration of the First Extension Period, and (ii) if the First Extension Period is properly exercised, to a date ending upon the expiration of the Second Extension Period, subject to Borrowers' satisfaction of the following conditions precedent:

(i) Borrowers shall have notified Administrative Agent in writing of the exercise of the applicable Extension Period no earlier than ninety (90) days nor later than thirty (30) days prior to the Maturity Date.

(ii) On the date of commencement of the applicable Extension Period:

(A) No Potential Default or Event of Default shall then exist;

(B) The Project Yield shall be at least 8.00%;

(C) The LTV Ratio is at least 68% based on current appraisals ordered by Administrative Agent (at Borrowers cost) of each Project.

(D) The Assumed Debt Service Coverage Ratio shall be at least 1.25:1.0.

(iii) Borrowers shall have delivered to Administrative Agent a current title search or similar evidence customarily provided in the states in which the Projects are located showing no additional exceptions to title other than those permitted by the terms of the Loan Documents or consented to by Administrative Agent.

(iv) Upon such extension, Borrowers and Guarantor shall have executed such documents as Administrative Agent deems reasonably appropriate to evidence the extension.

(v) At the time of the extension, Borrowers shall pay all title company charges, recording fees and reasonable out-of-pocket attorneys' fees and expenses incurred by Administrative Agent in connection with the extension.

Notwithstanding anything to the contrary contained in this Agreement, if the conditions set forth for an Extension Period in Section 2.3(c)(ii)(B), (C) or (D) are not satisfied, Borrowers may, prior to the commencement of the applicable Extension Period, prepay the Loan in order to satisfy such condition and no Prepayment Premium shall be required in connection with such prepayment.

(d) **Payment by Kansas City Master Lessee.** In accordance with the terms of Article 3 of the Kansas City Master Lease, LCRA hereby directs Kansas City Master Lessee to make all payments due on the Loan directly to Administrative Agent on behalf of and for the account and benefit of LCRA, at such times and in such amounts as required under the Loan Documents.

Section 2.4 Prepayment.

(a) **Right to Prepay.** The Loan may be prepaid in whole, but, except as otherwise set forth herein, not in part, provided Borrowers provide not less than five (5) Business Days' notice to Administrative Agent of such prepayment and pay with such prepayment all accrued interest and all other outstanding amounts then due and unpaid under the Loan Documents, including, without limitation, Prorated Interest and the Prepayment Premium. For the avoidance of doubt, the Prepayment Premium shall be payable if the Indebtedness is accelerated in accordance with the terms of the Loan Documents.

(b) **Prepayment Not Made on a Payment Date.** If for any reason the Loan or any portion thereof is prepaid on a day other than a scheduled monthly Payment Date, Borrowers shall pay interest prorated through the date of prepayment (the "**Prorated Interest**") in addition to the amounts required to be paid under Section 2.4(a) above.

(c) **Partial Prepayment.** If, notwithstanding Section 2.4(a), Administrative Agent permits the Loan to be prepaid in part, Borrowers shall pay, in addition to the principal amount

prepaid, Prorated Interest on the amount of such prepayment plus the Prepayment Premium applicable to such principal being prepaid.

(d) **Involuntary Prepayment.** If the Loan is accelerated for any reason, Borrowers shall pay to Administrative Agent, for the account of the Lenders, in addition to all other amounts outstanding under the Loan Documents, and if and to the extent applicable, the Prepayment Premium.

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

(f) **Prepayment Due to Casualty or Condemnation.** In the event of a prepayment resulting from the application of insurance or condemnation proceeds pursuant to Article 3 hereof, no Prepayment Fee shall be imposed. In the event insurance or condemnation proceeds are applied to the Loan but are not sufficient to repay the Loan in full, then Borrowers may prepay the remaining Loan in full within thirty (30) days of the application of such proceed without the payment of any Prepayment Fee.

(g) **LIBOR Breakage Amount.** Upon any payment of the Loan (or any portion thereof) on any day that is not a scheduled monthly Payment Date (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise), Borrowers shall pay to Administrative Agent, for the account of Lenders the Libor Breakage Amount.

Section 2.5 Security; Establishment of Funds.

(a) **Security.** The Loan shall be secured by the Mortgage, which shall create a first lien on the Projects, subject only to the Permitted Exceptions, and the other Loan Documents.

(b) **Establishment of Funds.** Borrowers agree to establish the following reserves with Administrative Agent, to be held by Administrative Agent as further security for the Loan:

(i) Borrowers shall deposit with Administrative Agent on each Payment Date one-twelfth (1/12th) of the product of \$0.10 multiplied by the number of rentable square feet in the Projects, which shall be held by Administrative Agent for replacements and repairs required to be made to the Projects during the term of the Loan (the “**Replacement Escrow Fund**”).

Administrative Agent shall hold the Funds, and any and all other impounds or reserves otherwise provided for in this Agreement, for the benefit of all Lenders.

(c) **Pledge and Disbursement of Funds.** Borrowers hereby pledge to Administrative Agent and the Lenders, and grant a security interest in, any and all monies now or hereafter deposited in the Funds as additional security for the payment of the Loan. Administrative Agent shall make disbursements from the Funds as requested by Borrowers, and approved by Administrative Agent in its reasonable discretion, on a monthly basis in increments of no less than \$10,000.00 upon delivery by Borrowers of Administrative Agent's standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Administrative Agent and the disbursement for any single item exceeds \$50,000, lien waivers and releases from all parties furnishing materials or services in connection with the requested payment. The Lenders and Borrowers acknowledge and agree that the Funds shall be held without interest in Administrative Agent's name and may be commingled with the general funds of Administrative Agent. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent may (and at the direction of the Required Lenders shall) apply any sums then present in the Funds to the payment of the Loan in any order in the reasonable discretion of Administrative Agent. Until expended or applied as above provided, the Funds shall constitute additional security for the Loan. Administrative Agent shall have no obligation to release any of the Funds while any Event of Default or Potential Default exists. All reasonable costs and expenses incurred by Administrative Agent in the disbursement of any of the Funds shall be paid by Borrowers promptly upon demand or, at Administrative Agent's sole discretion, deducted from the Funds.

Section 2.6 Application of Payments.

(a) **Waterfall.** Provided no Event of Default exists, all payments received by Administrative Agent under the Loan Documents shall be applied, (i) first, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to Administrative Agent pursuant to this Agreement, any Loan Document or the Environmental Indemnity Agreement, (ii) second, to pay Default Rate interest or late charges, (iii) third, to pay interest then due and payable calculated at the Contract Rate, (iv) fourth, to principal payments due under the Loan and to any Obligations under the Secured Hedge Agreements, (v) fifth, to any reserves, escrows or other impounds required to be maintained pursuant to the Loan Documents, (vi) sixth, to any Prepayment Premium then due, and (vii) seventh, to the ratable payment of all other Obligations. Upon the occurrence and during the continuance of an Event of Default, all payments shall be applied in such order as Administrative Agent shall determine in its sole discretion. Notwithstanding anything herein to the contrary, if at any time during the existence of an Event of Default or following acceleration of the Obligations or on or after the Maturity Date, Administrative Agent applies any payments received or the proceeds of any Collateral to principal payments on the Loan, Administrative Agent shall apply such payments or proceeds pro rata between such principal payments on the Loan and the amounts owing with respect to the Specified Hedge Obligations and the Specified Treasury Obligations.

(b) **Application of Payments Generally.** All repayments of the Loan shall be applied to reduce the remaining installments of the outstanding principal amount of the Loan in the stated order of maturity. If sufficient amounts are not available to repay all outstanding Obligations described in any priority level set forth in this Section 2.6, the available amounts shall be applied, unless otherwise expressly specified herein, to such Obligations ratably based on the proportion of

the Secured Parties' interest in such Obligations. Any priority level set forth in this Section 2.6 that includes interest shall include all such interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding. All prepayments of principal, if permitted hereunder or otherwise accepted by Administrative Agent, shall be applied to amounts owing in the inverse order of maturity (i.e., to the final principal installment due with respect to the Loan).

(c) **Payments and Computations.** Borrowers and Kansas City Master Lessee shall make each payment under any Loan Document not later than 2:00 p.m. (Eastern Standard or Daylight Savings time) on the day when due to Administrative Agent by wire transfer to the following account (or at such other account or by such other means to such other address as Administrative Agent shall have notified Borrowers in writing within a reasonable time prior to such payment) in immediately available Dollars and without setoff or counterclaim:

Bank:	Capital One, N.A.
ABA Number:	065000090
Account Number:	38395-10002131
Account Name:	Agency Clearing
Reference:	*Borrower Name

Administrative Agent shall cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders, in accordance with the application of payments set forth in Section 2.6(a), promptly after receipt or deemed receipt, but not later than one Business Day following receipt (or deemed receipt) by Administrative Agent. Administrative Agent shall have no obligation to make any payments to a Lender except out of amounts received or applied by Administrative Agent with respect to the Loan, and only if and to the extent payable in accordance with said Section 2.6(a). Payments received by Administrative Agent after 2:00 p.m. (Eastern Standard or Daylight Savings time) shall be deemed to be received on the next Business Day. It is acknowledged and understood that LCRA's ability and obligation to pay the Loan is limited to rent proceeds available under the Kansas City Master Lease and LCRA's ownership interest in the Kansas City Project (and not to assets of LCRA other than the Kansas City Project).

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

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

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

Section 2.7 Intentionally Omitted.

Section 2.8 Capital Adequacy; Increased Costs; Illegality.

(a) If any Change in Law increases or would have the effect of increasing the amount of capital, reserves or other funds required to be maintained by such Lender and thereby reducing the rate of return on such Lender's capital as a consequence of its obligations hereunder, then Borrowers shall from time to time upon demand by such Lender, pay to such Lender, additional amounts sufficient to compensate such Lender for such reduction. A certificate as to the amount of that reduction and showing the basis of the computation thereof submitted by the affected Lender to Borrowers shall, absent manifest error, be final, conclusive and binding for all purposes. Each Lender agrees that, as promptly as practicable after it becomes aware of any circumstances referred to above which would result in any such increased cost, such Lender shall, to the extent not inconsistent with such Lender's internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by Borrowers pursuant to this Section 2.8(a).

(b) If, due to any Change in Law, there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining the Loan, then Borrowers shall from time to time, upon demand by such Lender, pay to such Lender additional amounts sufficient to compensate such Lender for such increased cost. A certificate as to the amount of such increased cost, submitted to Borrowers by such Lender, shall be conclusive and binding on Borrowers for all purposes, absent manifest error. Each Lender agrees that, as promptly as practicable after it becomes aware of any circumstances referred to above which would result in any such increased cost, such Lender shall, to the extent not inconsistent with such Lender's internal policies of general application, use reasonable commercial efforts to minimize costs and expenses incurred by it and payable to it by Borrowers pursuant to this Section 2.8(b).

(c) Notwithstanding anything to the contrary contained herein (but subject to the terms of Section 2.10), if after the Closing Date, (i) any Change in Law shall make it unlawful, or any central bank or other Governmental Authority shall assert that it is unlawful, for any Lender to agree to make or to make or to continue to fund or maintain its Loan Commitment bearing interest computed by reference to the Libor Rate or any Benchmark Replacement Rate, or (ii) the Libor Rate or any Benchmark Replacement Rate is discontinued or is otherwise no longer available, then (A) with respect to the occurrence described in subsection (i) above, unless such Lender is able to

make or to continue to fund or to maintain the Loan at another office of such Lender without, in such Lender's opinion, adversely affecting it or its Loan or the income obtained therefrom, on notice thereof and demand therefor by such Lender to Borrowers, the obligation of such Lender to agree to make or to make or to continue to fund or maintain the Loan based on the Libor Rate or any Benchmark Replacement Rate shall terminate and Borrowers shall elect to either (1) utilize the Base Rate as a replacement index, plus an applicable spread to approximate the Contract Rate or (2) prepay in full such Lender's Pro Rata Share of the Loan, together with interest accrued thereon, but without payment of Prepayment Premium, within thirty (30) days following such Lender's demand, and (B) with respect to the occurrence described in subsection (ii) above, Administrative Agent will use the Base Rate as a replacement index, plus an applicable spread to approximate the Contract Rate. If Borrowers elect to use the Base Rate as contemplated by subsection (A) above or if subsection (B) above is applicable, Administrative Agent will notify Borrowers of the Base Rate and the Applicable Margin to be used and the same shall be applied to the Loan effective as of the date such Lender or Administrative Agent determined that the Libor Rate was no longer available, as applicable.

(d) Notwithstanding anything else to the contrary in this Section 2.8, Borrowers shall not be under any obligation to compensate any Lender under this Section 2.8(a) or (b) with respect to increased costs or reductions where such Lender is not demanding such compensation from all of its customers similarly situated.

(e) If (i) Borrowers receive notice from Administrative Agent requesting increased costs or additional amounts under this Section 2.8(a) or (b) or (ii) any Lender is affected in the manner described in this Section 2.8(c), then in each case, Borrowers shall have the right, as long as no Event of Default shall have occurred and be continuing (unless, in the case of clause (a) and (b) above, such Lender has removed or cured the conditions which resulted in the obligation to pay such increased costs or additional amounts or agreed to waive and otherwise forego any right it may have to any payments provided for under any such provision in respect of such conditions), to replace in its entirety such Lender (the "**Replaced Lender**") upon prior written notice to Administrative Agent and such Replaced Lender, with one or more other Lenders or a Lender Transferee acceptable to Administrative Agent (each, a "**Replacement Lender**"); provided, however, that, at the time of any replacement pursuant to this Section 2.8(e), the Replaced Lender and the Replacement Lender shall execute and deliver to Administrative Agent an Assignment and Assumption, pursuant to which (i) the Replacement Lender shall acquire the Replaced Lender's Pro Rata Share of the Loan and, in connection therewith, shall pay to the Replaced Lender in respect thereof an amount equal to the principal of, and all accrued but unpaid interest on, the Replaced Lender's Pro Rata Share of the Loan; and (ii) Borrowers shall pay to the Replaced Lender any other amounts payable to the Replaced Lender under this Agreement. Upon the execution of the Assignment and Assumption, the payment by Borrowers to Administrative Agent of an assignment fee in the amount of \$3,500 and the delivery to the Replacement Lender of a Note executed by Borrowers, the Replacement Lender shall automatically become a Lender hereunder and the Replaced Lender shall cease to be a Lender hereunder, except with respect to any indemnification provisions under this Agreement, each of which shall survive as to such Replaced Lender. Any such replacement under this Section 2.8(e) shall be made in accordance with the

terms of Section 11.3 below except to the extent the terms of this Section 2.8(e) conflict with the terms of Section 11.3.

Section 2.9 Interest Rate Protection. Except in connection with a Secured Hedge Agreement, the Projects shall not be pledged or encumbered in any manner to secure any obligation under a Hedge Agreement. Borrowers shall not enter into any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement pertaining to fluctuations in interest rates, or any swaps, caps or collar agreements or similar arrangements providing for protection against fluctuations in currency exchange rates, either generally or under specific contingencies, other than a Hedge Agreement approved by Administrative Agent, such approval not to be unreasonably withheld, conditioned or delayed, and not for speculative purposes, it being acknowledged and agreed that Borrowers are not obligated to enter into a Hedge Agreement in connection with the Loan.

Section 2.10 Benchmark Replacement.

(a) **Benchmark Replacement.** Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, Administrative Agent and Borrowers may amend this Agreement to replace the LIBOR Rate with a Benchmark Replacement Rate. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Administrative Agent has provided such proposed amendment to all Lenders and Borrowers, so long as Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election, will become effective on the date that Lenders comprising the Required Lenders have delivered to Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of the LIBOR Rate with a Benchmark Replacement Rate pursuant to this Section 2.10 will occur prior to the applicable Benchmark Transition Start Date.

(b) **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement Rate, Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(c) **Notices; Standards for Decisions and Determinations.** Administrative Agent will promptly notify Borrowers and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (ii) the implementation of any Benchmark Replacement Rate, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Administrative Agent or Lenders pursuant to this Section 2.10, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking

any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.10.

(d) **Benchmark Unavailability Period.** Upon Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, the Loan will bear interest at the Base Rate, plus the Applicable Margin, provided Administrative Agent shall utilize such Base Rate uniformly to borrowers similarly situated to Borrowers.

(e) **Interest Rates.** Neither Administrative Agent nor any Lender warrants, or accepts responsibility, nor shall Administrative Agent or any Lender have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "LIBOR Rate" or with respect to any comparable or successor rate thereto including, without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to this Section 2.10, will be similar to, or produce the same value or economic equivalence of, the LIBOR Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

(f) **Conflict with Other Sections.** In the event of a conflict between the terms of this Section 2.10 and the terms of Section 2.8 or any other section of this Agreement, the terms of this Section 2.10 shall control.

Section 2.11 Intentionally Omitted.

Section 2.12 Evidence of Debt.

(a) **Records of Lenders.** Each Lender shall maintain in accordance with its usual practice accounts evidencing the Indebtedness of Borrowers to each Lender resulting from the Proportionate Share of the Loan of such Lender from time to time outstanding, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. In addition, with respect to each Lender having sold a participation interest in any of the Obligations owing to it, such Lender, acting as agent of Borrowers solely for this purpose and solely for tax purposes, shall establish and maintain at its address referred to in Section 11.1 (or at such other address as Administrative Agent shall notify Borrowers) a record of ownership, in which such Lender shall register by book entry (i) the name and address of each such participant (and each change thereto, whether by assignment or otherwise) and (ii) the rights, interest or obligation of each such participant in any Obligation owing to such Lender, in any Commitment or any portion of the Loan and in any right of such Lender to receive any payment hereunder.

(b) **Records of Administrative Agent.** Administrative Agent, acting solely for this purpose as an agent of Borrowers, shall maintain at one of its offices in the United States 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 (and stated interest) of the Loan owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error; provided, however, that no error in such account and no failure of any Lender or Administrative Agent to maintain any such

account shall affect the obligations of any Borrower Party to repay the Loan in accordance with its terms. Borrowers, 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. The Register shall be available for inspection by Borrowers and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(c) **Registered Obligations.** Notwithstanding anything to the contrary contained in this Agreement, the Loan (including any Notes evidencing the Loan) shall constitute a registered obligation, the right, title and interest of the Lenders and their assignees in and to the Loan shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 2.12 and Section 11.3 shall be construed so that the Loan is at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

Section 2.13 Substitution of Lenders.

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

(b) To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender, Borrowers shall deliver a notice to Administrative Agent and such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery to Administrative Agent by Borrowers (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender, and (ii) in the case of a substitution, (A) payment by the Substitute Lender of the assignment fee set forth in Section 11.3 and (B) an Assignment and Assumption.

(c) Upon satisfaction of the conditions set forth in clause (b) above, Administrative Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full, such Affected Lender’s Commitment shall be terminated and (ii) in the case of any substitution, (A) the Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents with respect to the Loan, except that the Affected Lender shall retain such rights expressly providing that they survive the repayment of the Obligations and the termination of the Commitments, (B) the Substitute Lender shall become a “Lender” hereunder having a Commitment in the amount of such Affected Lender’s Commitment and (C) the Affected Lender and the applicable Substitute Lender shall execute and deliver to Administrative Agent an

Assignment and Assumption to evidence such substitution and deliver any Note in its possession; provided, however, that the failure of any Affected Lender and the applicable Substitute Lender to execute any such Assignment and Assumption or deliver any such Note shall not render such sale and purchase (or the corresponding assignment) invalid.

Section 2.14 Pro Rata Treatment; Sharing of Payments.

(a) **Pro Rata Treatment.** (i) Each advance of the Loan from the Lenders under Section 2.1 shall be made by the Lenders, and any termination of the obligation to make an advance of the Loan shall be applied to the respective Commitments of the Lenders, based on their Proportionate Share; (ii) each payment or prepayment of principal of the Loan by Borrowers shall be made for account of the Lenders based on their Proportionate Share; and (iii) each payment of interest on the Loan by Borrowers shall be made for account of the Lenders pro rata in accordance with the amounts of interest on the Loan then due and payable to the respective Lenders.

(b) **Sharing of Payments, Etc.**

(i) If any Lender shall obtain from any Borrower payment of any principal of or interest on the Loan owing or payment of any other amount under this Agreement or any other Loan Document through the exercise of any right of set off, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loan or such other amounts then due hereunder or thereunder by Borrowers to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loan or such other amounts, respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of or interest on the Loan or such other amounts, respectively, owing to each of the Lenders. To such end, all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

(ii) Intentionally omitted.

(iii) Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrowers. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set off to which this Section 2.14(b) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 2.14(b) to share in the benefits of any recovery on such secured claim.

Section 2.15 Fees. Borrowers shall pay to Administrative Agent, Sole Lead Arranger and Sole Bookrunner for their own respective accounts fees in the amounts and at the times specified in the Fee Letter; provided, that such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

Section 2.16 Withholding Taxes.

(a) **Payments Free and Clear of Withholding Taxes.** Each payment by Borrowers under any Loan Document or the Environmental Indemnity Agreement shall be made free and clear of all present or future taxes, levies, imposts, deductions, charges or withholdings, including any interest, additions to tax or penalties applicable thereto (and without deduction for any of them) (collectively, but excluding Excluded Taxes, as defined below, the “**Withholding Taxes**”) unless required by applicable Requirements of Law.

(b) **Gross-Up.** If any Withholding Taxes shall be required by any applicable Requirements of Law (as determined in the good faith discretion of the applicable Withholding Agent) to be deducted or withheld from or in respect of any amount payable under any Loan Document or the Environmental Indemnity Agreement to any Lender, (i) the relevant Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (ii) any such amount payable with respect to any payment made by or on account of any obligation of any Loan Party Guarantor under any Loan Document shall be increased as necessary to ensure that, after all required deductions for Withholding Taxes other than Excluded Taxes are made (including deductions applicable to any increases to any amount under this Section 2.16), such Lender receives the amount it would have received had no such deductions been made. “**Excluded Taxes**” means (i) taxes imposed on or measured by net income (however denominated) including branch profits taxes and franchise taxes, in each case, (A) imposed as a result of Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such tax (or any political subdivision thereof) or (B) that are Other Connection Taxes, (ii) United States federal withholding taxes imposed on amounts payable to or for the account of Lender with respect to an applicable interest in the Loan (or, if applicable, Commitment) pursuant to a law in effect on the date on which (A) Lender acquires such interest in the Loan (or, if applicable, Commitment) (other than pursuant to an assignment request by Borrower under Section 2.13) or (B) such Lender changes its lending office, except in each case to the extent that, pursuant to this Section 2.16(b), 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, (iii) taxes that are attributable to the failure by any Lender to deliver the documentation required to be delivered pursuant to clause (f) below and (iv) any withholding Taxes imposed under FATCA. “**Other Connection Taxes**” means, with respect to Lender, taxes imposed as a result of a present or former connection between Lender and the jurisdiction imposing such tax (other than connections arising from Lender 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).

(c) **Other Taxes.** In addition, Borrowers agree to pay, and authorize Administrative Agent to pay in their name, all present or future stamp, court or documentary, intangible, filing, or similar taxes, charges and levies imposed by any applicable Requirements of Law or Governmental Authority, including any interest, additions to tax or penalties applicable thereto, in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document, the Environmental Indemnity Agreement or any transaction contemplated therein (collectively, “**Other Taxes**”). Within thirty (30) days after the date of any payment of Other Taxes by any Loan Party Guarantor, such Loan Party Guarantor shall furnish to Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof.

(d) **Indemnification.** Borrowers shall reimburse and indemnify, within thirty (30) days after receipt of demand therefor (with copy to Administrative Agent), each Lender for all Withholding Taxes with respect to any payment made by or on account of any obligation of any Loan Party Guarantor under any Loan Document, and Other Taxes payable (including any such Withholding Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.16) paid by such Lender, including any interest, additions to tax or penalties applicable thereto, whether or not such Withholding Taxes or Other Taxes were correctly or legally asserted. A certificate of the Lender (or of Administrative Agent on behalf of such Lender) claiming any compensation under this clause (d), setting forth the amounts to be paid thereunder and delivered to Borrowers with copy to Administrative Agent, shall be conclusive, binding and final for all purposes, absent manifest error. Within thirty (30) days after the date of any payment of such Withholding Taxes by any Loan Party Guarantor, such Loan Party Guarantor shall furnish to Administrative Agent, at its address referred to in Section 11.1, the original or a certified copy of a receipt evidencing payment thereof.

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

(f) **Tax Forms.**

(i) Each Non-U.S. Lender Party that, at any of the following times, is entitled to an exemption from United States Withholding Tax or, after a change in any Requirements of Law, is subject to such Withholding Tax at a reduced rate under an applicable Tax treaty, shall (w) on or prior to the date such Non-U.S. Lender Party becomes a “Non-U.S. Lender Party” hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by Borrowers’ Agent or Administrative Agent (or, in the case of a participant or SPV, the relevant Lender), provide Administrative Agent and Borrowers’ Agent (or, in the case of a participant or SPV, the relevant Lender) with two completed originals of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. Withholding Tax because the income is effectively

connected with a U.S. trade or business), W-8BEN or W-8BEN-E, as applicable (claiming exemption from, or a reduction of, U.S. Withholding Tax under an income tax treaty), or W-8IMY (together with appropriate forms, certifications and supporting statements) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN or W-8BEN-E, as applicable (claiming exemption from U.S. Withholding Tax under the portfolio interest exemption), or any successor form and a certificate in form and substance acceptable to Administrative Agent and Borrowers' Agent that such Non-U.S. Lender Party is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of Borrowers within the meaning of Section 881(c)(3)(B) of the Code or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States Withholding Tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents. Unless Borrowers' Agent and Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States Withholding Tax or are subject to such tax at a rate reduced by an applicable tax treaty, Borrower Parties and Administrative Agent shall be entitled to withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

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

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

(iv) If a payment made to a Non-U.S. Lender Party would be subject to United States federal Withholding Tax imposed by FATCA if such Non-U.S. Lender Party fails to comply with the applicable reporting requirements of FATCA, such Non-U.S. Lender Party shall deliver to Administrative Agent and Borrowers' Agent any documentation under any Requirements of Law or reasonably requested by Administrative Agent or Borrowers' Agent sufficient for Administrative Agent or Borrowers' Agent to comply with their obligations under FATCA and to determine that such Non-U.S. Lender Party has complied with its obligations under FATCA or to determine the amount to deduct and

withhold from such payment. Solely for purposes of this clause (iv), “FATCA” shall include any amendments made to FATCA after the date of this Agreement. Each Lender agrees that if any form or certification it previously delivered pursuant to this clause (iv) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers’ Agent and the Administrative Agent in writing of its legal inability to do so.

(g) **Refunds.** If a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of (or tax credit with respect to) any Withholding Taxes or Other Taxes as to which it has been indemnified by Borrowers or with respect to which Borrowers have paid additional amounts pursuant to this Section 2.16, it shall pay over such refund (or the benefit realized as a result of such tax credit) to Borrowers (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers under this Section 2.16 with respect to the Withholding Taxes or Other Taxes giving rise to such refund), net of all out of pocket expenses of the Lender (including any Withholding Taxes imposed with respect to such refund) as is determined by the Lender in good faith, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that Borrowers, upon the request of the Lender, agree to repay as soon as reasonably practicable the amount paid over to Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender in the event the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (g), in no event will a Lender be required to pay any amount to Borrowers pursuant to this clause (g) the payment of which would place such Lender in a less favorable net after-tax position than such Lender 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 Section 2.16 shall not be construed to require the Lender to make available its tax returns (or any other information relating to its Withholding Taxes or Other Taxes which it deems in good faith to be confidential) to Borrowers or any other person.

(h) **Survival.** Each party’s obligations under this Section 2.16 shall survive the resignation or replacement of 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.

Section 2.17 Partial Releases.

(a) **Release Conditions.** Notwithstanding anything contained in this Agreement, the Notes, the Mortgage or any of the other Loan Documents to the contrary, upon the request of Borrowers, Administrative Agent agrees to release a Project from the lien of the related Mortgage and the other Loan Documents (such release herein called a “**Partial Release**”), provided that all of the Release Conditions are satisfied both before and after the Partial Release. As used herein, the term “**Release Conditions**” means all of the following:

(i) The aggregate rentable square footage of all Projects following the Partial Release is at least * [70% of initial square footage].

(ii) There shall exist no Event of Default or Potential Default (or such Partial Release shall cure any such existing Event of Default or Potential Default) and Borrowers shall certify in writing to Administrative Agent that no Potential Default or Event of Default shall exist immediately after giving effect to the applicable Partial Release and the execution and delivery of all documents connected therewith.

(iii) If following the Partial Release aggregate rentable square footage of all Projects following the Partial Release is at least *_____ [90% of initial square footage], then Administrative Agent shall have determined that, after giving effect to the applicable Partial Release the Project Yield is not less than 10.0%;

(iv) If following the Partial Release aggregate rentable square footage of all Projects following the Partial Release is less than *_____ [90% of initial square footage], but greater than or equal to *_____ [80% of initial square footage], then Administrative Agent shall have determined that, after giving effect to the applicable Partial Release the Project Yield is not less than 10.15%;

(v) If following the Partial Release aggregate rentable square footage of all Projects following the Partial Release is less than *_____ [80% of initial square footage], but greater than or equal to *_____ [70% of initial square footage], then Administrative Agent shall have determined that, after giving effect to the applicable Partial Release the Project Yield is not less than 10.40%;

(vi) Borrowers shall deliver, together with such request for the Partial Release, a pro forma Compliance Certificate showing that, on a pro forma basis, after giving effect to such Partial Release, all financial covenants contained in the Loan Documents shall be satisfied.

(vii) Borrowers shall provide written notice to Administrative Agent of their desire to have the applicable Project released as security for the Loan, and provide Administrative Agent with all information (including any purchase and sale agreement and proposed release forms) and documents relating to such release at least thirty (30) days prior to the anticipated date for the release of the applicable Project and such release forms must be reasonably satisfactory to Administrative Agent in form and substance.

(viii) Such Partial Release will not affect the priority of lien or liens on the remainder of the Security, or Administrative Agent's or Lenders' rights in and to the remainder of the Security.

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

(x) Borrowers shall pay to Administrative Agent, for the account of Lenders, an amount equal to 100% of the Allocated Loan Amount for the applicable Project, plus any applicable Prepayment Premium.

(xi) ***Additional covenant regarding Master Account may be necessary.**

(xii) Administrative Agent shall receive a reaffirmation of the Environmental Indemnity Agreement, if requested by Administrative Agent, that the Environmental Indemnity Agreement shall remain in full force and effect with respect to the remaining Security and the Project being released, subject in each case to the terms and conditions of the Environmental Indemnity Agreement.

(b) **Intentionally Omitted.**

(c) **General.** Upon receipt of the amounts required under Section 2.17(a) and satisfaction of all of the other requirements contained in Section 2.17(a) or elsewhere in the Loan Documents, Administrative Agent will release the applicable Project from the lien of the applicable Mortgage, and other Loan Documents specific to the released Project. Any such application of funds to the Loan shall be deemed a prepayment but shall not be subject to the Prepayment Premium.

Section 2.18 Several Obligations of Lenders. The failure of any Lender to make any advance of its Commitment to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make the advance of its Commitment, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make the advance to be made by such other Lender.

ARTICLE 3 **INSURANCE, CONDEMNATION AND IMPOUNDS**

Section 3.1 Insurance. Borrowers, at their sole cost and expense, shall obtain and maintain (or cause to be maintained) during the entire term of the Loan, insurance providing at least the following coverages:

(a) **Property; Business Interruption.** Borrowers shall (i) keep the Projects insured against damage by fire, acts of domestic and foreign terrorism, any type of wind and such other hazards covered by a special form or all-risk insurance policy (A) for the full insurable value thereof on a replacement cost basis without any coinsurance, with the exception of named storm coverage which shall be maintained at a limit of not less than \$100,000,000 per occurrence, subject to the blanket policy provisions set forth herein Section 3.1(d) (B) with a deductible not to exceed \$25,000, except for wind/named storms and earthquake, which shall provide for a deductible of no more than five percent (5%) of the total insurable value of the applicable Projects, (C) containing Law & Ordinance coverage if any of the Improvements or the use of the Projects shall at any time constitute legal non-conforming structures or uses, including coverage for loss to the undamaged portion of the building (with a limit equal to replacement cost), the cost of demolition and the increased costs of construction (each in amounts as required by Administrative Agent) and (D) shall maintain boiler and machinery insurance and such other property insurance as reasonably required by Administrative Agent. Administrative Agent reserves the right to require such other insurance from time to time, including but not limited to earthquake, flood (in addition to Federal Flood Insurance) and sinkhole, each in amounts acceptable to Administrative Agent. The full

insurable value shall be re-determined from time to time (but not more frequently than once in any twelve (12) calendar months) at the request of Administrative Agent by an appraiser or contractor designated and paid by Borrowers and approved by Administrative Agent. No omission on the part of Administrative Agent to request any such ascertainment shall relieve Borrowers of any of their obligations under this Section 3.1. Further, if any portion of the Improvements or personal property at any Project is located currently or at any time in the future in Special Flood Hazard Area, Borrowers shall deliver to Administrative Agent the following: (1) evidence as to whether the community in which such Project is located is participating in the National Flood Insurance Program, (2) the applicable Borrowers' written acknowledgment of receipt of written notification from Administrative Agent as to the fact that such Project is located in a Special Flood Hazard Area and as to whether the community in which such Project is located is participating in the National Flood Insurance Program and (3) copies of the application for a Federal Flood Insurance policy, plus proof of premium payment, a declaration page confirming that Federal Flood Insurance has been issued, or such other evidence of Federal Flood Insurance satisfactory to Administrative Agent, in all cases naming Administrative Agent as Mortgagee on behalf of the Lenders; and (ii) maintain business interruption insurance, including rental income loss and extra expense, (A) with Administrative Agent a loss payee, (B) covering all perils required herein to be insured against, (C) covering a period of restoration of 18 months and containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of 12 months from the date that the Project is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period and (D) in an amount equal to one hundred percent (100%) of the projected gross revenue (less non-continuing expenses) from the Project for a period of 18 months. The amount of such business interruption insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrowers' reasonable estimate of the gross revenue (less non-continuing expenses) from the Project for the succeeding 18-month period. All business interruption proceeds shall be held by Administrative Agent and shall be applied to the Obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrowers of their obligation to pay Debt Service on the Payment Dates set forth herein, except to the extent such amounts are actually paid out of the proceeds of such business interruption insurance.

(b) **Liability.** Borrowers shall maintain (i) commercial general liability insurance, including terrorism coverage, with respect to each Project for both personal injury, bodily injury to or death of a person and for property damage providing for limits of liability in the amount approved by Administrative Agent but in no event less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, (ii) umbrella liability coverage of no less than \$40,000,000 per occurrence and in the annual aggregate and otherwise on terms consistent with the general liability insurance required hereinabove, and (iii) other liability insurance as reasonably required by Administrative Agent, including but limited to auto liability or worker's compensation and employer's liability arising out of accidents or disease suffered by employees of Borrowers. In addition, Borrowers shall cause each Property Manager, if applicable, to maintain (A) worker's compensation insurance and employer's liability insurance covering employees at the Projects

employed by such Property Manager (in the amounts required by applicable Requirements of Law) and (B) professional liability insurance. In no event shall Borrowers consent to any decrease in the amount or scope of coverage or increase the deductibles from those previously approved by Administrative Agent.

(c) **Construction, Repairs, Alterations.** At all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the property or liability coverage forms do not otherwise apply, Borrower shall maintain or cause its contractors to maintain (i) commercial general liability and umbrella liability insurance covering claims related to the construction, repairs or alterations being made which are not covered by or under the terms or provisions of the commercial general liability and umbrella liability insurance policy required in Section 3.1(b); and (ii) the insurance provided for in Section 3.1(a) written in a so-called builder's risk completed value form (A) on a non-reporting basis, (B) against all risks insured against pursuant to Section 3.1(a), and (C) including permission to occupy the applicable Projects.

(d) **Form and Quality.** All insurance policies shall be obtained under valid and enforceable policies and shall be subject to the reasonable approval of Administrative Agent. Such policies shall be endorsed in form and substance acceptable to Administrative Agent to name Administrative Agent (on behalf of the Lenders) thereunder as an additional insured, as its interest may appear, on liability insurance policies and as mortgagee/lender's loss payable, as its interest may appear, on all property insurance policies, including but not limited to special form/all-risk, business interruption, boiler and machinery, terrorism, windstorm, flood and earthquake insurance, Administrative Agent as a Loss Payee, without contribution, under a standard non-contributory mortgagee clause. No policy shall contain a Protective Safeguard Endorsement. Administrative Agent shall act on behalf of the Lenders in respect of insurance matters. The proceeds of insurance paid on account of any damage or destruction to any Project shall be paid to Borrower and Administrative Agent, on behalf of the Lenders, to be applied as provided in Section 3.2. In the event any Borrower, Kansas City Master Lessee, any Property Manager or any Ground Lessor receives any insurance proceeds (without the same having been disbursed to Administrative Agent), Borrowers and Kansas City Master Lessee will or will cause such Property Manager or Ground Lessor (to the extent provided in the applicable Ground Lease and Recognition Agreement) to immediately return such proceeds to Administrative Agent for application in accordance with the provisions of Section 3.2. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form reasonably acceptable to Administrative Agent and issued by such insurance companies authorized to do business in the state in which the applicable Project is located, with a rating of "A- VIII" or better as established by Best's Rating Guide or "A-" or better by Standard & Poor's Ratings Group. Each property insurance policy shall provide that such policy may not be canceled except upon thirty (30) days' prior written notice (except ten (10) days' prior notice for non-renewal or cancellation due to non-payment of premium) to Administrative Agent and that no act or negligence of Borrowers, or any other insured under the policy, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, or commencement of foreclosure or similar action, shall in any way affect the validity or enforceability of the insurance insofar as Administrative Agent is concerned. If available using

commercially reasonable efforts, each liability insurance policy shall provide that such policy may not be canceled except upon thirty (30) days' prior written notice (except ten (10) days' prior notice for non-renewal or cancellation due to non-payment of premium) to Administrative Agent (provided that, if the insurer will not or cannot provide the required notice, Borrowers shall be obligated to provide such notice). Blanket policies shall be permitted only if (i) any such policy shall in all other respects comply with the requirements of this Section and (ii) such policy is approved in advance in writing by Administrative Agent, subject to review of the schedule of locations and values, portfolio PML reports for the catastrophic perils and such other information as requested by Administrative Agent, and such policy includes changes to the coverages and requirements set forth herein as may be required by Administrative Agent (including increases to the amount of coverages required herein). Further, Borrower shall notify Lender of any material changes to the Policy, including changes to the limits under the policy as of Closing Date or an aggregation of the insured values covered under the blanket policy, including the reduction or erosion of named storm limits or the addition of locations that are subject to the perils of named storm, and such changes shall be subject to Administrative Agent's approval. Borrowers authorize Administrative Agent to pay the premiums for such policies (the "**Insurance Premiums**") from the Insurance Impound as the same become due and payable annually in advance. If Borrowers fail to deposit funds into the Insurance Impound sufficient to permit Administrative Agent to pay the Insurance Premiums when due, Administrative Agent may obtain such insurance and pay the premium therefor and Borrowers shall, on demand, reimburse Administrative Agent for all expenses incurred in connection therewith. Borrowers shall not maintain any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise reasonably satisfactory to Administrative Agent in all respects.

(e) **Assignment; Delivery of Certificates and Policies.** Borrowers shall assign the policies (except, with respect to such policies, to the extent that Administrative Agent has approved blanket policies covering other properties in addition to the Projects) and all proceeds payable thereunder or proofs of insurance to Administrative Agent (for the benefit of the Lenders), in such manner and form that Administrative Agent and its successors and assigns shall at all times have and hold the same as security for the payment of the Loan. In the event of a foreclosure of the applicable Mortgage or other transfer of title to the applicable Projects in extinguishment in whole or in part of the Obligations, all right, title and interest of Borrowers in and to the policies then in force concerning the applicable Projects and all proceeds payable thereunder shall thereupon vest exclusively in Administrative Agent or the purchaser at such foreclosure or other transferee in the event of such other transfer of title. Unless otherwise approved by Administrative Agent, with respect to the property insurance required under this Section 3.1, Borrowers shall provide (i) on or before the Closing Date, an ACORD 27 or 28 along with a policy binder, (ii) endorsements required by Administrative Agent within thirty (30) days following the Closing Date if not provided on or before the Closing Date and (iii) a copy of the full policy within sixty (60) days following the Closing Date or prior to expiration of the binder. Unless otherwise approved by Administrative Agent, with respect to the liability insurance required under this Section 3.1, Borrowers shall provide (i) on or before the Closing Date, an ACORD 25 along with evidence of 30-day notice of cancellation of coverage along with a policy binder which is valid for at least 60 days following the Closing Date or a complete copy of the policy, (ii) endorsements required by Administrative Agent within thirty (30) days following the Closing Date if not provided on or

before the Closing Date and (c) a copy of the full policy within sixty (60) days following the Closing Date. From time to time upon Administrative Agent's request, Borrowers shall identify to Administrative Agent all insurance maintained by Borrowers with respect to the Projects. The proceeds of insurance policies coming into the possession of Administrative Agent shall not be deemed trust funds, and Administrative Agent shall be entitled to apply such proceeds as herein provided.

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

(g) **WARNING REGARDING RIGHT OF ADMINISTRATIVE AGENT TO PURCHASE INSURANCE: IF BORROWERS FAIL TO PROVIDE ADMINISTRATIVE AGENT WITH EVIDENCE OF THE INSURANCE COVERAGES REQUIRED BY THIS AGREEMENT, ADMINISTRATIVE AGENT SHALL HAVE THE RIGHT TO TAKE SUCH ACTION DEEMED NECESSARY TO PROTECT THE INTEREST OF ADMINISTRATIVE AGENT AND LENDERS, INCLUDING, WITHOUT LIMITATION, THE PURCHASING OF INSURANCE AT BORROWERS' EXPENSE AS ADMINISTRATIVE AGENT IN ITS SOLE DISCRETION DEEMS APPROPRIATE. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT BORROWERS' INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE ADMINISTRATIVE AGENT PURCHASES MAY NOT PAY ANY CLAIM BORROWERS MAKE OR ANY CLAIM MADE AGAINST BORROWERS. BORROWERS ARE RESPONSIBLE FOR ALL EXPENSES INCURRED BY ADMINISTRATIVE AGENT IN CONNECTION WITH SUCH ACTION AND THE COST OF ANY INSURANCE PURCHASED PURSUANT TO THIS PROVISION AND SUCH COST IS PAYABLE ON DEMAND; IF BORROWERS FAIL TO PAY SUCH COST, IT MAY BE ADDED TO THE INDEBTEDNESS AND BEAR INTEREST AT THE DEFAULT RATE. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE BORROWERS' PRIOR COVERAGE LAPSED OR THE DATE BORROWERS FAILED TO PROVIDE PROOF OF COVERAGE. THE COVERAGE ADMINISTRATIVE AGENT PURCHASES MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE BORROWERS CAN OBTAIN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE IMPOSED BY REQUIREMENTS OF LAW. AFTER RECEIVING WRITTEN CONSENT FROM ADMINISTRATIVE AGENT, BORROWERS MAY LATER CANCEL THIS COVERAGE**

BY PROVIDING EVIDENCE THAT THE REQUIRED PROPERTY COVERAGE WAS PURCHASED ELSEWHERE. THIS NOTICE IS PROVIDED PURSUANT TO PARAGRAPH (3) OF 815 ILCS 180/10.

(h) **Non-Conforming Policy.** As an alternative to the policies required to be maintained pursuant to the preceding provisions of this Section 3.1, Borrowers will not be in default under this Section 3.1 if Borrowers maintain (or causes to be maintained) policies which (i) have coverages, deductibles or other related provisions other than those specified above or (ii) are provided by insurance companies not meeting the credit ratings requirements set forth above (any such policy, a “**Non-Conforming Policy**”), provided, that, prior to obtaining such Non-Conforming Policies (or permitting such Non-Conforming Policies to be obtained), Borrowers shall have received Administrative Agent’s prior written consent thereto. Notwithstanding the foregoing, Administrative Agent hereby reserves the right to deny its consent to any Non-Conforming Policy regardless of whether or not Administrative Agent has consented to the same on any prior occasion.

Section 3.2 Use and Application of Insurance Proceeds.

(a) **Notice; Repair Obligation.** If any Project shall be damaged or destroyed, in whole or in part, by fire or other casualty (a “**Casualty**”), Borrowers shall give prompt notice thereof to Administrative Agent. Following the occurrence of a Casualty, provided Administrative Agent makes insurance proceeds available to Borrowers, Borrowers shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable Requirements of Law. If Administrative Agent does not make insurance proceeds available to Borrowers, Borrowers, at Borrowers’ expense, shall promptly proceed to remove any debris and secure the damaged Project.

(b) **Application of Insurance Proceeds.** Subject to any applicable provisions of the applicable Ground Lease and Recognition Agreement and the Kansas City Master Lease, Administrative Agent shall make insurance proceeds available to Borrowers for application to the costs of restoring the damaged Project or to the payment of the Loan as follows:

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

(ii) if the loss exceeds the Restoration Threshold but is not more than 25% of the replacement value of the Improvements comprising the damaged Project, Administrative Agent shall disburse the insurance proceeds to Borrowers, which proceeds shall be used by Borrowers for the restoration of the damaged Project provided that (A) at all times during such restoration no Event of Default or Potential Default exists; (B) Borrowers deliver reasonably detailed plans and a budget to Administrative Agent for the proposed restoration; (C) Administrative Agent reasonably determines throughout the

restoration that there are sufficient funds available to restore and repair the damaged Project to a condition existing immediately prior to such Casualty or, if Administrative Agent reasonably determines there is any such insufficiency, Borrowers provide additional security to address such insufficiency to Administrative Agent's reasonable satisfaction; (D) Administrative Agent reasonably determines that the Adjusted Net Operating Income of the Projects (including the damaged Project) during restoration, taking into account rent loss or business interruption insurance, will be sufficient to pay Debt Service; (E) [intentionally omitted]; (F) Administrative Agent reasonably determines that after restoration of the damaged Project, the Debt Service Coverage Ratio will be at least 1.25:1.00 and the Project Yield will be at least 0.25% above the Cash Sweep Threshold (G) Administrative Agent determines that restoration and repair of the damaged Project to a condition approved by Administrative Agent will be completed within twelve (12) months after the date of loss or Casualty and in any event ninety (90) days prior to the Maturity Date; (H) Borrowers promptly commence and are diligently pursuing restoration of the damaged Project; and (I) the Project after the restoration will be in compliance with and permitted under all Requirements of Law; and

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

Notwithstanding the foregoing, Administrative Agent will not be required to make insurance proceeds available to Borrowers (and clause (iii) above will apply) if Administrative Agent determines, in its reasonable discretion, that following reconstruction due to any applicable zoning ordinances or other Requirements of Law (A) the damaged Project will not be able to be restored such that the net rentable square feet of the damaged not be materially less than the net rentable square feet of the damaged Project on the date such Project was made part of the Collateral or (B) the damaged Project will not be able to be used for substantially the same use as which it was used on the date such Project was made part of the Collateral.

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

(d) **Minor Casualty.** Notwithstanding anything herein to the contrary, so long as no Event of Default has occurred and is continuing, in the event of any Casualty in which the

estimated loss is \$50,000 or less, (i) Borrowers shall not be required to notify Administrative Agent of such Casualty and (ii) any proceeds payable under any policies with respect to such Casualty may be paid directly to Borrower to be used for the restoration of the damaged Project.

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

Section 3.4 Insurance Impounds. Borrowers shall deposit with Administrative Agent, monthly on each Payment Date, a sum of money (the “**Insurance Impound**”) equal to one-twelfth (1/12th) of the annual charges for the Insurance Premiums. Deposits shall be made on the basis of Administrative Agent’s reasonable estimate from time to time of the Insurance Premiums for the current year. All funds so deposited shall be held without interest in Administrative Agent’s name and shall not be deemed to be held in trust for the benefit of Borrowers. All funds so deposited may be commingled with the general funds of Administrative Agent. Borrowers hereby grant to Administrative Agent (for its benefit and the benefit of the Lenders) a security interest in all funds

so deposited with Administrative Agent for the purpose of securing the Loan. Until an Event of Default exists, Administrative Agent shall apply the funds deposited to pay Insurance Premiums as provided herein. While an Event of Default exists, the funds deposited may be applied in payment of the Insurance Premiums for which such funds have been deposited, or to the payment of the Loan or any other charges affecting the security of Administrative Agent, as Administrative Agent may elect, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Administrative Agent. Borrowers shall furnish Administrative Agent with bills for the Insurance Premiums for which such deposits are required at least thirty (30) days prior to the date on which the Insurance Premiums first become payable. If at any time the amount on deposit with Administrative Agent, together with amounts to be deposited by Borrowers before such Insurance Premiums are payable, is insufficient to pay such Insurance Premiums, Borrowers shall deposit any deficiency with Administrative Agent within ten (10) Business Days' of Administrative Agent's demand. Administrative Agent shall pay such Insurance Premiums when the amount on deposit with Administrative Agent is sufficient to pay such Insurance Premiums and Administrative Agent has received a bill for such Insurance Premiums. The obligation of Borrowers to pay the Insurance Premiums, as set forth in the Loan Documents, is not affected or modified by the provision of this paragraph; provided, however, that Borrowers shall not be in default under the Loan for failure to pay the Insurance Premiums if and to the extent there are sufficient funds on deposit in the Insurance Impound to timely pay such Insurance Premiums. On the Maturity Date, the monies then remaining on deposit with Administrative Agent under this Section 3.4 shall, at Administrative Agent's option, be applied against the Indebtedness or if no Event of Default exists hereunder, returned to Borrowers. Notwithstanding anything to the contrary contained in this Agreement (except as set forth in the following sentence), the Insurance Impound shall be waived so long as (i) an Event of Default is not then continuing, (ii) the Properties are insured under a blanket policy, and (iii) at the written request of Administrative Agent, Borrowers provide to Administrative Agent evidence reasonably acceptable to Administrative Agent that such blanket policy is in full force and effect.

Section 3.5 Real Estate Tax Impounds. Borrowers shall deposit with Administrative Agent, monthly on each Payment Date, a sum of money (the "Tax Impound") equal to one-twelfth (1/12th) of the annual Taxes. Deposits shall be made on the basis of Administrative Agent's reasonable estimate from time to time of the Taxes for the current year (after giving effect to any reassessment or, at Administrative Agent's election, on the basis of the Taxes for the prior year, with adjustments when the Taxes are fixed for the then current year). All funds so deposited shall be held without interest in Administrative Agent's name and shall not be deemed to be held in trust for the benefit of Borrowers. All funds so deposited may be commingled with the general funds of Administrative Agent. Borrowers hereby grant to Administrative Agent (for its benefit and the benefit of the Lenders) a security interest in all funds so deposited with Administrative Agent for the purpose of securing the Loan. Until an Event of Default exists, Administrative Agent shall apply the funds deposited to pay the Taxes as provided herein. While an Event of Default exists, the funds deposited may be applied in payment of the charges for which such funds have been deposited, or to the payment of the Loan or any other charges affecting the security of Administrative Agent, as Administrative Agent may elect, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Administrative Agent. Borrowers shall furnish Administrative Agent with bills for the Taxes for which such deposits are

required at least thirty (30) days prior to the date on which the Taxes first become payable. If at any time the amount on deposit with Administrative Agent, together with amounts to be deposited by Borrowers before such Taxes are payable, is insufficient to pay such Taxes, Borrowers shall deposit any deficiency with Administrative Agent within ten (10) Business Days' of Administrative Agent's demand. Administrative Agent shall pay such Taxes when the amount on deposit with Administrative Agent is sufficient to pay such Taxes and Administrative Agent has received a bill for such Taxes. The obligation of Borrowers to pay the Taxes, as set forth in the Loan Documents, is not affected or modified by the provision of this paragraph; provided, however, that Borrowers shall not be in default under the Loan for failure to pay Taxes if and to the extent there are sufficient funds on deposit in the Tax Impound to timely pay such Taxes. On the Maturity Date, the monies then remaining on deposit with Administrative Agent under this Section 3.5 shall, at Administrative Agent's option, be applied against the Indebtedness or if no Event of Default exists hereunder, returned to Borrowers. Notwithstanding anything to the contrary contained in this Agreement, the Tax Impound shall be waived so long as (i) an Event of Default is not in existence and (ii) Borrowers provide to Administrative Agent, on or before the date of delinquency, evidence reasonably acceptable to Administrative Agent that all Taxes which have become due have been paid in full.

ARTICLE 4 **LEASING MATTERS**

Section 4.1 Representations and Warranties on Leases.

(a) Borrowers and Kansas City Master Lessee represent and warrant to Administrative Agent and Lenders with respect to the Leases that, (i) the rent roll for each Project delivered to Administrative Agent with respect to such Leases is true and correct in all material respects; (ii) such Leases are in full force and effect; (iii) the Leases (including amendments) are in writing, and, to Borrower's knowledge, there are no oral agreements with respect thereto; (iv) the copies of the Leases delivered to Administrative Agent are true and complete in all material respects; (v) to Borrower's knowledge, neither the landlord nor any tenant is in default under any of the Leases; (vi) Borrowers have no knowledge of any notice of termination or default with respect to any Lease; (vii) Borrowers have not assigned or pledged any of the Leases, the rents or any interests therein except to Administrative Agent and the Lenders; (viii) no Tenant or other party has an option to purchase all or any portion of any Project; (ix) no Tenant has the right to terminate its Lease prior to expiration of the stated term of such Lease; (x) no Tenant has prepaid more than one month's rent in advance (except for bona fide Security Deposits not in excess of an amount equal to two months' rent); (xi) [intentionally omitted]; and (xiii) following the date of this Agreement, no Tenant will have a right to become a member in (or otherwise acquire an ownership interest in) any Borrower.

(b) LCRA and Kansas City Master Lessee represents and warrants to Administrative Agent and the Lenders that: (i) the Kansas City Master Lease is valid and in and full force and effect; (ii) the Kansas City Master Lease is in writing, and there are no oral agreements with respect thereto; (iii) the copy of the Kansas City Master Lease delivered to Administrative Agent is true and complete; (iv) neither LCRA nor Kansas City Master Lessee is in default under the Kansas City Master Lease; (v) Borrower has no knowledge of any notice of termination or default with

respect to the Kansas City Master Lease; (vi) Borrower has not assigned or pledged the Kansas City Master Lease, the rents or any interests therein except to Administrative Agent and the Lenders; (vii) except as specifically provided in Section 17.1 of the Kansas City Master Lease, no Tenant or other party has an option to purchase all or any portion of the Kansas City Project; and (viii) except as specifically provided in Section 17.2 of the Kansas City Master Lease, there are no options or rights to terminate the Kansas City Master Lease prior to expiration of its stated term.

Section 4.2 Standard Lease Form; Approval Rights.

(a) All Leases and other rental arrangements entered into after the Closing Date shall in all respects be approved by Administrative Agent (which approval shall not be unreasonably withheld, conditioned or delayed) and, except as otherwise approved by Administrative Agent, (which approval will not be unreasonably withheld or delayed) shall be on a standard lease form approved by Administrative Agent in connection with the closing of the Loan with such commercially reasonable modification as Borrower or Kansas City Master Lessee determines in its reasonable discretion (provided no modifications may be to the provisions in the standard lease form which provide such lease is subordinate to the Mortgage and that the tenant will attorn to Administrative Agent or any purchaser at a foreclosure sale, in each case, without Administrative Agent's consent) . To the extent required by Requirements of Law, Borrowers and Kansas City Master Lessee shall hold, in trust, all tenant Security Deposits in a segregated account, and, to the extent required by Requirements of Law, shall not commingle any such funds with any other funds of Borrowers or Kansas City Master Lessee. Within ten (10) Business Days after Administrative Agent's request, Borrowers and Kansas City Master Lessee shall furnish to Administrative Agent a statement of all tenant Security Deposits, and copies of all Leases not previously delivered to Administrative Agent, certified by Borrowers and Kansas City Master Lessee as being true and correct in all material respects.

(b) Notwithstanding anything contained in the Loan Documents, provided no Event of Default has occurred and is continuing, Borrowers and Kansas City Master Lessees shall have the right to enter into non-Major Leases without Administrative Agent's consent provided (i) the economic terms of the Lease conform to those of the market;(ii) the tenant is a physician or physician group or other medical or ancillary use typically found in medical office buildings similar to the applicable Project; (iii) if applicable, the Lease and the tenant thereunder comply with the requirements of the applicable Ground Lease and, if applicable, the Kansas City Master Lease; and (iv) if required under the terms of the applicable Ground Lease, Administrative Agent shall have received evidence of written approval of the Lease by applicable Ground Lessor.

(c) With respect to any Lease or amendment of a Lease which requires approval of Administrative Agent or the Required Lenders, such approval will not be unreasonably withheld and will be deemed approved after 15 Business Days of request from Borrowers if Administrative Agent and Required Lenders have not otherwise responded to Borrowers in writing provided the request for consent is presented to Administrative Agent in writing with the following language prominently displayed at the top and on the cover of any such request in all caps, boldface, 14 point type or larger: **THIS LETTER CONTAINS A REQUEST FOR CONSENT WHICH WILL BE DEEMED GIVEN IF NOT DENIED IN WRITING WITHIN 15 BUSINESS DAYS.**

(d) Borrowers acknowledge that, as of the date of this Agreement, Borrowers have not delivered a copy of Borrowers' standard form lease agreement to Administrative Agent for review and approval. Notwithstanding Section 4.2(b) above or elsewhere in the Loan Documents, Borrowers may not enter into any Lease or other occupancy agreement affecting any Project without the prior written consent of Administrative Agent until such time as Administrative Agent has approved Borrowers' standard form lease agreement in writing (which approval shall not be unreasonably withheld). At such time as Administrative Agent (or its counsel) has approved, in writing, Borrower's standard form lease agreement, Borrowers may thereafter enter into Leases affecting the Projects in accordance with the terms of Section 4.2(b) above. ***NTD: TO BE REMOVED UPON RECEIPT AND APPROVAL OF FORM LEASE**

Section 4.3 Covenants.

(a) Borrowers and Kansas City Master Lessee shall (or shall cause Property Manager to) (i) perform the obligations which any Landlord Party is required to perform under the Leases in all material respects; (ii) enforce the obligations to be performed by the Tenants under the Leases in all material respects and in its commercially reasonable judgement; (iii) promptly furnish to Administrative Agent any notice of default or termination received by any Borrower or Kansas City Master Lessee from any Tenant under a Lease, and any notice of default or termination given by any Borrower or Kansas City Master Lessee to any Tenant; (iv) not collect any rents for more than one month in advance of the time when the same shall become due, except for bona fide Security Deposits not in excess of an amount equal to two month's rent; (v) not enter into any ground lease or master lease of any part of the Projects other than the Ground Leases; (vi) not further assign or encumber any Lease; (vii) not, except with Administrative Agent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, cancel or accept surrender or termination of any Lease; (viii) not, except with Administrative Agent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, materially modify or amend any Lease or guaranty thereof (except minor for modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not affecting the economic terms of the Lease or guaranty thereof); provided, however, that in no event shall Borrowers or Kansas City Master Lessee be obligated to obtain Administrative Agent's prior written consent to amend or modify any Lease if (a) Administrative Agent's consent was not required for Borrower or Kansas City Master Lessee to enter into such Lease, (b) Administrative Agent's consent would not have been required for Borrower or Kansas City Master Lessee to enter into such Lease had the amendments or modifications been included in the original Lease at the time of execution thereof and (c) if such modification is required under the express terms of any such Lease; (ix) assign to Administrative Agent any letter of credit in excess of \$100,000 (or if all such letters of credit in the aggregate exceed \$300,000) evidencing a security deposit on such terms as may be required by Administrative Agent and shall deliver the original of such letter(s) of credit to Administrative Agent, and (x) not, except with Administrative Agent's consent, consent to an assignment or sublease of any Lease by the Tenant thereunder to the extent landlord's consent is required thereunder. Borrowers, Kansas City Master Lessee and Property Manager, as applicable, will not suffer or permit any material breach or default to occur in any of any Landlord Party's obligations

under any of the Leases, nor suffer or permit the same to terminate by reason of any failure of Landlord Party to meet any requirement of any Lease.

(b) LCRA and Kansas City Master Lessee shall (i) perform the obligations under the Kansas City Master Lease in all material respects; (ii) enforce the obligations to be performed under the Kansas City Master Lease in all material respects; (iii) not further assign or encumber the Kansas City Master Lease; (iv) not, except with Administrative Agent's prior written consent, cancel or accept surrender or termination of the Kansas City Master Lease other than in connection with a LCRA Termination Right; and (v) not, except with Administrative Agent's prior written consent, modify or amend the Kansas City Master Lease. Any action in violation of clauses (iii), (iv) or (v) of this Section 5.3(b) shall be void at the election of Administrative Agent.

Section 4.4 Tenant Estoppels. At Administrative Agent's request but not more frequently than once every two years during the term of the Loan unless an Event of Default exists, Borrowers and Kansas City Master Lessee shall use commercially reasonable efforts to obtain and furnish to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent or in the form required under any such Lease, executed by Tenants under Leases in excess of 3,000 square feet of any Project and confirming the term, rent, and other provisions and matters reasonably requested by Administrative Agent relating to such Leases.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

Each Borrower represents, warrants and covenants to Administrative Agent and Lenders unless otherwise specified, as of the Closing Date and as of the date of each Compliance Certificate delivered to Administrative Agent pursuant to Section 6.2 hereof that (provided, however, LCRA makes no representations or warranties with respect to any Borrower Party other than LCRA):

Section 5.1 Organization, Power and Authority; Formation Documents.

(a) **Organization, etc.** Each Borrower and each other Borrower Party is duly organized, validly existing and in good standing under the laws of the state of its formation or existence and is in compliance in all material respects with all Requirements of Law applicable to doing business in the state in which the Projects are located. No Borrower is a "foreign person" within the meaning of §1445(f)(3) of the Code. Each Borrower and each other Borrower Party has only one state of incorporation or organization which is set forth in Schedule 5.1. All other information regarding each Borrower and each other Borrower Party contained in Schedule 5.1, including the ownership structure of each Borrower and its constituent entities, is true and correct as of the Closing Date.

(b) **Formation Documents.** LCRA was formed by adoption of Committee Substitute for Ordinance No. 16120, duly passed by the City Council of the City of Kansas City, Missouri on November 21, 1952 pursuant to the Land Clearance for Redevelopment Authority Law, Section 99.300, et seq., of the Revised Statutes of Missouri. A true and complete copy of the formation documents creating each Borrower and each other Borrower Party and any and all amendments thereto (collectively, the "**Borrower Formation Documents**") has been furnished to

Administrative Agent. The Borrower Formation Documents constitute the entire agreement governing the formation and existence of each Borrower (other than LCRA) and each other Borrower Party among the members of such Borrower or such other Borrower Party and are binding upon and enforceable against each of the members in accordance with their terms. No breach exists under the Borrower Formation Documents and no condition exists which, with the giving of notice or the passage of time, would constitute a breach under the Borrower Formation Documents.

(c) **Proceedings; Enforceability.** Each Borrower has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents and the Environmental Indemnity Agreement. The Loan Documents and the Environmental Indemnity Agreement have been duly executed and delivered by Borrowers and constitute legal, valid and binding obligations of Borrowers enforceable against Borrowers in accordance with their respective terms, subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and general principles of equity. The Loan Documents and the Environmental Indemnity Agreement are not subject to, and Borrowers have not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury. No exercise of any of the terms of the Loan Documents or the Environmental Indemnity Agreement, or any right thereunder, will render any Loan Document unenforceable.

(d) **No Conflicts.** The execution, delivery and performance of the Loan Documents and the Environmental Indemnity Agreement by Borrowers and the transactions contemplated hereby will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents and the Environmental Indemnity Agreement) upon any of the property of Borrowers pursuant to the terms of, any agreement or instrument to which any Borrower is a party or by which its property is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrowers or any of their property. Any consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrowers of the Loan Documents and the Environmental Indemnity Agreement has been obtained and is in full force and effect.

Section 5.2 Validity of Loan Documents. The execution, delivery and performance by each Borrower Party of the Loan Documents and the Environmental Indemnity Agreement to which they are a party: (a) are duly authorized and do not require the consent or approval of any other party or Governmental Authority which has not been obtained; and (b) will not violate any law or result in the imposition of any Lien upon the assets of any such party, except as contemplated by the Loan Documents or the Environmental Indemnity Agreement. The Loan Documents or the Environmental Indemnity Agreement constitute the legal, valid and binding obligations of each Borrower and each other Borrower Party who is a party to such Loan Documents or the Environmental Indemnity Agreement, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights. Notwithstanding the foregoing, LCRA is not a party to the

Environmental Indemnity Agreement and makes no representation under this Section 5.2 as to the validity or enforceability of the Environmental Indemnity Agreement.

Section 5.3 Liabilities; Litigation.

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

(b) **Contemplated Actions.** No Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and no Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

(c) **Litigation.** There are no actions, suits or other proceedings at law or in equity by or before any Governmental Authority now pending or threatened against or affecting any Borrower or any Project, which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

Section 5.4 Taxes and Assessments. There are no unpaid or outstanding real estate or other taxes or assessments on or against the Projects or any part thereof, except general real estate taxes not due or payable. Each Project is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to the knowledge of Borrowers, proposed, special or other assessments for public improvements or otherwise affecting any Project, nor, to the knowledge of Borrowers, are there any contemplated improvements to any Project that may result in such special or other assessments.

Section 5.5 Other Agreements Defaults. No Borrower Party is a party to any agreement or instrument or subject to any court order, injunction, permit, or restriction which could reasonably be expected to have a Material Adverse Effect. No Borrower Party is in violation of any agreement which violation could reasonably be expected to have a Material Adverse Effect.

Section 5.6 Compliance with Laws. Each Borrower or each Property Manager have all requisite Permits necessary to own, lease and operate the Projects and carry on its business, and, except as disclosed in the Zoning Reports or Property Condition Reports delivered to Administrative Agent prior to the Closing Date, each Project is in compliance in all material respects with all applicable Requirements of Law. Except as expressly disclosed in the Zoning Reports, no Project constitutes, in whole or in part, a legally non-conforming use under applicable

Requirements of Law. No Project, Borrower, Guarantor or, to Borrowers' knowledge, Property Manager is in violation of any Healthcare Laws or the subject of a Healthcare Investigation.

Section 5.7 Condemnation. No condemnation has been commenced, and to Borrower's knowledge, is contemplated with respect to all or any portion of the Projects or for the relocation of roadways providing access to any Project.

Section 5.8 Access. Each Project has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of each Project are located in the public right-of-way abutting the applicable Project, and all such utilities are connected so as to serve such Project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting such Project. All roads necessary for the full utilization of each Project for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities.

Section 5.9 Location of Borrowers; Trade Name. Each Borrower's principal place of business and chief executive offices are located at the address stated in Schedule 5.1 and, except as otherwise set forth in Schedule 5.1, each Borrower at all times has maintained its principal place of business and chief executive office at such location or at other locations within the same state. No Borrower uses, nor will any Borrower use, any trade name and no Borrower has done, nor will any Borrower do, business under any name other than its actual name set forth herein.

Section 5.10 ERISA Employees.

(a) As of the Closing Date and throughout the term of the Loan, (i) no Borrower is nor will be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Part 4 of Subtitle B of Title I of ERISA, and (ii) the assets of Borrowers do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA, as determined under Section 3(42) of ERISA.

(b) As of the Closing Date and throughout the term of the Loan (i) no Borrower is or will be a "governmental plan" within the meaning of Section 3(3) of ERISA and (ii) transactions by or with any Borrower are not and will not be subject to state statutes applicable to any Borrower regulating investments of and fiduciary obligations with respect to such governmental plans.

(c) No Borrower has any employees.

Section 5.11 Use of Loan Proceeds. The proceeds of the Loan are intended and will be used for agricultural, business or commercial purposes and are not intended and will not be used for personal, family or household purposes. No proceeds of the Loan will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System. Each Borrower confirms that such Borrower is acting on its own behalf and for its own benefit. The Loan has been requested by Borrowers and the proceeds of the Loan shall be utilized by Borrowers for their own account.

Section 5.12 Forfeiture. There has not been committed by any Borrower Party or any Property Manager, any other person in occupancy of or involved with the operation or use of the Projects any act or omission affording the federal government or any state or local government the right of forfeiture as against the Projects or any part thereof or any monies paid in performance of Borrowers' obligations under any of the Loan Documents or the Environmental Indemnity Agreement (the "**Forfeiture Rights**").

Section 5.13 Tax Filings. Each Borrower and Kansas City Master Lessee has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by such Borrower or and Kansas City Master Lessee, respectively, except taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained. Notwithstanding the foregoing sentence, so long as Borrower is a disregarded entity for tax purposes, Borrower shall have no obligation to file any tax return under this Section 5.13. Fraudulent Transfer. No Borrower has entered into the Loan, any Loan Document or the Environmental Indemnity Agreement with the actual intent to hinder, delay, or defraud any creditor, and each Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents and the Environmental Indemnity Agreement. Giving effect to the transactions contemplated by the Loan Documents and the Environmental Indemnity Agreement, the fair saleable value of each Borrower's assets exceeds and will, immediately following the execution and delivery of the Loan Documents and the Environmental Indemnity Agreement, exceed Borrower's total probable liabilities, including subordinated, unliquidated, disputed and contingent liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured (provided, however, for purposes hereof, each Borrower's joint liability hereunder as to portions of the Loan in excess of the Allocated Loan Amount applicable to the Project owned by such Borrower is not considered). No Borrower's assets constitute (nor will, immediately following the Closing Date and each advance of the proceeds of the Loan, any Borrower's assets constitute) unreasonably small capital to carry out its business as conducted or as proposed to be conducted. No Borrower intends to, nor believes that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of such Borrower).

Section 5.15 Full and Accurate Disclosure; No Material Adverse Change.

(a) No statement of fact made by or on behalf of any Borrower Party in this Agreement, in any of the other Loan Documents or the Environmental Indemnity Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading, nor has there been any material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect. There is no fact presently known to any Borrower which has not been disclosed to Administrative Agent which could reasonably be expected to have a Material Adverse Effect. All information supplied by Borrowers regarding any other Collateral

is accurate and complete in all material respects. All evidence of each Borrower Party's identity provided to Administrative Agent and Lenders is genuine, and all related information is accurate. Notwithstanding the foregoing, LCRA makes no representation under this Section 5.15(a) as to the Environmental Indemnity Agreement.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

Section 5.16 Flood Zone. Except as disclosed in the Surveys, no portion of the Improvements comprising the Projects is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1994, as amended, or any successor law, or, if located within any such area, Borrowers have obtained and will maintain the insurance prescribed in Section 3.1 hereof.

Section 5.17 Single Purpose Entity/Separateness. Each Borrower represents, warrants and covenants, from and after the Closing Date for so long as any obligation under the Loan Documents remains outstanding, as follows (except that the provisions of this Section 5.17 shall not apply to LCRA):

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

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

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

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

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

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

(i) other than with respect to the pledge of its assets to secure the debt of the other Borrowers, guarantee any obligation of any Person, including any Affiliate of any

Borrower, or become obligated for the debts of any other Person or hold out its credit as being available to pay the obligations of any other Person;

(ii) engage, directly or indirectly, in any business other than as required or permitted to be performed under this Section 5.17;

(iii) incur, create or assume any Debt other than (A) the Loan and (B) unsecured trade payables incurred in the ordinary course of its business that are related to the ownership and operation of the Projects and which shall (1) not exceed two percent (2%) of the outstanding balance of the Loan, (2) not be evidenced by a note, (3) be paid within sixty (60) days, and (4) otherwise expressly be permitted under the Loan Documents, and (C) a reimbursement obligation for any Special Letter of Credit delivered pursuant to Section 7.13;

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

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

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

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

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

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

(x) enter into a Division Transaction.

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

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

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

(iii) comply with all organizational formalities necessary to maintain its separate existence;

(iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;

(v) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; except that each Borrower's assets may be included in a consolidated financial statement of its Affiliate so long as appropriate notation is made on such consolidated financial statements to indicate the separateness of such Borrower from such Affiliate and to indicate that such Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person;

(vi) other than with respect to the consolidated tax return of its Affiliates, prepare and file its own tax returns separate from those of any Person to the extent required by Requirements of Law, and pay any taxes required to be paid by Requirements of Law except (a) taxes that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are being maintained or (b) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect; provided, however, so long as Borrower is a disregarded entity for tax purposes, Borrower shall have no obligation to file any tax return in accordance with the prior sentence;

(vii) allocate and charge fairly and reasonably any common employee or overhead shared with Affiliates;

(viii) not enter into any transaction with any Person owned or controlled by an Affiliate of Borrowers except on an arm's-length basis on terms which are intrinsically fair and no less favorable than would be available for unaffiliated third parties, and pursuant to written, enforceable agreements;

(ix) conduct business in its own name, and use separate stationery, invoices and checks;

(x) not commingle its assets or funds with those of any other Person other than as required or permitted by this Agreement, except that, as an accommodation to each Borrower as part of a centralized cash management system, Administrative Agent has consented to (i) the commingling of Rents with monies of other Borrowers (but no other Persons) in a master account in the name of * [REDACTED] (the "Master Account") and (ii) after Rents have been deposited into the Master Account, the transfer of funds in the Master Account (so long as an Event of Default does not then exist) to an account maintained by Welltower Property Manager to pay certain expenses of Borrowers and other Affiliates of Guarantor; provided however that (a) each Borrower's funds will be separately accounted for in the books and records of such account, (b) at all times, each Borrower's assets and liabilities can be identified from those of any other Person and (c)

such funds shall be used only for proper expenses and costs of managing and operating the Projects;

(xi) not assume, guarantee or pay the debts or obligations of any other Person other than with respect to the pledge of its assets to secure the debt of the other Borrowers;

(xii) correct any known misunderstanding as to its separate identity;

(xiii) not permit any Affiliate of Borrowers to guarantee or pay its obligations (other than limited guarantees and indemnities set forth in the Loan Documents and in the Environmental Indemnity Agreement);

(xiv) not make loans or advances to any other Person;

(xv) pay its liabilities and expenses out of and to the extent of its own funds;

(xvi) maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds;

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

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

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

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

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

Section 5.18 Anti-Money Laundering/International Trade Law Compliance; Patriot Act.

(a) No Covered Entity and, to Borrowers' knowledge, no Covered Entity Advisor(i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority.

(b) The proceeds of the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority.

(c) The funds used to repay the Loan are not derived from any unlawful activity.

(d) Each Covered Entity, and to Borrowers' knowledge, each Covered Entity Advisor, is in compliance with, and no Covered Entity, nor, to Borrowers' knowledge, any Covered Entity Advisor, engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws.

(e) Each Borrower covenants and agrees that it shall immediately notify Administrative Agent in writing upon the occurrence of a Reportable Compliance Event.

(f) As used herein: "**Anti-Terrorism Laws**" means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; "**Compliance Authority**" means each and all of the (i) U.S. Treasury Department/Office of Foreign Assets Control, (ii) U.S. Treasury Department/Financial Crimes Enforcement Network, (iii) U.S. State Department/Directorate of Defense Trade Controls, (iv) U.S. Commerce Department/Bureau of Industry and Security, (v) U.S. Internal Revenue Service, (vi) U.S. Justice Department, and (vii) U.S. Securities and Exchange Commission; "**Covered Entity**" means each Borrower, their Affiliates and subsidiaries, all guarantors, pledgors of collateral, all owners of the foregoing (provided, direct or indirect owners of shares which are listed on a publicly traded exchange shall not be considered Covered Entities); "**Covered Entity Advisor**" means all brokers or other agents of Borrower acting in any capacity in connection with the Loan; "**Reportable Compliance Event**" means that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; "**Sanctioned Country**" means a country subject to a sanctions program maintained by any Compliance Authority; and "**Sanctioned Person**" means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

(g) No Borrower Party nor any partner in any Borrower Party or member of such partner nor any owner of a direct or indirect interest in any Borrower Party (but specifically excluding owners of shares stock in any Borrower Party or any member or partner of a Borrower Party or any direct or indirect owner of a Party Borrower which such shares are listed on a publicly traded exchange) (i) is listed on any Government Lists, (ii) is a Prohibited Person, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude, or (iv) is currently under investigation by any Governmental Authority for alleged criminal activity.

(h) Notwithstanding anything to the contrary herein, the provisions of this Section 5.18 shall not apply to, and Borrower makes not representations, warranties or covenants with respect to, any Person whose direct or indirect interests in Borrower, Guarantor or any Borrower Party consist of publicly traded stocks or securities or were otherwise acquired through a public exchange.

Section 5.19 Intentionally Omitted.

Section 5.20 Management Agreements. A true, correct and complete copy of each of the Management Agreements, together with all amendments thereto, have been delivered to Administrative Agent; and the Management Agreements and all amendments thereto are in full force and effect as of the Closing Date.

Section 5.21 Physical Condition. Except as specifically set forth in the Property Condition Reports, to each Borrower's knowledge, (a) the Projects, including all Improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, are in good condition, order and repair in all material respects, subject to ordinary wear and tear; and (b) there exists no structural or other material defects or damages in any Project, whether latent or otherwise. No Borrower has received written notice from any insurance company or bonding company of any defects or inadequacies in any Project, or any part thereof, which would adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

Section 5.22 Survival. All of the representations and warranties in this Article 5 and elsewhere in the Loan Documents and the Environmental Indemnity Agreement (i) shall survive the funding or repayment of the Loan until the Obligations have been paid and performed in full, and (ii) shall be deemed to have been relied upon by Administrative Agent and the Lenders notwithstanding any investigation heretofore or hereafter made by Administrative Agent or any Lender or on their respective behalves.

ARTICLE 6
FINANCIAL REPORTING

Section 6.1 Financial Statements. Borrowers shall furnish to Administrative Agent and shall cause each other Borrower Party to furnish to Administrative Agent such financial statements and other financial information as required pursuant to this Article 6 and such other financial information as Administrative Agent may reasonably request from time to time. All such financial statements shall accurately and fairly present the results of operations and the financial condition of Borrowers at the dates and for the period indicated, shall be in scope and detail reasonably satisfactory to Administrative Agent and shall be otherwise sufficient to permit Administrative Agent and Lenders to calculate or verify Borrowers' compliance with the financial covenants in Section 7.13, Guarantor's compliance with the financial covenants in the Recourse Guaranty Agreement. All financial statements shall be delivered in Excel format.

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

(i) within forty-five (45) days after the end of each calendar quarter, internally prepared quarterly financial statements (including income statements and balance sheets) prepared for Borrowers and each Project which fairly present the financial condition of Borrowers and each Project for such period and year-to-date;

(ii) within forty-five (45) days after the end of each calendar quarter, (A) a detailed operating statement (showing quarterly activity and year-to-date) stating operating revenues, operating expenses, operating income and net cash flow for the calendar quarter just ended and year-to-date for each Project, and (B) a current rent roll for each Project;

(iii) if requested by Administrative Agent, within thirty (30) days before the end of each fiscal year, annual projected (A) profit and loss statements for each Project and (B) operating and capital budgets (each prepared on a monthly basis) for the succeeding fiscal year for each Project;

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

(v) intentionally omitted;

(vi) within forty-five (45) days after the end of each calendar quarter, internally prepared quarterly financial statements (including income statements and balance sheets) prepared for Guarantor which fairly present the financial condition of Guarantor for such period and year-to-date;

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

(viii) intentionally omitted;

(ix) during any period in which Borrowers are required to deposit Excess Cash Flow into the Project Yield Fund, within twenty (20) days after the end of each calendar month, internally prepared income statements for such month, a monthly statement for each Deposit Account maintained by each Borrower (or by any Property Manager on behalf of a Borrower), a calculation of Excess Cash Flow for the prior month and an Excess Cash Flow Certificate as of the end of such month;

(x) upon the request of Administrative Agent, copies of the monthly bank statements of Borrowers for the Deposit Accounts ; and

(xi) such additional information, reports or statements regarding Borrowers, the Projects and Guarantor as Administrative Agent may from time to time reasonably request.

All property related financial statements will contain the requested information on a Project by Project basis, as well as a consolidated basis, as well as a consolidated basis for all Projects.

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

(c) **Additional Reports.** Borrowers shall deliver to Administrative Agent the following additional reports and information:

(i) from time to time, if any Lender determines that obtaining appraisals is necessary in order for such Lender to comply with applicable Requirements of Law (including any appraisals required to comply with FIRREA), Administrative Agent may obtain appraisal reports in form and substance and from appraisers reasonably satisfactory to Administrative Agent stating the then current fair market value of each Project; provided, however, that Borrowers shall not be required to pay or reimburse Administrative Agent for the cost of more than one such report during the term of the Loan unless (A) a Potential Default or Event of Default has occurred and is continuing, (B) any Lender is required to obtain such report under Requirements of Law more frequently than once during the term of the Loan, (C) a current appraisal is needed to confirm entitlement to a Partial Release, or (D) a current appraisal is needed to confirm entitlement to an Extension Period;

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

(iii) to the extent not publicly available, within thirty (30) days following the request of Administrative Agent, evidence satisfactory to Administrative Agent that all federal and state taxes, including payroll taxes, that are due have been paid in full by each Borrower (other than LCRA), and by Kansas City Master Lessee, to be delivered to Administrative Agent (A) with respect to federal and state taxes (other than payroll taxes), within ten (10) days after the required filing date of the applicable tax return and (B) with respect to payroll taxes, within thirty (30) days following the end of each calendar quarter;

(iv) to the extent not publicly available, upon the request of Administrative Agent, a copy of each Borrower's (other than LCRA) and by Kansas City Master Lessee's income tax filings for the prior calendar year within thirty (30) days after the filing thereof;

(v) within thirty (30) days after Administrative Agent's request therefor, an accounts receivable and accounts payable aging report for each of the Projects; and

(vi) promptly following any request therefor, information and documentation reasonably requested by Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the Patriot Act or other applicable anti-money laundering laws.

(d) **Tenant Financials**. Borrowers will (i) use commercially reasonable efforts to pursue delivery to Borrowers of the financial statements of any Tenant (or Lease guarantor) that is obligated under the terms of its Lease to deliver financial statements, and (ii) to the extent actually received by Borrowers, promptly provide Administrative Agent copies thereof to the extent such financial statements are not required to be kept confidential by any Borrower pursuant to the applicable Lease.

(e) **Exceptions to Guarantor Reporting Requirements**. Notwithstanding anything to the contrary contained in Sections 6.1(a), (b), or (c) of this Loan Agreement (the "**Guarantor Reporting Sections**"), neither Borrower nor any other Borrower Party shall be required to deliver to Administrative Agent any information with respect to Guarantor requested to be delivered pursuant to the Guarantor Reporting Sections so long as (i) Guarantor is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto (the "Exchange Act"), and (ii) Guarantor files its financial information with the U.S. Securities and Exchange Commission as and when required by the Exchange Act and such financial information of Guarantor is available to the public.

Section 6.2 Compliance Certificate. Within forty-five (45) days after the end of each calendar quarter, Borrowers shall deliver and shall cause Guarantor to deliver such financial reports and information as Administrative Agent shall require evidencing compliance with the applicable financial covenants, together with a fully completed Compliance Certificate executed by Borrowers and Guarantor, and, if requested by Administrative Agent, back-up documentation as Administrative Agent shall reasonably require evidencing compliance.

Section 6.3 Accounting Principles. All financial statements shall be prepared in accordance with GAAP (or such other accounting basis reasonably acceptable to Administrative Agent), consistently applied. Notwithstanding the foregoing, all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof.

Section 6.4 Access. Borrowers shall permit Administrative Agent and any Lender to examine such records, books and papers of Borrowers which reflect upon its financial condition

and the income and expenses of the Projects. If Borrowers fail to forward the financial statements required in this Article 6 within thirty (30) days after written request, Administrative Agent shall have the right to audit such records, books and papers at Borrowers' expense.

Section 6.5 Books and Records/Audits. Borrowers shall keep and maintain or cause to be kept and maintained at all times at the Projects or Borrower's corporate headquarters in Ohio, or such other place as Administrative Agent may approve in writing, complete and accurate books of accounts and records adequate to reflect the results of the operation of the Projects and to provide the financial statements required to be provided to Administrative Agent pursuant to Section 6.1 above and copies of all written contracts, material correspondence, and other material documents affecting the Projects. Administrative Agent and its designated agents shall have the right to inspect and copy any of the foregoing. Additionally, if an Event of Default has occurred and is continuing or if Administrative Agent or any Lender has a reasonable basis to believe that Borrowers' records are materially inaccurate, Administrative Agent and each Lender may conduct a joint audit and determine, in such Person's reasonable discretion, the accuracy of Borrowers' records and computations, such audit to be at Borrowers' expense.

Section 6.6 Agent for Borrowers.

(a) Each of the entities comprising Borrowers hereby irrevocably appoints and constitutes [*] as its agent ("**Borrowers' Agent**") to request and direct advances in respect of the Loan (and to otherwise act on behalf of each such entity pursuant to this Agreement and the other Loan Documents) in the name or on behalf of each such Borrower. Administrative Agent may disburse proceeds of the Loan to the bank account of any one or more of such entities without notice to any of the other entities comprising Borrowers or any other Person at any time obligated on or in respect of the Obligations.

(b) Each of the entities comprising Borrowers hereby irrevocably appoints and constitutes Borrowers' Agent as its agent to receive statements of account and all other notices from Administrative Agent with respect to the Obligations or otherwise under or in connection with this Agreement and the other Loan Documents.

(c) No purported termination of the appointment of Borrowers' Agent as agent for Borrowers shall be effective without the prior written consent of Administrative Agent.

Section 6.7 LCRA. Notwithstanding anything to the contrary contained in this Agreement, LCRA will have no obligations under this Article 6 to deliver financial reports concerning LCRA, but Kansas City Master Lessee will be responsible for delivery the same financial reports as if it were a Borrower.

ARTICLE 7
COVENANTS

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

Section 7.1 Transfers or Encumbrance of Property.

(a) Neither any Borrower nor Kansas City Master Lessee shall cause or permit a Transfer (in each case, a “**Prohibited Transfer**”) without the prior written consent of Administrative Agent and Required Lenders, other than (i) pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Article 4, or (ii) as contemplated by Section 2.17.

(b) A Prohibited Transfer shall include, but not be limited to, (i) an installment sale agreement wherein Borrowers or Kansas City Master Lessee agree to sell the Projects or any part thereof for a price to be paid in installments; (ii) an agreement by Borrowers or Kansas City Master Lessee leasing all or a substantial part of the Projects for other than actual occupancy by a space tenant thereunder or a sale, assignment or other Transfer of, or the grant of a security interest in, any Borrower’s or Kansas City Master Lessee’s right, title and interest in and to any Leases or any rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Transfer of such corporation’s stock or the creation or issuance of new stock in one or a series of transactions; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Transfer of the partnership interest of any general or limited partner or any profits or proceeds relating to such partnership interests or the creation or issuance of new partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Transfer of the membership interest of any member or any profits or proceeds relating to such membership interest; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Transfer of the legal or beneficial interest in a Restricted Party, the creation or issuance of new legal or beneficial interests in such trust, the dissolution or revocation of such trust or the distribution of a material portion of the assets of such trust; and (vii) the removal or the resignation of the Property Manager (including an Affiliated Manager) other than in accordance with Section 7.3 or (viii) a Transfer which could result in an event of default under any Ground Lease or under the Kansas City Master Lease.

(c) Notwithstanding the provisions of Section 7.1(b), the following transfers shall not be deemed to be Prohibited Transfers (subject only to any conditions set forth below) and shall not require notice to Administrative Agent, Administrative Agent’s consent except as expressly noted otherwise below or any payment of a transfer or processing or any other fee in connection therewith:

(i) the issuance, sale, pledge, conveyance, disposition or other Transfer (each, a “**REIT Share Transfer**”) of any stock (the “**REIT Shares**”) in Welltower Inc., a Delaware corporation (“**REIT**”), so long as at the time of the REIT Share Transfer, the

REIT Shares are listed on the New York Stock Exchange or any other nationally recognized stock exchange; and

(ii) the merger, consolidation or other business combination of the REIT with or into any other Person or sale of all or substantially all of the assets of the REIT (each, a “**REIT Transfer**” and, collectively, “**REIT Transfers**”); provided, however, that (x) if any REIT Transfer or series of REIT Transfers (other than the sale of publicly traded stock in the REIT) shall result in a change in Control of the REIT then, notwithstanding the foregoing, Administrative Agent’s prior written consent (which shall not be unreasonably withheld, conditioned or delayed) shall be required in connection with such REIT Transfers, (y) Administrative Agent shall receive 30 days’ notice prior to such merger, consolidation or other business combination and (z) such merger, consolidation or other business combination would not result in an event of default under the any Ground Lease or the Kansas City Master Lease;

(iii) Transfers of direct or indirect interests in a Borrower and Kansas City Master Lessee so long as (A) following any such Transfer REIT (or another Person acceptable to Administrative Agent and the Lenders in their sole discretion) owns, directly or indirectly, not less than 50.1% of the ownership interests in each Borrower and Kansas City Master Lessee, (B) following any such Transfer REIT (or another Person acceptable to Administrative Agent and the Lenders in their sole discretion) Controls each Borrower and Kansas City Master Lessee, (C) no Transfer shall be made to any Prohibited Person or any Person that would result in noncompliance with Section 5.18, (D) Administrative Agent shall receive not less than thirty (30) days prior written notice of such proposed Transfer if such Transfer would result in any Person owning more than 20% of the direct or indirect interest in any Borrower or Kansas City Master Lessee and (E) such Transfer would not result in an event of default under the any Ground Lease or the Kansas City Master Lease; and

(iv) Any Transfer by LCRA of the LCRA Documents and/or the Kansas City Master Lease Documents to the City of Kansas City, Missouri or to any successor entity of LCRA created by the City of Kansas City, Missouri.

Notwithstanding the foregoing, (i) any Transfer that results in any Person owning fifty percent (50%) or more of the ownership interest in a Restricted Party (which Person did not own fifty percent (50%) or more of the ownership interest in such Restricted Party prior to such Transfer) will be considered a Prohibited Transfer and (ii) in no event will a Division Transaction be permitted without the prior written consent of Administrative Agent and Required Lenders.

(d) Upon Administrative Agent’s request, Borrowers and Kansas City Master Lessee shall deliver all appropriate papers, certificates and affidavits requested by Administrative Agent that evidence the organization, good standing, qualification to do business and tax status of the Transferee, which papers, certificates and affidavits shall include certified copies of all documents relating to the organization and formation of Transferee and of the entities, if any, which are partners or members of Transferee and updated organizational charts reflecting such transfer, as well as all documents and information requested by Administrative Agent to confirm that such

proposed transfer will satisfy the requirements of this Agreement, and sufficient for Administrative Agent and each Lender to undertake and review background checks and to satisfy such “know-your-customer” background checks and procedures as may be required to be performed by it pursuant to Requirements of Law or the policies of Administrative Agent or any Lender and to confirm that after giving effect to such transfer that no Person holding 20% or more of the direct or indirect interests in any Borrower or Kansas City Master Lessee or rights to distributions from any Borrower or Kansas City Master Lessee (who did not hold 20% or more of the direct or indirect interests in any Borrower or Kansas City Master Lessee or rights to distributions from any Borrower or Kansas City Master Lessee prior to such Transfer) shall be a Prohibited Person or otherwise a Person with whom Administrative Agent or any Lender would be prohibited, pursuant to Requirements of Law or the policies of Administrative Agent or any Lender, to engage in the transactions under the Loan Documents.

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

Section 7.2 Taxes/Utility Charges. Except to the extent sums sufficient to pay all Taxes (defined herein) have been previously deposited with Administrative Agent as part of the Tax Impound and subject to Borrowers’ right to contest in accordance with Section 11.14 hereof, Borrowers shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges (the “Taxes”) that may become a Lien upon the Projects or become payable during the term of the Loan. Borrowers’ compliance with Section 3.5 of this Agreement relating to impounds for Taxes shall, with respect to payment of such Taxes, be deemed compliance with this Section 7.2. Borrowers shall not suffer or permit the joint assessment of any Project with any other real property constituting a separate tax lot or with any other real or personal property. Borrowers shall promptly pay for all utility services provided to the Projects.

Section 7.3 Management.

(a) Borrowers acknowledge that the Lenders are making the Loan, in part, based upon the operational expertise of the Property Manager. Borrowers shall not surrender, terminate, cancel, modify in any material respect, renew, amend, or extend a Management Agreement, or enter into any other agreement relating to the management or operation of the Project with Property Manager or any other Person unless such Person is a Qualified Manager, or consent to the assignment by the Property Manager of its interest under a Management Agreement to any other Person which is not a Qualified Manager, in each case without the express written consent of Administrative Agent, which consent shall not be unreasonably withheld, conditioned or delayed and shall be based upon Administrative Agent’s evaluation of the proposed substitute manager’s and operator’s financial condition, credit history and credit worthiness, experience in operating

and managing properties similar to the Projects, performance and compliance history in connection with healthcare facilities, reputation for honesty and integrity and prior experience with Administrative Agent and the Lenders. If at any time Administrative Agent consents to the appointment of a new manager or if Borrowers enter into a new Management Agreement with a Qualified Manager, the Management Agreement to which such new manager (or Qualified Manager) is party shall be in substantially the form of the existing management agreement or otherwise in form and substance reasonably acceptable to Administrative Agent, and such new manager (or Qualified Manager) and Borrowers shall provide prior written notice of such action to notify Administrative Agent and shall execute an Acknowledgment and Agreement of Property Manager in form and substance similar to the Acknowledgment of Property Manager executed by the Property Manager as of the Closing Date. Each Property Manager shall hold and maintain all necessary licenses, certifications and permits under Requirements of Law to operate and manage the Project for which it is providing management services. Notwithstanding the foregoing, Manager may sub-contract the management and/or leasing responsibilities of Manager under a Management Agreement pursuant to a sub-management agreement.

(b) Borrowers shall (i) diligently perform and observe all of the terms, covenants and conditions of the Management Agreements on the part of Borrowers to be performed and observed, (ii) promptly notify Administrative Agent of any notice received by Borrowers of any default by Borrowers in the performance or observance of any of the material terms, covenants or conditions of the Management Agreements on the part of Borrowers to be performed and observed, and (iii) promptly deliver to Administrative Agent a copy of each financial statement, business plan, capital expenditures plan, report and estimate received by it under the Management Agreements. The management fee payable under the Management Agreements shall not exceed four percent (4.0%) of rental collections.

(c) Administrative Agent shall have the right to require Borrowers to replace the Property Manager with a Person which is not an Affiliate of, but is chosen by, Borrowers and approved by Administrative Agent (such approval not to be unreasonably withheld), such approval not to be unreasonably withheld or delayed, upon the occurrence of any one or more of the following events: (i) at any time following the occurrence and continuance of an Event of Default, (ii) if the Property Manager shall be in material default under the Management Agreements beyond any applicable notice or cure period, (iii) if the Property Manager has engaged in gross negligence, fraud or willful misconduct or is insolvent or a debtor in a bankruptcy proceeding, or (iv) the existence of a Resize Event and Borrowers have not otherwise taken steps to remove or replace such Property Manager under the terms of the applicable Management Agreement.

Section 7.4 Operation; Maintenance; Inspection. Borrowers shall observe and comply with all Requirements of Law applicable to the ownership, use and operation of the Projects. Borrowers shall maintain the Projects in good condition and promptly repair any damage or Casualty, normal wear and tear excepted. Borrowers shall, subject to the rights of Tenants under Leases and the Ground Leases, permit Administrative Agent, Lenders and their agents, representatives and employees, upon reasonable prior notice to Borrowers, to inspect the Projects and conduct such environmental and engineering studies as Administrative Agent may require,

provided such inspections and studies do not materially interfere with the use and operation of the Projects.

Section 7.5 Taxes on Security. Borrowers shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Administrative Agent or any Lender. If there shall be enacted any law (a) deducting the Loan from the value of any Project for the purpose of taxation, or (b) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrowers shall promptly pay to Administrative Agent, on demand, all taxes, costs and charges for which Administrative Agent or any Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Administrative Agent may declare all amounts owing under the Loan Documents to be due and payable within ninety (90) days following receipt of such notice by Borrowers.

Section 7.6 Legal Existence, Name, Etc. Each Borrower other than LCRA shall at all times operate as a Single Purpose Entity. Each Borrower shall preserve and keep in full force and effect its existence, and shall preserve and keep in full force and effect its entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits necessary for the ownership, use and operation of the Projects. No Borrower shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into any Person. Without limiting the foregoing, no Borrower shall reincorporate or reorganize itself under the laws of any jurisdiction other than the jurisdiction in which it is incorporated or organized as of the Closing Date. Each Borrower shall conduct business only in its own name and shall not change its name, identity, state of formation, or organizational structure (except in connection with a Permitted Transfer), or the location of its chief executive office or principal place of business unless such Borrower (a) shall have obtained the prior written consent of Administrative Agent to such change, and (b) shall have taken all actions necessary or requested by Administrative Agent to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents.

Section 7.7 Further Assurances. Each Borrower shall promptly (a) cure any defects in the execution and delivery of the Loan Documents and the Environmental Indemnity Agreement, (b) provide, and cause each other Borrower Party to provide, Administrative Agent such additional information and documentation on each Borrower's and each other Borrower Party's legal or beneficial ownership, policies, procedures, and sources of funds as Administrative Agent deems necessary or prudent to enable Administrative Agent and each Lender to comply with anti-money laundering laws and Anti-Terrorism Laws as now in existence or hereafter amended, and (c) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Administrative Agent may reasonably request to further evidence and more fully describe the Collateral for the Loan, to correct any omissions in the Loan Documents or the Environmental Indemnity Agreement to perfect, protect or preserve any liens created under any of the Loan Documents and the Environmental Indemnity Agreement, or to make any recordings, file any notices, or obtain any consents, as may be necessary or

appropriate in connection therewith. Each Borrower hereby grants Administrative Agent an irrevocable power of attorney coupled with an interest for the purpose of performing the obligations of each Borrower under clause (a) and (c) of this Section 7.7 to the extent not performed by Borrowers in violation of this Agreement following written notice from Administrative Agent. From time to time upon the written request of Administrative Agent, Borrowers shall deliver to Administrative Agent a schedule of the name, legal domicile address and jurisdiction of organization, if applicable, for each Borrower Party and each holder of a legal interest in Borrowers. Notwithstanding the foregoing, LCRA shall have no obligations under this Section 7.7 with respect to the Environmental Indemnity Agreement.

Section 7.8 Estoppel Certificates Regarding Loan. Borrowers, within ten (10) Business Days after request, shall furnish to Administrative Agent a written statement, duly acknowledged, setting forth the amount due on the Loan, the terms of payment of the Loan, the date to which interest has been paid, whether any offsets or defenses exist against the Loan and, if any are alleged to exist, the nature thereof in detail, and such other matters as Administrative Agent reasonably may request.

Section 7.9 Notice of Certain Events. Borrowers shall promptly notify Administrative Agent of (a) any notice of default received by Borrowers under other obligations relating to the Projects or otherwise material to Borrowers' business, including any notices of violations of any laws, regulations, codes or ordinances which could reasonably be expected to have a Material Adverse Effect; (b) any threatened (in writing) or pending legal, judicial or regulatory proceedings, including any dispute between Borrowers and any Governmental Authority; (c) a copy of each notice of default or termination given or made to any Property Manager by Borrowers or received by Borrowers from any Property Manager; (d) a copy of each notice of default or termination under any license or permit necessary for the operation of the Projects in the manner required by this Agreement; (e) any notice of a Healthcare Investigation; (f) any threatened (in writing) or pending Healthcare Investigation; and (g) any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification. In the case of clauses (a), (c), (d), (e) or (f), Borrowers shall promptly provide Administrative Agent with copies of such notices referred to therein.

Section 7.10 Payment For Labor and Materials. Subject to Borrowers' right to contest in accordance with Section 11.14 hereof, Borrowers will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Projects and never permit to exist beyond the due date thereof in respect of any Project or any part thereof any Lien, even though inferior to the Liens hereof, and in any event never permit to be created or exist in respect of any Project or any part thereof any other or additional Lien other than the Liens hereof, except for the Permitted Exceptions. In addition, as to the Kansas City Project, the Kansas City Master Lessee, at its cost, shall obtain or cause its construction contractor to obtain a payment and performance bond from a surety reasonably acceptable to LCRA and in an amount sufficient to secure full payment for completion of construction related to the Kansas City Project as required by Section 107.170, of the Revised Statutes of Missouri, as amended. LCRA shall be named as a dual obligee on such payment and performance bonds.

Section 7.11 Use and Proceeds, Revenues. No portion of the proceeds of the Loan shall be used by Borrowers in any manner that might cause the borrowing or the application of such proceeds to violate Regulation D, Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Securities Act of 1933 or the Securities Exchange Act of 1934. Revenues and other proceeds from the Projects received by Borrowers or Kansas City Master Lessee shall be applied to the Obligations due under the Loan Documents and Environmental Indemnity Agreement, actual operating expenses relating to the Projects of the type included in the definition of “Adjusted Expenses”, or other budgeted capital improvements, repairs or replacements for the Projects before distribution by Borrowers or Kansas City Master Lessee to members, partners or shareholders, as applicable, or any other Borrower Party. No distribution may be made by any Borrower or Kansas City Master Lessee to its members, partners or shareholders, as applicable, or to any other Borrower Party during any period in which an (a) Event of Default is in existence or (b) Borrowers and Kansas City Master Lessee are required to deposit Excess Cash Flow into the Project Yield Fund.

Section 7.12 Compliance with Laws and Contractual Obligations.

(a) Borrowers will comply with and will cause Property Manager to comply in all material respects with the Requirements of Law as are now in effect and which may be imposed upon Borrowers or Property Manager or the maintenance, use or operation of the Projects or the provision of services to the occupants of the Projects and the obligations, covenants and conditions contained in all other material contractual obligations of Borrowers, and as they relate to the Projects and Property Manager. Without limitation of the foregoing, each Borrower shall cooperate with Administrative Agent in connection with compliance with laws governing the National Flood Insurance Program, including by providing any information reasonably required by Administrative Agent in order to confirm compliance with such laws.

(b) Borrowers will obtain and maintain and will cause Property Manager to obtain and maintain, all licenses, qualifications and permits now held or hereafter required to be held by Borrowers or Property Manager for which the loss, suspension, revocation or failure to obtain or renew, could reasonably be expected to have a Material Adverse Effect.

Section 7.13 Cash Flow Sweep; Resize Event.

(a) **Resize Event.** If a Resize Event exists on any Determination Date, Administrative Agent shall deliver notice thereof to Borrowers and of any applicable Resize Amount and, within ten (10) Business Days after Borrowers’ receipt of such notice, Borrowers shall either (i) make a partial prepayment of the Loan in an amount equal to such Resize Amount (which such partial prepayment shall not require payment of any Prepayment Premium and, at the request of Borrowers, shall be paid first from funds in the Project Yield Fund), (ii) deposit with Administrative Agent an amount equal to such Resize Amount, which deposit shall be held without interest in Administrative Agent’s name, shall not be deemed to be held in trust for the benefit of Borrowers and may be commingled with the general funds of Administrative Agent (the “**Project Yield Fund**”), or (iii) deliver to Administrative Agent a Special Letter of Credit with a face amount equal to such Resize Amount.

(b) **Excess Cash Flow Sweep.** If, as of any Determination Date, the Project Yield – Cash Sweep Commencement is less than the Cash Sweep Threshold, and Administrative Agent delivers notice thereof to Borrowers and Kansas City Master Lessee, Borrowers and Kansas City Master Lessee shall, within ten (10) days after the end of each calendar month thereafter (the end of the first calendar month following Borrowers’ and Kansas City Master Lessee’s receipt of such notice being the “**Cash Flow Sweep Commencement Date**”) until such time as an Excess Cash Flow Termination Date shall have occurred, (i) deliver to Administrative Agent (A) internally prepared income statements for such month, (B) a monthly statement for each Deposit Account maintained by a Borrower or Kansas City Master Lessee (or by a Property Manager on behalf of a Borrower or Kansas City Master Lessee), (C) a calculation of Excess Cash Flow for such month, and (D) an Excess Cash Flow Certificate as of the end of such month (collectively, the “**Cash Flow Requirements**”), and (ii) deposit the Excess Cash Flow for such month into the Project Yield Fund. At any time prior to a Cash Flow Sweep Commencement Date, Borrowers may prepay the Loan (which such partial prepayment shall not require payment of any Prepayment Premium) or provide Special Letters of Credit (a “**Cash Sweep Prevention Letter of Credit**”) in an amount sufficient such that Project Yield – Cash Sweep Commencement would be equal to or greater than the Cash Sweep Threshold in which case, Borrowers and Kansas City Master Lessee shall not be required to satisfy the Cash Flow Requirements or deposit of Excess Cash Flow into the Project Yield Fund unless the Project Yield – Cash Sweep Commencement is less than the Cash Sweep Threshold on a subsequent Determination Date.

(c) **Application of Funds.** If Borrowers and Kansas City Master Lessee are required to deposit Excess Cash Flow into the Project Yield Fund for more than six consecutive calendar quarters, then at any time following the commencement of the seventh consecutive calendar quarter, Administrative Agent may (i) cause any or all of the funds on deposit in the Project Yield Fund to be withdrawn, and (ii) draw all or any portion of any Special Letter of Credit then outstanding. Any amounts received by Administrative Agent as a result of the foregoing shall be applied (A) if no Event of Default is then in existence, to the then-outstanding principal balance of the Loan (which such prepayment shall not require payment of any Prepayment Premium) or (B) if an Event of Default is then in existence, to the Obligations in any order and any manner determined by Administrative Agent in its sole discretion.

(d) **Termination of Cash Sweep/Resize Event.** So long as no Event of Default or Potential Default exists:

(i) if following the occurrence of a Resize Event, the Project Yield is then greater than or equal the Resize Threshold for two consecutive Determination Dates, as evidenced by Borrowers’ submission to Administrative Agent of financial statements and Compliance Certificates in accordance with Article 6 of this Agreement, any Special Letter of Credit above will be released to Borrowers and Administrative Agent will release to Borrowers an amount equal to the lesser of (1) the then current balance of the Project Yield Fund and (2) the Resize Amount deposited into the Project Yield Fund pursuant to Section 7.13(a)(ii) above; and

(ii) following the occurrence of the Excess Cash Flow Termination Date, Administrative Agent, upon Borrowers’ written request, shall release to Borrowers the

amounts then on deposit in the Project Yield Fund and take such steps as Borrowers may reasonably request (and at Borrowers' expense) to effectuate termination of any then outstanding Special Letters of Credit.

(e) **Pledge of Project Yield Fund.** Borrowers and Kansas City Master Lessee grant to Administrative Agent, as security for the Obligations, a security interest in the Project Yield Fund which shall be effective at such time as such Deposit Account is established by Borrowers or Kansas City Master Lessee. If an Event of Default shall occur and be continuing, Administrative Agent may (i) cause any or all of the funds on deposit in the Project Yield Fund to be withdrawn, and (ii) draw all or any portion of any Special Letter of Credit then outstanding. Any amounts received by Administrative Agent as a result of the foregoing shall be applied to the Obligations in any order and any manner determined by Administrative Agent in its sole discretion.

(f) **Special Letter of Credit.** If Borrowers deliver a Special Letter of Credit, Borrowers shall deliver to Administrative Agent not later than thirty (30) days prior to the expiration date of such Special Letter of Credit and any renewal or replacement Special Letter of Credit, a renewal or replacement Special Letter of Credit identical in terms and amount. Failure to deliver any renewal or replacement Special Letter of Credit in accordance with the foregoing requirements shall constitute an immediate Event of Default without any further notice or opportunity to cure and Administrative Agent may, in its discretion, draw upon any Special Letter of Credit then in its possession and apply proceeds in accordance with the terms hereof. Administrative Agent reserves the right to periodically review the financial condition of the issuing financial institution for each Special Letter of Credit and any renewal or replacement Special Letter of Credit and if Administrative Agent determines that the issuing financial institution is no longer acceptable to Administrative Agent, Administrative Agent may require a replacement Special Letter of Credit in form and substance and from a United States bank acceptable to Administrative Agent, in its reasonable discretion.

(g) **Calculation of Project Yield.** When calculating the Project Yield (but not the Hypothetical Project Yield or the Project Yield – Cash Sweep Commencement) the outstanding principal balance of the Loan will not be deemed reduced by any amounts in any of the Project Yield Fund or by the balance of any Special Letters of Credit.

(h) **Borrowers' Failure to Perform.** If Borrowers or Kansas City Master Lessee fail to perform their obligations under Section 7.13(a) or (b), Administrative Agent may exercise its rights under the Deposit Account Control Agreement to cause all revenues generated by Borrowers, Kansas City Master Lessee and the Projects to be deposited into the Project Yield Fund. In such event, Borrowers and Kansas City Master Lessee hereby authorize Administrative Agent to disburse monies in the Project Yield Fund for the payment of all debt service, impounds, escrows, reserves and other amounts required to be paid to Administrative Agent or Lenders under the Loan Documents (the "**Lender Party Payments**"). If Borrowers or Kansas City Master Lessee desire to use monies in the Project Yield Fund to pay other operating expenses of the Projects then Borrowers and Kansas City Master Lessee must comply with the Cash Flow Requirements and once a month, Borrowers and Kansas City Master Lessee will submit to Administrative Agent an accounting of monthly expenses paid or due for the current month. Provided the Lender Party Payments have been made and no Potential Event of Default or Event of Default exists,

Administrative Agent will disburse monies in the Project Yield Fund to pay such expenses, which monies will be used by Borrowers and Kansas City Master Lessee solely for that purpose.

Section 7.14 Healthcare Laws and Covenants. Without limiting the generality of any other provision of this Agreement, each Borrower shall be in compliance in all material respects with all Healthcare Laws applicable to such Borrower. Each Borrower has maintained (or caused to be maintained) and shall continue to maintain (or caused to be maintained) in all material respects all records required to be maintained by Borrower by any Governmental Authority or otherwise under the Healthcare Laws.

Section 7.15 Transactions With Affiliates. Without the prior written consent of Administrative Agent Borrowers shall not engage in any transaction affecting the Projects with an Affiliate of Borrowers, except as expressly contemplated by this Agreement or otherwise on arm's-length market terms. This Section 7.15 shall not apply to LCRA.

Section 7.16 Alterations. Without the prior written consent of Administrative Agent Borrowers shall not make any alteration to the Projects (except tenant improvements under any Lease approved by Administrative Agent or for which approval is not required by Administrative Agent under the terms of this Agreement, alterations necessary or appropriate to comply with Requirements of Law and restoration following a casualty or condemnation) (a) that affects the structural components of the Projects, utilities or the exterior of the Projects (but excluding minor or decorative work such as painting, wall papering and carpeting and replacement of fixtures, furnishings and equipment to the extent of a routine and recurring nature and performed in the ordinary course of business), (b) that are reasonably likely to cause a Material Adverse Change or (c) the cost of which (including any related alteration, improvement or replacement) is reasonably anticipated to exceed the Restoration Threshold, which approval may be granted or withheld in Administrative Agent's reasonable discretion.

Section 7.17 Business and Operations. Each Borrower will continue to engage only in the businesses currently conducted by it on the date hereof, as and to the extent the same are necessary for the ownership and leasing of the Project owned (or leased, pursuant to a Ground Lease) by such Borrower. Borrowers shall at all times cause the Projects to be maintained in accordance with the Projects' use as a medical office building. This Section 7.17 shall not apply to LCRA.

Section 7.18 Required Debt Service Coverage Ratio. The Debt Service Coverage Ratio as of each Determination Date shall be equal to or greater than 1.25 to 1.00. If on any Determination Date the Debt Service Coverage Ratio is less than 1.25:1.00 then Borrower make a partial prepayment of the Loan (which such prepayment shall not require payment of any Prepayment Premium) in an amount equal to the DSCR Paydown Amount; provided, however, Borrower may request that Administrative Agent apply funds then held in the Project Yield Fund to such required DSCR Paydown Amount.

Section 7.19 Forfeiture. Borrowers hereby covenant and agree not to commit, permit or suffer to exist any act or omission affording any Person Forfeiture Rights with respect to any Project.

Section 7.20 Patriot Act Compliance. Each Borrower shall comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower Parties and any Project, including those relating to money laundering and terrorism. Administrative Agent shall have the right to audit any Borrower Party's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over any Borrower Party and any Project, including those relating to money laundering and terrorism. If any Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Administrative Agent may, at its option, cause such Borrower to comply therewith and any and all reasonable costs and expenses incurred by Administrative Agent in connection therewith shall be secured by the Mortgage and the other Loan Documents and shall be immediately due and payable.

Section 7.21 Post-Closing Obligations. Borrowers shall satisfy the Post-Closing Obligations within the time periods set forth on Schedule 11.36.

Section 7.22 Ground Lease. Reference is made to the applicable Mortgage for provisions addressing the applicable Borrowers' obligations with respect to the applicable Ground Lease.

Section 7.23 Cash Management. Each Borrower covenants and agrees that such Borrower will comply with the following terms and conditions:

(a) Each Borrower shall deposit, and cause to be deposited, all collections, proceeds, funds, or revenues from the Project, including, without limitation, all receivables and all amounts due under the Leases into the Master Account. All rents, additional rent and all other amounts received by any Borrower with respect to any Project (i) shall be deemed to be collateral for the Loan and shall be held in trust for the benefit, and as the property, of Administrative Agent for the benefit of the Lenders, (ii) shall not be commingled with any other funds or property of Borrowers (except to the extent expressly permitted hereunder), and (iii) shall be deposited by the applicable Borrower into the Master Account within five (5) Business Days after receipt of the same. Other than during the existence of an Event of Default, Borrowers may give instructions regarding the disposition of funds in the Master Account for any purpose not prohibited by the terms and conditions of this Agreement or the other Loan Documents; provided, however, that during the existence of an Event of Default, Administrative Agent shall have the exclusive right to give instructions regarding the disposition of funds in the Master Account.

(b) Notwithstanding anything in any other agreement to the contrary, Borrowers agree that Borrowers shall be liable for any commercially reasonable fees and charges in effect from time to time and charged in connection with the Master Account, and that Administrative Agent shall not have any liability therefor. Borrowers further acknowledge and agree that, to the extent such fees and charges are not paid by Borrowers directly but are satisfied using amounts in a Master Account such fees and charges shall be immediately (upon notice) due and payable from Borrowers to Administrative Agent.

(c) During the existence of an Event of Default, Borrowers agree that all amounts in the Master Account or otherwise received by Administrative Agent, may be applied on account of the Obligations in accordance with the terms of this Agreement.

Section 7.24 Kansas City Master Lease.

(a) As of the date hereof, the Kansas City Project is subject to the Kansas City Master Lease. The Loan Documents and Environmental Indemnity Agreement have been structured as if the Kansas City Master Lease will be in effect until payment in full of the Loan. Borrowers and Kansas City Master Lessee agree that if the Kansas City Master Lease is terminated for any reason, Administrative Agent, Lenders, Borrowers and Kansas City Master Lessee will promptly enter into (and cause the other Borrower Parties to enter into) a modification agreement, in a form reasonably acceptable to all parties thereto, modifying the Loan Documents and Environmental Indemnity Agreement as necessary (in the reasonable determination of Administrative Agent), to address the absence of the Kansas City Master Lease and the substitution of Kansas City Master Lessee as “Borrower” under the Loan Documents. The parties acknowledge that any termination of the Kansas City Master Lease will limit LCRA’s involvement in the Kansas City Project to winding down the sale/leaseback transaction as contemplated in the Kansas City Master Lease and Kansas City Master Lessee shall pay all costs and expenses, including reasonable attorney’s fees, incurred by Borrower in connection with any actions or documentation necessary to complete any such transfer, Loan modification, full release of LCRA’s obligations under the Loan Documents, and release by LCRA of all Liabilities of LCRA against each Indemnified Person (but not Kansas City Master Lessee or any Related Person of Kansas City Master Lessee).

(b) Reference is made to the applicable Mortgage for provisions addressing the Kansas City Master Lessee’s and LCRA’s obligations with respect to the applicable Kansas City Master Lease.

Section 7.25 LCRA Termination Right. Kansas City Master Lessee covenants to deliver to Administrative Agent (i) notice of Kansas City Master Lessee’s exercise of the LCRA Termination Right contemporaneously with providing notice thereof to LCRA (provided, however, Kansas City Master Lessee must provide Administrative Agent with at least 30 days’ prior written notice of its exercise of the LCRA Termination Right) and (ii) notice of the exercise by LCRA of a LCRA Termination Right promptly after receipt thereof by Kansas City Master Lessee. The failure of Kansas City Master Lessee to give such notice will not invalidate the exercise or consummation of a LCRA Termination Right. Borrower and Kansas City Master Lessee hereby advise Administrative Agent that termination of the Kansas City Master Lease shall also result in termination of the Redevelopment Contract and of the LCRA tax incentive program for the Kansas City Project. Upon request of Administrative Agent, Borrowers, Guarantor and Kansas City Master Lessee shall execute a modification agreement in connection with the exercise of a LCRA Termination Right making any modifications to the Loan Documents and Environmental Indemnity Agreement reasonably requested by Administrative Agent, including, without limitation, the addition of Kansas City Master Lessee as an additional Borrower. The form of any modification agreement shall be subject to prior LCRA approval, which shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE 8

EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default hereunder and under the Loan:

Section 8.1 Payments. Failure of Borrowers to pay any regularly scheduled installment of principal, interest or other amount due under the Loan Documents within five (5) days of (and including) the date when due, or failure of Borrowers to pay the Loan on or before the Maturity Date, whether by acceleration or otherwise.

Section 8.2 Insurance. Borrowers' or Kansas City Master Lessee's failure to maintain insurance as required under Section 3.1 of this Agreement.

Section 8.3 Prohibited Transfer. A Prohibited Transfer occurs in violation of Section 7.1 of this Agreement.

Section 8.4 Covenants. Borrowers' or Kansas City Master Lessee's failure to perform, observe or comply with any of the agreements, covenants or provisions contained in this Agreement or in any of the other Loan Documents or Environmental Indemnity Agreement (other than those agreements, covenants and provisions referred to elsewhere in this Article 8), and the continuance of such failure for thirty (30) days after notice by Administrative Agent to Borrowers; however, subject to any shorter period for curing any failure by Borrowers or Kansas City Master Lessee as specified in any of the other Loan Documents or Environmental Indemnity Agreement, Borrowers and Kansas City Master Lessee shall have an additional ninety (90) days to cure such failure if (a) such failure does not involve the failure to make payments on a monetary obligation; (b) such failure is susceptible of cure but cannot reasonably be cured within thirty (30) days; and (c) Borrowers or Kansas City Master Lessee are diligently undertaking to cure such default. The notice and cure provisions of this Section 8.4 do not apply to the other Events of Default described in this Article 8 or to Borrowers' or Kansas City Master Lessee's failure to perform, observe or comply with any of the agreements, covenants or provisions referenced elsewhere in this Article 8 (for which no notice and cure period shall apply).

Section 8.5 Representations and Warranties. Any representation or warranty made in any Loan Document, the Environmental Indemnity Agreement, any Compliance Certificate or any Excess Cash Flow Certificate proves to be untrue in any material respect when made or deemed made; provided, however, that, if such breach or violation (i) was not knowingly made or otherwise made in bad faith, (ii) is capable of being cured, and (iii) neither Administrative Agent or any Lender would be prejudiced in any material respect by permitting Borrowers to cure the same, Administrative Agent will permit Borrowers thirty (30) days after receipt of written notice thereof to cure such breach or violation before it becomes an Event of Default hereunder.

Section 8.6 Other Encumbrances. Any default by Borrowers (other than LCRA) or Kansas City Master Lessee under any document or instrument, other than the Loan Documents, evidencing or creating a Lien on any Project or any part thereof, is not cured within any applicable grace or cure period therein.

Section 8.7 Involuntary Bankruptcy or Other Proceeding. Commencement of an involuntary case or other proceeding against any Borrower or any other Borrower Party that seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of ninety (90) days; or an order for relief against a Borrower or any other Borrower Party shall be entered in any such case under the Federal Bankruptcy Code.

Section 8.8 Voluntary Petitions, etc. Commencement by a Borrower or any other Borrower Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Borrower or any other Borrower Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making by a Borrower or any other Borrower Party of a general assignment for the benefit of creditors, or the failure by a Borrower or any other Borrower Party, or the admission by a Borrower or any other Borrower Party in writing of its inability, to pay its debts generally as they become due, or any action by Borrower or any other Borrower Party to authorize or effect any of the foregoing.

Section 8.9 Default Under Management Agreements. The occurrence of a default by Borrowers or Kansas City Master Lessee under any Management Agreement, which remains uncured beyond any applicable grace or cure periods.

Section 8.10 Certain Covenants. Any Borrower's or Kansas City Master Lessee's failure to (a) maintain its status as a Single Purpose Entity; (b) comply with the provisions of Section 7.11, Section 7.13(a), Section 7.18 or Section 7.23; (c) [intentionally omitted]; or (d) provide Administrative Agent with ten (10) Business Days subsequent written notice of changes of the state of any Borrower's or Kansas City Master Lessee's formation or any Borrower's or Kansas City Master Lessee's name.

Section 8.11 Financial Information. Borrowers' or Kansas City Master Lessee's failure to deliver financial statements, any Excess Cash Flow Certificate, Compliance Certificate and any other report when and as required by Article 6 and the continuance of such failure for ten (10) Business Days after the required delivery date.

Section 8.12 Default Under Guaranties. The occurrence of a default under the Recourse Guaranty Agreement and such default is not cured within any grace or cure periods provided therein.

Section 8.13 Criminal Act. Any Borrower Party or any Executive Officer of Guarantor is indicted of a crime involving fraud, embezzlement or other crime involving moral turpitude, and the individual indicted in connection therewith is not terminated within five (5) days of such conviction/indictment as an officer or director of such Borrower Party.

Section 8.14 Environmental Indemnity Agreement. There shall have occurred any default under the Environmental Indemnity Agreement which remains uncured beyond any applicable grace or cure periods available under the Environmental Indemnity Agreement.

Section 8.15 Post-Closing Requirements. The failure to satisfy the Post-Closing Obligations within the time periods set forth on Schedule 11.36.

Section 8.16 Intentionally Omitted.

Section 8.17 Secured Hedge Agreement. The occurrence of a default under a Secured Hedge Agreement which remains uncured beyond any applicable grace or cure periods provided therein.

Section 8.18 Deposit Account Control Agreement. The occurrence of a default by any Borrower or Kansas City Master Lessee under the Deposit Account Control Agreement which remains uncured beyond any applicable grace or cure periods provided therein.

Section 8.19 Healthcare Investigations. The occurrence of a Healthcare Investigation affecting any Project, Borrower or Guarantor that is reasonably likely to have a Material Adverse Effect.

Section 8.20 Ground Lease. The (i) occurrence of a default by any Borrower under any Ground Lease which remains uncured beyond any applicable grace or cure periods provided therein, or (ii) the modification, termination or surrender of any Ground Lease.

Section 8.21 Declaration. The (i) occurrence of a default by any Borrower under any Declaration which remains uncured beyond any applicable grace or cure periods provided therein, or (ii) the modification, termination or surrender of any Declaration.

Section 8.22 Lease Assignment. The consent to or acceptance by any Borrower of an assignment, sublease or surrender of a Major Lease without Administrative Agent's prior written consent.

Section 8.23 Intentionally Omitted.

Section 8.24 Major Lease. Without the prior written consent of Administrative Agent and the Required Lenders, (a) the entering into of a Major Lease, (b) the termination or acceptance of a surrender of a Major Lease, (c) the modification of any Major Lease in violation of the terms of this Agreement, or (d) if landlord's consent is required pursuant to the terms of a Major Lease, Borrower consents to any assignment or sublease of a Major Lease.

Section 8.25 Intentionally Omitted.

Section 8.26 Intentionally Omitted.

Section 8.27 Intentionally Omitted.

Section 8.28 Master Lease Documents. The (i) occurrence of a default under any of the Kansas City Master Lease Documents which remains uncured beyond applicable grace or cure periods provided therein, (ii) except in connection with the exercise of a LCRA Termination Right, the modification, termination or surrender of any of the Kansas City Master Lease Documents without the prior written consent of Administrative Agent, or (iii) the occurrence of a default under Section 7.24; provided, however, that no Event of Default shall exist under this Section 8.28 if within thirty (30) days after Borrowers receive notice from Administrative Agent of the occurrence of any of the events described in this Section 8.28, LCRA or Kansas City Master Lessee exercises a LCRA Termination Right in compliance with the terms of this Agreement.

Section 8.29 LCRA Documents. The (i) occurrence of a default under any of the LCRA Documents which remains uncured beyond applicable grace or cure periods provided therein, or (ii) except in connection with the exercise of a LCRA Termination Right, the modification, termination or surrender of any of the LCRA Documents without the prior written consent of Administrative Agent; provided, however, that no Event of Default shall exist under this Section 8.29 if within thirty (30) days after Borrowers receive notice from Administrative Agent of the occurrence of any of the events described in this Section 8.29, LCRA or Kansas City Master Lessee exercises a LCRA Termination Right in compliance with the terms of this Agreement.

Notwithstanding anything to the contrary contained in this Article 8, in the event of any non-monetary Event of Default which occurs solely as a result of breach or default by LCRA or its direct or indirect owners, subsidiaries, officers, directors, employees or agents (other than any other Borrower Party), such breach or default shall not constitute an Event of Default hereunder if within thirty (30) days after Borrowers receive notice from Administrative Agent of the occurrence of such breach or default, LCRA or Kansas City Master Lessee exercises a LCRA Termination Right in compliance with the terms of this Agreement.

ARTICLE 9 **REMEDIES**

Section 9.1 Remedies - Insolvency Events. Upon the occurrence of any Event of Default described in Sections 8.7 or 8.8, all amounts due under the Loan Documents shall immediately and automatically become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrowers; however, if a Person in breach of Section 8.7 or Section 8.8 is not a Borrower, then all amounts due under the Loan Documents shall become immediately due and payable at Administrative Agent's election, in Administrative Agent's sole discretion.

Section 9.2 Remedies - Other Events. Except as set forth in Section 9.1 above, while any Event of Default exists, Administrative Agent may and at the direction of the Required Lenders shall (a) by written notice to Borrowers, declare the entire Loan to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrowers, and (b) exercise all rights and

remedies therefor under the Loan Documents (including any Deposit Account Control Agreement) and at law or in equity. Notwithstanding anything to the contrary contained in the Loan Documents or the Environmental Indemnity Agreement, the enforcement of the obligations of Borrowers and the other Borrower Parties under the Loan Documents and the Environmental Indemnity Agreement and the exercise of rights and remedies thereunder shall be undertaken solely by Administrative Agent in its capacity as agent for the Lenders.

Section 9.3 Administrative Agent's Right to Perform the Obligations. If Borrowers or Kansas City Master Lessee shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents or the Environmental Indemnity Agreement, then while any Event of Default exists, and without notice to or demand upon Borrowers and without waiving or releasing any other right, remedy or recourse Administrative Agent may have because of such Event of Default, Administrative Agent may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrowers, and shall have the right to enter upon the Projects for such purpose and to take all such action thereon and with respect to the Projects as it may deem necessary or appropriate. If Administrative Agent shall elect to pay any sum due with reference to the Projects, Administrative Agent may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Administrative Agent shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. All sums expended by Administrative Agent to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loan, shall be secured by the Loan Documents and shall be paid by Borrowers to Administrative Agent upon demand.

Section 9.4 Deposit Account Control Agreement. Administrative Agent may, and at the direction of Required Lenders shall, exercise the rights given to Administrative Agent under the Deposit Account Control Agreement, including, sending a Notice of Exclusive Control (as defined in the Deposit Account Control Agreement), at any time during the existence of an Event of Default.

ARTICLE 10 **ADMINISTRATIVE AGENT**

Section 10.1 Appointment and Duties.

(a) Each Lender hereby appoints CONA (together with any successor Administrative Agent pursuant to Section 10.8) as Administrative Agent hereunder and authorizes Administrative Agent to (i) execute and deliver the Loan Documents and the Environmental Indemnity Agreement and accept delivery thereof on its behalf from any Borrower or any other Borrower Party, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Administrative Agent under such Loan Documents and the Environmental Indemnity Agreement, and (iii) exercise such powers as are reasonably incidental thereto.

(b) Without limiting the generality of clause (a) above, Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents and the Environmental Indemnity Agreement (including in any proceeding described in Section 8.7 or Section 8.8 or any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document and the Environmental Indemnity Agreement to any Secured Party is hereby authorized to make such payment to Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 8.7 or Section 8.8 or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document or the Environmental Indemnity Agreement, exercise all remedies given to Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents or the Environmental Indemnity Agreement, applicable law or otherwise, (vii) execute any amendment, consent or waiver under the Loan Documents and the Environmental Indemnity Agreement on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Administrative Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any Deposit Account maintained by Borrowers or any other Borrower Party with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed and (viii) provide each Lender within ten (10) Business Days following receipt, copies of the reports and financial information received from Borrowers under Article 6 and notices of default delivered by or received by Administrative Agent under this Agreement.

(c) Under the Loan Documents and the Environmental Indemnity Agreement, Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 2.12(b) with respect to the Register), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Administrative Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document and the Environmental Indemnity Agreement to refer to Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document or the Environmental Indemnity Agreement other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document or the Environmental Indemnity Agreement, and each Lender hereby waives and agrees

not to assert any claim against Administrative Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above.

(d) The relationship between Administrative Agent and each Lender is a contractual relationship only, and nothing herein shall be deemed to impose on Administrative Agent any obligations other than those for which express provision is made herein or in the other Loan Documents. Administrative Agent may employ agents and attorneys, and may delegate all or any part of its obligations hereunder, to third parties and shall not be responsible for the negligence or misconduct of any such agents, attorneys in fact or third parties selected by it in good faith. Administrative Agent may deem and treat the payee of a Note as the holder thereof for all purposes hereof unless and until a notice of the assignment or transfer thereof shall have been filed with Administrative Agent, any such assignment or transfer to be subject to the provisions of Section 11.3. Except to the extent expressly provided in Section 10.9, the provisions of this Article 10 are solely for the benefit of Administrative Agent and the Lenders, and Borrowers shall not have any rights as a third-party beneficiary of any of the provisions hereof and Administrative Agent and the Lenders may modify, amend or waive such provisions of this Article 10 in their sole and absolute discretion.

Section 10.2 Binding Effect. Each Lender agrees that (i) any action taken by Administrative Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents or the Environmental Indemnity Agreement, (ii) any action taken by Administrative Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

Section 10.3 Use of Discretion.

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

(b) Notwithstanding clause (a) of this Section 10.3, Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to Administrative Agent, any other Secured Party) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against Administrative Agent or any Related Person thereof or (ii) that is, in the opinion of Administrative Agent or its counsel, contrary to any Loan Document or the Environmental Indemnity Agreement or applicable Requirements of Law.

Section 10.4 Intentionally Omitted.

Section 10.5 Liability. None of Administrative Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document or the Environmental Indemnity Agreement, and each Lender and Borrowers (on their own behalf and, except for LCRA, on behalf of the other Borrower Parties) hereby waive and shall not assert any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of Administrative Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, Administrative Agent:

(a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents and the Environmental Indemnity Agreement, and shall not by reason of this Agreement or any other Loan Document or the Environmental Indemnity Agreement, be a trustee for any Lender;

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

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

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

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

For each of the items set forth in clauses (a) through (e) above, each Lender and Borrowers (on behalf of themselves and each of the other Borrower Parties) hereby waive and agree not to assert any right, claim or cause of action it might have against Administrative Agent based thereon.

Section 10.6 Administrative Agent Individually. Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, any Borrower or any other Borrower Party or Affiliate thereof as though it were not acting as Administrative Agent and may receive separate fees and other payments therefor. To the extent Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender,” and “Required Lender,” and any similar terms shall, except where otherwise expressly provided in any Loan Document or the Environmental Indemnity Agreement, include Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders, respectively.

Section 10.7 Lender Credit Decision. Each Lender acknowledges that it shall, independently and without reliance upon Administrative Agent, any other Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Administrative Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Borrower and each other Borrower Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or the Environmental Indemnity Agreement or with respect to any transaction contemplated in any Loan Document or the Environmental Indemnity Agreement, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document or the Environmental Indemnity Agreement to be transmitted by Administrative Agent to the Lenders, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Borrower Party or any Affiliate of any Borrower or any other Borrower Party that may come into the possession of Administrative Agent or any of its Related Persons.

Section 10.8 Resignation of Administrative Agent.

(a) Administrative Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrowers, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective. If Administrative Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent. If, within 30 days after the retiring Administrative Agent having given notice of resignation, no successor Administrative Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent from among the Lenders.

(b) Effective immediately upon its resignation, (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents and the

Environmental Indemnity Agreement, (ii) the Lenders shall assume and perform all of the duties of Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the retiring Administrative Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document or the Environmental Indemnity Agreement other than with respect to any actions taken or omitted to be taken while such retiring Administrative Agent was, or because such Administrative Agent had been, validly acting as Administrative Agent under the Loan Documents and (iv) subject to its rights under Section 9.3, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents and the Environmental Indemnity Agreement. Effective immediately upon its acceptance of a valid appointment as Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent under the Loan Documents and the Environmental Indemnity Agreement.

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

Section 10.9 Defaults.

(a) Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Potential Default or an Event of Default unless Administrative Agent has received notice from a Lender or any Borrower Party specifying such Potential Default or Event of Default and stating that such notice is a “**Notice of Default.**” In the event that Administrative Agent receives such a notice of the occurrence of a Potential Default or Event of Default, Administrative Agent shall give prompt notice thereof to the Lenders. Within ten (10) days of delivery of such notice of Potential Default or Event of Default from Administrative Agent to the Lenders (or such shorter period of time as Administrative Agent determines is necessary), Administrative Agent and the Lenders shall consult with each other to determine a proposed course of action. Administrative Agent shall (subject to Section 10.13) take such action with respect to such Potential Default or Event of Default as shall be directed by the Required Lenders, provided that, (A) unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, including decisions (1) to make Protective Advances that Administrative Agent determines are necessary to protect or maintain the Projects and (2) to foreclose on any of the Projects or exercise any other remedy, with respect to such Potential Default or Event of Default as it shall deem advisable in the interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of all of the Lenders; provided, however, that no actions approved by the Required Lenders shall violate the Loan Documents or applicable Requirements of Law. Each of the Lenders acknowledges and agrees that no individual Lender may separately enforce or exercise any of the provisions of any of the Loan Documents or Environmental Indemnity Agreement (including the Notes) other than through Administrative Agent. Administrative Agent shall advise the Lenders of all material

actions which Administrative Agent takes in accordance with the provisions of this Section 10.9(a) and shall continue to consult with the Lenders with respect to all of such actions. Notwithstanding the foregoing, if the Required Lenders shall at any time direct that a different or additional remedial action be taken from that already undertaken by Administrative Agent, including the commencement of foreclosure proceedings, such different or additional remedial action shall be taken in lieu of or in addition to, the prosecution of such action taken by Administrative Agent; provided that all actions already taken by Administrative Agent pursuant to this Section 10.9(a) shall be valid and binding on each Lender. All cash proceeds (other than cash proceeds subject to the provisions of Section 10.9(i)) received from any enforcement actions, including the cash proceeds of a foreclosure sale of any of the Projects, shall be applied, *first*, to the payment or reimbursement of Administrative Agent for expenses incurred in accordance with the provisions of Sections 10.9(b) and (c) and Section 10.13 and to the payment of any servicing fees to the extent not paid by Borrowers pursuant to Section 10.13, *second*, to the payment or reimbursement of the Lenders for expenses incurred in accordance with the provisions of Sections 10.9(b) and (c) and Section 10.13; *third*, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 10.9(b) or (g); *fourth*, pari passu to the Lenders in accordance with their respective Proportionate Shares, unless an Unpaid Amount is owed pursuant to Section 10.15, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender and to pay any indebtedness of Borrowers under any Secured Hedge Agreement provided by Administrative Agent or any Affiliate.

(b) All losses incurred in connection with the Loan (including with respect to interest (including interest at the Default Rate) and other sums payable pursuant to the Notes), the enforcement thereof or the realization of the security therefor, shall be borne by the Lenders in accordance with their respective Proportionate Shares of the Loan. The Lenders shall promptly, upon request by Administrative Agent, remit to Administrative Agent their respective Proportionate Shares of (i) any expenses incurred or to be incurred by Administrative Agent in connection with any Potential Default or Event of Default to the extent any such expenses have not been paid by Borrowers or Guarantor, (ii) any advances or disbursements made or to be made to pay Taxes (including special assessments or payments in lieu of real estate taxes), maintenance costs, ground rent, insurance premiums or other items (including capital items) which Administrative Agent or Required Lenders determine are necessary to preserve the Lien (or priority of the Lien) of the Mortgage from any intervening lien, forfeiture, Casualty, loss, waste or other impairment, diminution or reduction in value (including, without limitation, the completion of any applicable alterations or improvements which have theretofore been commenced or are deemed necessary for the leasing, marketing or maintenance of the Projects or to preserve, protect, sell, operate, manage, lease, improve, maintain, repair, defend or dispose of the Projects or any portion thereof), whether or not the amount necessary to be advanced for such purposes exceeds the amount of the Mortgage (all such advances, collectively, "**Protective Advances**"), (iii) any other expenses incurred in connection with the enforcement of the Mortgage, other Loan Documents or the Environmental Indemnity Agreement, and (iv) any expenses incurred in connection with the consummation of the Loan not paid or provided for by Borrowers. Each Lender's Proportionate Share of any Protective Advance shall constitute obligatory advances of that Lender under this Agreement, shall be payable by each Lender on demand by Administrative

Agent and secured by the Collateral, and if unpaid by any Lender as set forth below, its Proportionate Share thereof shall bear interest at the rate applicable to such amount under the Loan or if no longer applicable, at the Base Rate. Administrative Agent shall notify each Lender in writing of its Proportionate Share of each Protective Advance. Upon receipt of notice from Administrative Agent of its making of a Protective Advance, each Lender shall make the amount of such Lender's Proportionate Share of the Protective Advance available to Administrative Agent, in same day funds, to such account of Administrative Agent as Administrative Agent may designate, (i) on or before 3:00 p.m. (Administrative Agent's time) on the day Administrative Agent provides Lenders with notice of the making of such Protective Advance if Administrative Agent provides such notice on or before 12:00 p.m. (Administrative Agent's time), or (ii) on or before 12:00 p.m. on the Business Day immediately following the day Administrative Agent provides Lenders with notice of the making of such advance if Administrative Agent provides notice after 12:00 p.m. (Administrative Agent's time).

(c) If, at the direction of the Required Lenders or otherwise as provided in Section 10.9(a), any action(s) is brought to foreclose the Mortgage, such action shall (to the extent permitted under applicable Requirements of Law and the decisions of the court in which such action is brought) be an action brought by Administrative Agent on behalf and for the benefit of the Lenders, collectively, to foreclose all or a portion of the Mortgage and collect on the Notes. Counsel selected by Administrative Agent shall prosecute any such foreclosure on behalf of Administrative Agent and the Lenders and Administrative Agent and the Lenders shall consult and cooperate with each other in the prosecution thereof. If requested by Administrative Agent, each Lender shall join as a party in any such lawsuit or proceeding. All decisions concerning the appointment of a receiver, the conduct of such receivership, the conduct of such foreclosure action, the acceptance of a deed in lieu of foreclosure, the bid on behalf of Administrative Agent and the Lenders at the foreclosure sale of the Projects, the manner of taking and holding title to the Projects (other than as set forth in Section 10.9(d) below), the sale of the Projects after foreclosure pursuant to Section 10.9(e), and the commencement and conduct of any deficiency judgment proceeding shall be made by Administrative Agent subject to this Article 10. The costs and expenses of foreclosure to the extent not paid by Borrowers or Guarantor will be borne by the Lenders in accordance with their respective Proportionate Shares. If requested by Administrative Agent, each Lender shall join as a party in any such lawsuit or proceeding brought to foreclose the Mortgage and collect on the Notes.

(d) If the Projects (or any part thereof) is acquired by Administrative Agent or its nominee as a result of a foreclosure or the acceptance of a deed or assignment in lieu of foreclosure, or is retained in satisfaction of all or any part of the obligations, the title to the Projects shall be held as required by the Required Lenders and as acceptable to Administrative Agent provided title is held in an entity or structure which limits liability of the Lenders and is a "pass-through" entity or structure for income tax purposes, or, in the absence of such direction of the Required Lenders, at the sole option of Administrative Agent, be held in the name of Administrative Agent, or a nominee or subsidiary of Administrative Agent, as administrative agent, for the ratable benefit of the Lenders, or a limited liability company of which Administrative Agent (or a nominee or subsidiary of Administrative Agent, as administrative agent, for the ratable benefit of the Lenders) is the manager and the Lenders (or their permitted assignees) are the

members in proportion to their Proportionate Shares, which shall be formed pursuant to a form of limited liability company agreement approved by Administrative Agent and the Required Lenders prior to the completion of such foreclosure, which agreement shall include provisions in all material respects similar to this Section 10.9 and Article 10 in relation to the duties, rights and immunities of Administrative Agent (or a nominee or subsidiary of Administrative Agent, in its capacity as the manager thereunder) and rights and obligations of the Lenders. In the event any Lender fails to execute and deliver such agreement in accordance with and after written request therefor from Administrative Agent, each such Lender hereby grants to Administrative Agent a power of attorney to execute and deliver such agreement on its behalf and to take on its behalf any other actions as may reasonably be required to form and qualify such company, which power of attorney is coupled with an interest and irrevocable.

(e) Administrative Agent shall prepare for the approval of the Required Lenders a recommended course of action for the Projects (a “**Post-Foreclosure Plan**”). Subject to its standard of care contained herein, Administrative Agent (or a nominee or subsidiary of Administrative Agent, as administrative agent, for the account of, and ratable benefit of, the Lenders) shall manage, operate, repair, administer, complete, construct, restore or otherwise deal with the Projects acquired, and shall administer all transactions relating thereto, substantially in accordance with the Post-Foreclosure Plan, including, without limitation, employing a management agent, leasing agent and other agents, contractors and employees, including agents for the sale of the Projects, and the collecting of rents and other sums from the Projects and paying the expenses of the Projects. Once approved by the Required Lenders, Administrative Agent shall use commercially reasonable efforts, consistent with its standard of care contained in this Article 10, to operate and maintain the Projects in accordance with the Post-Foreclosure Plan in all material respects (subject to the effect of force majeure events, fire, earthquake, floods, explosion, actions of the elements, other accidents or Casualty, declared or undeclared war, riots, mob violence, acts of terrorism, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, the effect of orders of Governmental Authorities, laws, rules, regulations or other cause beyond the reasonable control of Administrative Agent) and shall be authorized to make expenditures and pay expenses in accordance with the Post-Foreclosure Plan. It is understood and agreed that Administrative Agent is not warranting that the results contemplated by the Post-Foreclosure Plan shall be realized. If the Required Lenders shall fail to approve of the proposed Post-Foreclosure Plan, however, the following shall apply: (i) if the proposed Post-Foreclosure Plan is the initial Post-Foreclosure Plan, then Administrative Agent, on behalf of the Lenders, may approve an interim plan to govern the operations of the Projects until the Required Lenders approve the first plan; and, (ii) if the proposed Post-Foreclosure Plan is other than the plan referred to in the preceding clause (i), then the Projects shall be operated under the most recent Post-Foreclosure Plan until a new Post-Foreclosure Plan shall be approved by the Required Lenders, subject to adjustments as Administrative Agent shall deem appropriate to take into account emergency or serious maintenance situations at the Projects, any tenant improvement costs and leasing commissions for leases executed after approval of the most recently approved budget and any expenditures for the Projects required by applicable Requirements of Law, which, if not made, may result in the imposition of a fine or penalty or other sanction against the Lenders, Administrative Agent or entity that holds title to the Projects for the benefit of the

Lenders. Administrative Agent shall not make any material changes to the approved Post-Foreclosure Plan without the consent of the Required Lenders.

(f) Upon demand therefor from time to time, each Lender shall contribute its Proportionate Share of all costs and expenses incurred by Administrative Agent pursuant to the approved Post-Foreclosure Plan in connection with the construction, operation, management, maintenance, leasing and sale of the Projects. In addition, Administrative Agent shall render or cause to be rendered to each Lender, on a periodic basis (but in any event once per calendar quarter), an income and expense statement for the Projects, and each Lender shall promptly contribute its Proportionate Share of any operating loss for the Projects, and such other expenses and operating reserves as Administrative Agent shall deem reasonably necessary pursuant to and in accordance with the approved Post-Foreclosure Plan.

(g) To the extent there is net operating income from the Projects, Administrative Agent shall, in accordance with the approved Post-Foreclosure Plan, determine the amount and timing of distributions to the Lenders in accordance with Section 10.9(i).

(h) The Lenders acknowledge and agree that if title to the Projects is obtained by Administrative Agent or its nominee or limited liability company as provided above, the Projects will not be held as a permanent investment but will be liquidated and the proceeds of such liquidation will be distributed in accordance with the Post-Foreclosure Plan as soon as practicable. Administrative Agent shall undertake to sell the Projects, at such price and upon such terms and conditions as the Required Lenders reasonably shall determine to be most advantageous to the Lenders. Any purchase money mortgage or deed of trust taken in connection with the disposition of the Projects in accordance with the immediately preceding sentence shall name Administrative Agent, as agent for the Lenders, as the beneficiary or mortgagee; provided, however, that purchase money financing shall not be provided in connection with the disposition of the Projects without the prior consent of each Lender. If purchase money financing is so provided, then, Administrative Agent and the Lenders shall enter into an agreement with respect to such purchase money mortgage or deed of trust defining the rights and obligations of Administrative Agent and the rights and obligations of the Lenders in the same Proportionate Shares as provided hereunder, which agreement shall be in all material respects similar to this Article insofar as the same is appropriate or applicable and shall contain such other terms and conditions as may be satisfactory to each of the Lenders.

(i) All cash proceeds received with respect to the Projects after so acquiring title to or taking possession of the Projects, including cash proceeds from the rental, operation and management of the Projects and the proceeds of a sale of the Projects, shall be applied, *first*, to the payment or reimbursement of Administrative Agent for expenses incurred in accordance with the provisions of this Article 10 or for any other sums then due to Administrative Agent hereunder; *second*, to the payment of operating expenses with respect to the Projects; *third*, to the establishment of reasonable reserves for the operation of the Projects, including, without limitation, to fund any capital improvement, leasing and other reserves; *fourth*, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 10.9(c) or (f); *fifth*, in accordance with clauses first through fourth of Section 10.9(a); and *sixth, pari passu* to the Lenders in accordance with their respective Proportionate Shares on account of all sums due and unpaid

under the Loan Documents, unless an Unpaid Amount is owed pursuant to Section 10.15, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender

Section 10.10 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely and act upon any certification, notice or other communication (including any thereof by telephone, facsimile, telegram or cable) reasonably believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. As to any matters not expressly provided for by this Agreement or any other Loan Document or the Environmental Indemnity Agreement, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Required Lenders, and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

Section 10.11 Rights as a Lender. With respect to CONA's Commitment, if any, and the advances of the Loan made by it, CONA (and any successor acting as Administrative Agent) in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Administrative Agent, and the term "**Lender**" or "**Lenders**" shall, unless the context otherwise indicates, include Administrative Agent in its individual capacity. CONA (and any successor acting as Administrative Agent) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of lending, trust or other business with Borrowers (and any of their Affiliates) as if it were not acting as Administrative Agent, and CONA and its Affiliates may accept fees and other consideration from Borrowers for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

Section 10.12 Standard of Care; Indemnification. In performing its duties under the Loan Documents and the Environmental Indemnity Agreement, Administrative Agent will exercise the same degree of care as Administrative Agent normally exercises in connection with similar loans held for its own account, but Administrative Agent shall have no further responsibility to any Lender except as expressly provided herein and except for its own gross negligence or willful misconduct which resulted in actual loss to such Lender, and, except to such extent, Administrative Agent shall have no responsibility to any Lender for the failure by Administrative Agent to comply with any of Administrative Agent's obligations to Borrowers under the Loan Documents, the Environmental Indemnity Agreement or otherwise. The Lenders agree to indemnify Administrative Agent (to the extent not reimbursed under Sections 11.5 or 11.11, but without limiting the obligations of Borrowers under Sections 11.5 or 11.11) ratably in accordance with each Lender's Proportionate Share, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Administrative Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Loan Document, the Environmental Indemnity Agreement or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including the costs and expenses that Borrowers are

obligated to pay under Section 11.11, but excluding, unless an Event of Default has occurred and is continuing, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent they arise from Administrative Agent's breach of its standard of care set forth in the first sentence of this Section.

Section 10.13 Failure to Act. Except for actions expressly required of Administrative Agent hereunder, and under the other Loan Documents and the Environmental Indemnity Agreement, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 10.12 against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

Section 10.14 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 ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF BORROWERS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF BORROWERS. 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 ANY MATERIALS OR INFORMATION PROVIDED BY OR ON BEHALF OF BORROWERS OR THE PLATFORM. In no event shall Administrative Agent or any of its Related Persons (collectively, the "**Agent Parties**") have any liability to Borrowers, any Lender, or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Borrowers' or Administrative Agent's transmission of any materials or information provided by or on behalf of Borrowers 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 Borrowers, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

Section 10.15 Defaulting Lenders.

(a) **Generally.** A Lender shall be a "**Defaulting Lender**" hereunder if it (a) shall for any reason fail to (i) make any advance of the Loan required pursuant to the terms of this Agreement or (ii) pay its Proportionate Share of any advance pursuant to Sections 10.9(b), 10.9(c) or 10.9(f) or any Protective Advance, or otherwise made or requested by Administrative Agent to be made in connection with the exercise by Administrative Agent of any of its remedies hereunder, or of any indemnification payment required pursuant to Section 10.12, and such failure shall continue for a period of two (2) Business Days following the delivery of written notice thereof by Administrative Agent to such Lender; (b) shall assign or transfer its interest hereunder or in or

to its Loan or Commitment in violation of Section 11.3; (c) shall exercise any rights of set-off in violation of Section 11.7; (d) has notified Borrowers or Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund its Proportionate Share of the Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied); (e) has failed, within three (3) Business Days after written request by Administrative Agent or Borrowers, to confirm in writing to Administrative Agent and Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (e) upon receipt of such written confirmation by Administrative Agent and Borrowers); or (f) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any debtor relief law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Administrative Agent that a Lender is a Defaulting Lender under one or more of clauses (a) through (f) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrowers and each Lender. If for any reason a Lender fails to make timely payment to Administrative Agent of any amount required to be paid to Administrative Agent hereunder (without giving effect to any notice or cure periods), in addition to other rights and remedies which Administrative Agent or Borrowers may have under the immediately preceding provisions or otherwise, Administrative Agent shall be entitled (i) to collect interest from such Defaulting Lender on such delinquent payment for the period from the date on which the payment was due until the date on which the payment is made at the Federal Funds Rate, (ii) to withhold or setoff and to apply in satisfaction of the defaulted payment and any related interest, any amounts otherwise payable to such Defaulting Lender under this Agreement or any other Loan Document and (iii) to bring an action or suit against such Defaulting Lender in a court of competent jurisdiction to recover the defaulted amount and any related interest. Any amounts received by Administrative Agent in respect of a Defaulting Lender's Proportionate Share of the Loan shall not be paid to such Defaulting Lender and shall be held uninvested by Administrative Agent and either applied against the purchase price of such Proportionate Share of the Loan under the following Section 10.15(b) or paid to such Defaulting Lender upon the Defaulting Lender's curing of its default.

(b) **Purchase or Cancellation of Defaulting Lender's Commitment.** Any Lender who is not a Defaulting Lender shall have the right, but not the obligation, in its sole discretion, to acquire by assignment all of a Defaulting Lender's Commitments. Any Lender

desiring to exercise such right shall give written notice thereof to Administrative Agent and Borrowers no sooner than two (2) Business Days and not later than five (5) Business Days after such Defaulting Lender became a Defaulting Lender. If more than one Lender exercises such right, each such Lender shall have the right to acquire an amount of such Defaulting Lender's Commitments in proportion to the respective Commitments of the Lenders exercising such right. If after such fifth (5th) Business Day, the Lenders have not elected to acquire all of the Commitments of such Defaulting Lender, then Borrowers may (but shall not be obligated to), by giving written notice thereof to Administrative Agent, such Defaulting Lender and the other Lenders, demand that such Defaulting Lender assign its Commitments to an assignee subject to and in accordance with the provisions of Section 11.3 for the purchase price provided for below. Upon any such assignment, the Defaulting Lender's interest in the Loan and its rights hereunder (but not its liability in respect thereof or under the Loan Documents to the extent the same relate to the period prior to the effective date of the purchase) shall terminate on the date of purchase, and the Defaulting Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest to the purchaser or assignee thereof, including an appropriate Assignment and Assumption and, notwithstanding Section 11.3, shall pay to Administrative Agent an assignment fee in the amount of \$10,000. The purchase price for the Commitments of a Defaulting Lender shall be equal to the amount of the principal balance of the Loan outstanding and owed by Borrowers to the Defaulting Lender plus interest thereon, accrued fees and all other amounts payable to such Defaulting Lender hereunder and under the other Loan Documents. Prior to payment of such purchase price to a Defaulting Lender, Administrative Agent shall apply against such purchase price any amounts retained by Administrative Agent pursuant to the last sentence of the immediately preceding [Section 10.15\(a\)](#).

(c) **Optional Advance by Lender of Defaulting Lender's Proportionate Share.** If a Defaulting Lender shall for any reason fail to (i) make any respective advance of the Loan required pursuant to the terms of this Agreement or (ii) pay its Proportionate Share of a Protective Advance, any of the other Lenders may, but shall not be obligated to, make all or a portion of the Defaulting Lender's advance under the Loan or Proportionate Share of such Protective Advance, provided that such Lender gives the Defaulting Lender and Administrative Agent prior notice of its intention to do so. The right to make such advances in respect of the Defaulting Lender shall be exercisable first by the Lender holding the greatest Proportionate Share and thereafter to each of the Lenders in descending order of their respective Proportionate Shares of the Loan or in such other manner as the Required Lenders (excluding the Defaulting Lender) may agree on. Any Lender making all or any portion of the Defaulting Lender's Proportionate Share of the applicable Loan or advance in accordance with the foregoing terms and conditions shall be referred to as a "**Special Advance Lender**."

(d) **Special Advance Lender.** In any case where a Lender becomes a Special Advance Lender, the Special Advance Lender shall be deemed to have purchased, and the Defaulting Lender shall be deemed to have sold, a senior participation in the Defaulting Lender's interest in the Loan to the extent of the amount so advanced or disbursed (the "**Advanced Amount**") bearing interest (including interest at the Default Rate, if applicable). It is expressly understood and agreed that each of the respective obligations under this Agreement and the other Loan Documents, including making advances under the Loan, losses incurred in connection with

the Loan, costs and expenses of enforcement, advancing to preserve the Lien of the Mortgage or to preserve and protect the Projects, shall be without regard to any adjustment in the Proportionate Shares occasioned by the acts of a Defaulting Lender. The Special Advance Lender shall be entitled to an amount (the “**Unpaid Amount**”) equal to the applicable Advanced Amount, plus any unpaid interest due and owing with respect thereto, less any repayments thereof made by the Defaulting Lender immediately upon demand. The Defaulting Lender shall have the right to repurchase the senior participation in its interest in the Loan from the Special Advance Lender, pro rata if there is more than one Special Advance Lender, at any time by the payment of the Unpaid Amount.

(e) **Notice Requirements.** A Special Advance Lender shall (i) give notice to the Defaulting Lender, Administrative Agent and each of the other Lenders (provided that failure to deliver said notice to any party other than the Defaulting Lender shall not constitute a default under this Agreement) of the Advanced Amount and the percentage of the Special Advance Lender’s senior participation in the Defaulting Lender’s interest in the Loan and (ii) in the event of the repayment of any of the Unpaid Amount by the Defaulting Lender, give notice to the Defaulting Lender and Administrative Agent of the fact that the Unpaid Amount has been repaid (in whole or in part), the amount of such repayment and, if applicable, the revised percentage of the Special Advance Lender’s senior participation. Provided that Administrative Agent has received notice of such participation, Administrative Agent shall have the same obligations to distribute interest, principal and other sums received by Administrative Agent with respect to a Special Advance Lender’s senior participation as Administrative Agent has with respect to the distribution of interest, principal and other sums under this Agreement; and at the time of making any distributions to the Lenders, shall make payments to the Special Advance Lender with respect to a Special Advance Lender’s senior participation in the Defaulting Lender’s interest in the Loan out of the Defaulting Lender’s share of any such distributions.

(f) **Special Advance Lender’s Rights to Sums Paid to Defaulting Lender.** A Defaulting Lender shall immediately pay to a Special Advance Lender all sums of any kind paid to or received by the Defaulting Lender from Borrowers, whether pursuant to the terms of this Agreement or the other Loan Documents or in connection with the realization of the security therefor until the Unpaid Amount is fully repaid. Notwithstanding the fact that the Defaulting Lender may temporarily hold such sums, the Defaulting Lender shall be deemed to hold same as a trustee for the benefit of the Special Advance Lender, it being the express intention of the Lenders that the Special Advance Lender shall have an ownership interest in such sums to the extent of the Unpaid Amount.

(g) **Defaulting Lender’s Indemnification of Administrative Agent and Lenders.** Each Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all losses, damages, liabilities or expenses (including reasonable attorneys’ fees and expenses and interest at the Default Rate) which they may sustain or incur by reason of the Defaulting Lender’s failure or refusal to abide by its obligations under this Agreement or the other Loan Documents. Administrative Agent shall, after payment of any amounts due to any Special Advance Lender pursuant to the terms of Section

10.15(c) above, set-off against any payments due to such Defaulting Lender for the claims of Administrative Agent and the other Lenders pursuant to this indemnity.

(h) **Subordination of Rights of Defaulting Lender.** Notwithstanding any provision hereof to the contrary, until such time as a Defaulting Lender has funded its Proportionate Share of any advance described in Sections 10.15(b), 10.15(c), 10.15(g) or 10.12 or prior Loan disbursement which was previously a Non-Pro Rata Advance (including through the funding thereof on its behalf by a Special Advance Lender), or all other Lenders have received payment in full (whether by repayment or prepayment) of the amounts due in respect of such Non-Pro Rata Advance, all of the indebtedness and obligations owing to such Defaulting Lender hereunder shall be subordinated in right of payment, as provided in the following sentence, to the prior payment in full of all principal, interest and fees in respect of all Non-Pro Rata Advances in which the Defaulting Lender has not funded its Proportionate Share (including through the funding thereof on its behalf by a Special Advance Lender) (such principal, interest and fees being referred to as “**Senior Loans**”). All amounts paid by Borrowers and otherwise due to be applied to the indebtedness and obligations owing to the Defaulting Lender pursuant to the terms hereof shall be distributed by Administrative Agent to the other Lenders in accordance with their respective Proportionate Shares of the Loan (recalculated for purposes hereof to exclude the Defaulting Lender’s Proportionate Share of the Loan), until all Senior Loans have been paid in full. This provision governs only the relationship among Administrative Agent, each Defaulting Lender, and the other Lenders; nothing hereunder shall limit the obligations of Borrowers under this Agreement. The provisions of this paragraph shall apply and be effective regardless of whether a Potential Default or Event of Default occurs and is then continuing, and notwithstanding (i) any other provision of this Agreement to the contrary, (ii) any instruction of Borrowers as to their desired application of payments or (iii) the suspension of such Defaulting Lender’s right to vote on matters which are subject to the consent or approval of Required Lenders or all Lenders. The failure of any Defaulting Lender to timely receive any amounts otherwise payable to such Defaulting Lender under this Agreement or the other Loan Documents on account of the provisions of this paragraph shall not constitute a Potential Default or Event of Default.

(i) **Removal of Rights.** A Defaulting Lender shall have no voting rights or rights to grant any consent or approval whatsoever under this Agreement or any other Loan Documents (including, without limitation, under Section 11.2 of this Agreement) and shall not be considered in the calculation of “Required Lenders” so long as it is a Defaulting Lender. This Section shall remain effective with respect to a Defaulting Lender until such time as the Defaulting Lender shall no longer be in default of any of its obligations under this Agreement by curing such default with the consent of the non-Defaulting Lenders. Such Defaulting Lender nonetheless shall be bound by any amendment to or waiver of any provision of, or any consent, approval or other action granted, taken or omitted to be taken by Administrative Agent and/or the non-Defaulting Lenders under any Loan Document which is made subsequent to that Lender’s becoming a Defaulting Lender and prior to such cure or waiver.

Section 10.16 Liability of Administrative Agent. Administrative Agent shall not have any liabilities or responsibilities to Borrowers on account of the failure of any Lender (other than Administrative Agent in its capacity as a Lender) to perform its obligations hereunder or to any

Lender on account of the failure of any Borrower to perform its obligations hereunder, under any other Loan Document or under the Environmental Indemnity Agreement.

Section 10.17 USA Patriot Act Notice; Compliance. In order for Administrative Agent to comply with the USA Patriot Act of 2001 (Public Law 107-56), prior to any Lender that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, Administrative Agent may request, and such Lender shall provide to Administrative Agent, its name, address, tax identification number or such other identification information as shall be necessary for Administrative Agent to comply with federal law.

Section 10.18 No Reliance on Administrative Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on Administrative Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 1020.220 (as hereafter amended or replaced, the "**CIP Regulations**"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with Borrowers or any other loan parties, their Affiliates or their agents, the Loan Documents, the Environmental Indemnity Agreement or the transactions hereunder or contemplated hereby: (a) any identity verification procedures, (b) any recordkeeping, (c) comparisons with government lists, (d) customer notices, or (e) other procedures required under the CIP Regulations or such other Anti-Terrorism Law.

ARTICLE 11 **MISCELLANEOUS**

Section 11.1 Notices.

(a) Any notice required or permitted to be given under this Agreement shall be in writing and either shall be mailed by registered or certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 11.1). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth below.

To Borrower: c/o Welltower Inc.
4500 Dorr Street
Toledo, Ohio 43615
Attention: Cheryl O'Connor

With a copy to: Sidley Austin LLP
1 South Dearborn Street
Chicago, Illinois 60603
Attention: Dennis Coghlan
Facsimile: (312) 853-7036

And a copy to: Land Clearance for Redevelopment Authority of Kansas
City, Missouri
300 Wyandotte Street, Suite 400
Kansas City, MO 64105
Attention: Executive Director
Facsimile: 816-221-0189

And a copy to: Rouse Frets White Goss Gentile Rhodes, P.C.
4510 Belleview, Suite 300
Kansas City, Missouri 64111
Attention: Brian E. Engel
Facsimile: 816-753-9201

If to Kansas City Hospital Hill Medical Office Building LLC
Master Lessee c/o Welltower Inc.
4500 Dorr Street
Toledo, Ohio 43615
Attention: Cheryl O'Connor

With a copy to: Sidley Austin LLP
1 South Dearborn Street
Chicago, Illinois 60603
Attention: Dennis Coghlan
Facsimile: (312) 853-7036

To Administrative Capital One, National Association
Agent: 77 West Wacker Drive, 10th Floor
Chicago, Illinois 60601
Attention: Dan Eppley, Senior Director
Facsimile: (855) 544-4044
Reference: Welltower Landmark MOB Portfolio 1A

With a copy to: Capital One, National Association
77 West Wacker Drive, 10th Floor
Chicago, Illinois 60601
Attention: Jeffrey M. Muchmore, Credit Executive
Facsimile: (855) 332-1699
Reference: Welltower Landmark MOB Portfolio 1A

And a copy to: Capital One, National Association
5804 Trailridge Drive
Austin, Texas 78731
Attention: Diana Pennington, Senior Director, Associate
General Counsel
Facsimile: (855) 438-1132
Reference: Welltower Landmark MOB Portfolio 1A

To a Lender: To the address set forth on Exhibit C attached hereto

To a Ground Lessor: To the address set forth in the applicable Recognition Agreement

Any notice or request so addressed and sent by United States registered or certified mail or overnight courier shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee (except as otherwise provided in the Mortgage). Any notice or request so delivered in person shall be deemed to be given when received for by, or actually received by Administrative Agent, a Lender, Borrowers or Kansas City Master Lessee, as the case may be. Notices and other communications delivered through electronic communication, to the extent provided in subsection (b) below, shall be effective as provided in subsection (b) below. If given by facsimile, a notice or request shall be deemed given and received when the facsimile is transmitted to the party's facsimile number specified above and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 11.1. Any party may designate a change of address by written notice to the other by giving at least ten (10) days prior written notice of such change of address.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Lender if such Lender has notified Administrative Agent that it is incapable of receiving notices by electronic communication. Administrative Agent, Borrowers or Kansas City Master Lessee may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

(c) Unless 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

Section 11.2 Amendments and Waivers.

(a) No amendment or waiver of any provision of any Loan Document or the Environmental Indemnity Agreement and no consent to any departure by any Borrower or any other Borrower Party therefrom shall be effective unless the same shall be in writing and signed (i) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Secured Parties or extending an existing Lien over additional property, by Administrative Agent, Borrowers and Kansas City Master Lessee, (ii) in the case of any other waiver or consent, by the Required Lenders (or by Administrative Agent with the written consent of the Required Lenders) and (iii) in the case of any other amendment, by the Required Lenders (or by Administrative Agent with the consent of the Required Lenders), Borrowers and Kansas City Master Lessee; provided, however, that (x) the consent, amendment or waiver of LCRA shall only be required to the extent any consent amendment or waiver relates to the Kansas City Project, the Kansas City Master Lease Documents, the Kansas City Ground Lease, the LCRA Documents and/or would increase the liability or obligations of, or reduce the benefits to, LCRA under this Agreement or the other Loan Documents and (y) no amendment, consent or waiver described in clause (ii) or (iii) above shall be effective, unless in writing and signed by each Lender (or by Administrative Agent with the consent of the Lenders), in addition to any other Person the signature of which is otherwise required pursuant to any Loan Document or the Environmental Indemnity Agreement, and such amendment, consent or waiver does any of the following:

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

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

(iii) reduces (including through release, forgiveness, assignment or otherwise) (i) the principal amount of, the interest rate on, or any obligation of Borrowers to repay (whether or not on a fixed date), any outstanding amount under the Loan owing to Lenders or (ii) any fee or accrued interest payable to any Lender; provided, however, that this clause (C) does not apply to (x) any change to any provision increasing any interest rate or fee during the continuance of an Event of Default or to any payment of any such increase or (y) any modification to any financial covenant set forth in Article 7 or the Recourse Guaranty Agreement or in any definition set forth therein or principally used therein;

(iv) waives or postpones any scheduled maturity date or other scheduled date fixed for the payment, in whole or in part, of principal of or interest on the Loan (including any agreement to forbear that would have the same effect) or fee owing to such Lender or for the reduction of such Lender's Commitment; provided, however, that this clause (iv)

does not apply to any change to mandatory prepayments, including those required under this Agreement, or to the application of any payment, including as set forth in Section 2.6;

(v) releases all or substantially all of the Collateral or any or Guarantor from its guaranty of any Obligation of Borrowers or Kansas City Master Lessee;

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

(vii) amends Section 2.14(b) (Sharing of Payments, Etc.) or this Section 11.2;

(b) Anything herein to the contrary notwithstanding, (A) any waiver of any payment applied pursuant to Section 2.6 (Application of Payments) to, and any modification of the application of any such payment to the Loan shall require the consent of the Required Lenders, (B) no amendment, waiver or consent shall affect the rights or duties under any Loan Document or the Environmental Indemnity Agreement of, or any payment to, Administrative Agent (or otherwise modify any provision of Article 10 or the application thereof), and (C) (1) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (x) the Commitment or of such Lender may not be increased or extended without the consent of such Lender, (y) the outstanding balance of such Lender’s Proportionate Share of the Loan may not be forgiven without the consent of such Lender, and (z) the interest rate on the Loan cannot be reduced unless the Defaulting Lender is treated the same as all other Lenders; (2) each Lender is entitled to vote as such Lender sees fit on any bankruptcy or insolvency reorganization plan that affects the Loan; (3) each Lender acknowledges that the provisions of Section 1126(c) of the Federal Bankruptcy Code supersedes the unanimous consent provisions set forth herein; and (4) the Required Lenders may consent to allow Borrowers or Kansas City Master Lessee to use cash collateral in the context of a bankruptcy or insolvency proceeding.

(c) Each waiver or consent under any Loan Document (including the Recourse Guaranty Agreement) or the Environmental Indemnity Agreement shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Borrower or any other Borrower Party shall entitle such Person to any notice or demand in the same, similar or other circumstances. No failure on the part of any Secured Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. To the extent the consent of any Lender is required with respect to any amendment or waiver of any Loan Document or the Environmental Indemnity Agreement under the terms of this Section 11.2, each Lender will respond to any such request in a commercially reasonable manner and timeframe.

(d) This Agreement and the other Loan Documents and the Environmental Indemnity Agreement shall not be executed, entered into, altered, amended, or modified by Electronic Transmission. Without limiting the generality of the foregoing, Borrowers, Kansas City Master Lessee, Administrative Agent, and each Lender hereby agree that the transactions contemplated by this Agreement shall not be conducted by Electronic Transmission, except as specifically set

forth in Section 11.1 regarding notices. Any reference to a Loan Document or the Environmental Indemnity Agreement, whether in this Agreement or in any other Loan Document or the Environmental Indemnity Agreement, shall be deemed to be a reference to such Loan Document or the Environmental Indemnity Agreement as it may hereafter from time to time be amended, modified, supplemented and restated in accordance with the terms hereof.

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

Section 11.3 Assignments and Participations; Binding Effect.

(a) **Binding Effect.** Subject to the provisions of this Section 11.3, this Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders, Borrowers, Kansas City Master Lessee and their respective successors and permitted assigns, provided that neither Borrowers nor any other Borrower Party shall, without the prior written consent of Administrative Agent and Lenders, assign any of its rights, duties or obligations hereunder to any other Person.

(b) **Assignments by the Lenders.** Each Lender (other than a Defaulting Lender) may sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Commitment and its rights and obligations with respect to the Loan) to (i) any existing Lender (other than a Defaulting Lender), (ii) any Affiliate or Approved Fund of any existing Lender (so long as such Person would not, upon acceptance of such rights and obligations hereunder, constitute a Defaulting Lender) or (iii) any other Person (other than Borrowers, Kansas City Master Lessee, Guarantor or an Affiliate thereof) acceptable (which acceptance shall not be unreasonably withheld or delayed) to Administrative Agent (each such transferee, assignee or purchaser herein called a “**Lender Transferee**”); provided, however, that the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment and Assumption) of the Loan subject to any such sale shall be in a minimum amount of \$1,000,000, unless such sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor’s (together with its Affiliates and Approved Funds) entire interest in the Loan or is made with the prior consent of Administrative Agent. A Defaulting Lender may not sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder except with Administrative Agent’s consent or at Administrative Agent’s direction in accordance with Section 2.13(c) hereof. A Defaulting Lender (or Person that would constitute a Defaulting Lender upon acceptance of rights and obligations hereunder) may not be the recipient of the sale, transfer, negotiation or assignment of any rights or obligations hereunder except with the consent of Administrative Agent and Required Lenders.

(c) **Assignment Procedures.** The parties to each transfer or sale made in reliance on clause (b) above shall execute and deliver to Administrative Agent an Assignment and Assumption via an electronic settlement system designated by Administrative Agent (or if previously agreed with Administrative Agent, via a manual execution and delivery of the Assignment and Assumption) evidencing such transfer or sale, together with any existing Note subject to such transfer or sale (or any affidavit of loss therefor acceptable to Administrative Agent), any tax forms or other forms required to be delivered by Administrative Agent, and payment of an assignment fee in the amount of \$3,500, provided that (1) if a transfer or sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such transfer or sale, and (2) if a transfer or sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 (unless waived by Administrative Agent), shall be due in connection with such transfer or sale. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such assignment is made in accordance with Section 11.3(b)(iii), upon Administrative Agent consenting to such Assignment and Assumption, from and after the effective date specified in such Assignment and Assumption, Administrative Agent shall record or cause to be recorded in the Register the information contained in such Assignment and Assumption.

(d) **Participations.** A Lender may sell or agree to sell to one or more other Persons (each a “**Participant**”) a participation in all or any part of the Proportionate Share of the Loan held by it, or in its Commitment, provided that such Participant shall not have any rights or obligations under this Agreement or any Note or any other Loan Document (the Participant’s rights against such Lender in respect of such participation to be those set forth in the agreements executed by such Lender and the applicable Participant). All amounts payable by Borrowers to any Lender under Section 2.6 in respect of its Proportionate Share and its Commitment shall be determined as if such Lender had not sold or agreed to sell any participations in the Loan and its Commitment, and as if such Lender were funding its Proportionate Share of the Loan (if applicable) and its Commitment in the same way that it is funding its Proportionate Share of the Loan and its Commitment in which no participations have been sold.

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 clauses (i) through (vii) of Section 11.2(a) that affects such Participant.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of 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 Loan 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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Effect of Assignment.** Subject to the recording of an Assignment and Assumption by Administrative Agent in the Register pursuant to Section 2.12(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents and the Environmental Indemnity Agreement have been assigned to such assignee pursuant to such Assignment and Assumption, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment and Assumption, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents and the Environmental Indemnity Agreement, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment and Assumption covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents and the Environmental Indemnity Agreement, such Lender shall cease to be a party hereto except that each Lender agrees to remain bound by Article 10, Section 11.7 (Right of Setoff; Sharing of Payments) and Section 11.35 (Non-Public Information; Confidentiality).

(f) **Certain Pledges.** In addition to the assignments and participations permitted under the foregoing provisions of this Section 11.3 (but without being subject thereto):

(i) Any Lender may (without notice to Borrowers, Kansas City Master Lessee, Administrative Agent or any other Lender and without payment of any fee) assign and pledge all or any portion of its Proportionate Share of the Loan and its Note to any Federal Reserve Bank as collateral security pursuant to Regulation A and any operating circular issued by such Federal Reserve Bank, and such Proportionate Share of the Loan and Note shall be fully transferable as provided therein. No such assignment shall release the assigning Lender from its obligations hereunder.

(ii) Any Lender may pledge its Proportionate Share of the Loan and its Note to any Person that has provided a credit facility or source of liquidity to such Lender. No such pledge shall release the assigning Lender from its obligations hereunder. Any subsequent assignment upon the exercise of pledge remedies shall be subject to the terms of Section 11.3(b).

(g) **Provision of Information to Assignees and Participants.** Subject to the provisions of Section 11.35, a Lender may furnish any information concerning Borrowers, Kansas City Master Lessee or any of their Affiliates in the possession of such Lender from time to time to Lender Transferees and Participants (including prospective Lender Transferees and Participants).

(h) **No Assignments to Borrowers or Affiliates.** Anything in this Section 11.3 to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to Borrowers, Kansas City Master Lessee or any of their Affiliates without the prior written consent of each Lender.

Section 11.4 Renewal, Extension or Rearrangement. Subject to Section 11.9, all provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loan; provided, however, that the Maturity Date shall not be extended past the scheduled expiration date of the Kansas City Master Lease.

Section 11.5 Indemnities.

(a) Borrowers shall protect, defend, indemnify and save harmless Administrative Agent and each Lender, their respective shareholders, directors, officers, employees and agents (each, an “**Indemnified Person**”) from and against all Liabilities imposed upon or incurred by or asserted against any Indemnified Person, whether brought by a third party or any Borrower Party, by reason of (i) credit having been extended, suspended or terminated under this Agreement and the other Loan Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith; (ii) ownership of the Mortgage, the Projects or any interest therein or receipt of any rents and the exercise of rights and remedies thereunder; (iii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Projects or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iv) any use, nonuse or condition in, on or about the Projects or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Projects or any part thereof; (vi) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Agreement, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Agreement is made; (vii) any securities filing of, or with respect to, any Borrower, any other Borrower Party or the Projects; (viii) any commitment letter, proposal letter or term sheet with any Person and any contractual obligation entered into in connection with any E-Systems or other Electronic Transmissions; (ix) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnified Person or any of its Related Persons, any holders of securities or creditors, whether or not any such Indemnified Person, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirements of Law or theory thereof, including common law, equity, contract, tort or otherwise; (x) all sums paid by Administrative Agent pursuant to Section 9.3, or (xi) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the “**Indemnified Matters**” and, each, an “**Indemnified Matter**”); *provided, however*, that Borrowers shall have no liability under this Section 11.5 to any Indemnified Person with respect to any Indemnified Matter, and no Indemnified Person shall have any liability with respect to any Indemnified Matter other than (to

the extent otherwise liable), to the extent such liability, as determined by a court of competent jurisdiction in a final non-appealable judgment or order, (i) has resulted from the gross negligence, illegal acts, fraud or willful misconduct of any such Indemnified Person, or (ii) relates to a state of facts that first came into existence after the date of Administrative Agent, any Lender or either of their designee has taken possession of the applicable Project (to the exclusion of any Borrower Party) and title to such Project via foreclosure or acceptance of a deed in lieu of foreclosure. Furthermore, each Borrower (on its own behalf and on behalf of each other Borrower Party) waives and agrees not to assert against any Indemnified Person any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person. This Section 11.5(a) shall not apply with respect to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim.

(b) Any indemnification or other protection provided to any Indemnified Person pursuant to any Loan Document and the Environmental Indemnity Agreement and all representations and warranties made in any Loan Document and the Environmental Indemnity Agreement shall (i) survive the termination of the Commitment and the payment in full of other Obligations (except as otherwise expressly provided in the Environmental Indemnity Agreement) and (ii) inure to the benefit of any Person that at any time held a right thereunder (as an Indemnified Person or otherwise) and, thereafter, its successors and permitted assigns, but specifically excluding any successor owner of any Project that acquires all or part of such Project by any foreclosure, deed in lieu of foreclosure or post foreclosure transfer that is not Administrative Agent or a Lender (or an Affiliate of Administrative Agent or any Lender).

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

Section 11.6 Debtor-Creditor Relationship. The relationship between the Lenders and Administrative Agent, on the one hand, and Borrowers, on the other hand, is solely that of debtor and creditor. No Secured Party has any fiduciary relationship or duty to any Borrower Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Secured Parties and Borrowers and any other Borrower Party by virtue of, any Loan Document, the Environmental Indemnity Agreement or any transaction contemplated therein.

Section 11.7 Right of Setoff; Sharing of Payments.

(a) Each of Administrative Agent, each Lender, and each Affiliate (including each branch office thereof) of any of them is hereby authorized, without notice or demand (each of which is hereby waived by Borrowers and Kansas City Master Lessee), at any time and from time to time during the continuance of any Event of Default and to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other indebtedness, claims or other obligations at any time then due and owing by Administrative Agent, such Lender, or any of

their respective Affiliates to or for the credit or the account of Borrowers or Kansas City Master Lessee against any Obligation of any Borrower Party then existing, whether or not any demand was made under any Loan Document or the Environmental Indemnity Agreement with respect to such Obligation. Each of Administrative Agent and each Lender agrees promptly to notify Borrowers and Administrative Agent after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 11.7 are in addition to any other rights and remedies (including other rights of setoff) that Administrative Agent, the Lenders, and their Affiliates and other Secured Parties may have.

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

Section 11.8 Marshaling; Payments Set Aside. No Secured Party shall be under any obligation to marshal any property in favor of any Borrower Party or any other party or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from any Borrower Party, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

Section 11.9 Limitation on Interest. It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrowers, Administrative Agent and Lenders with respect to the Loan are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Administrative Agent and any Lender or charged by Administrative Agent or any Lender

for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loan would be usurious under applicable law (including the laws of the State of Illinois and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (a) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, taken, reserved, charged or received under the Loan Documents and the Environmental Indemnity Agreement shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on the Note by the holder thereof (or, if the Indebtedness evidenced by the Note has been paid in full, refunded to Borrowers); and (b) if maturity is accelerated by reason of an election by Administrative Agent, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by applicable law. In such case, excess interest, if any, provided for in the Loan Documents and the Environmental Indemnity Agreement or otherwise, to the extent permitted by applicable law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under applicable law, then such excess interest shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Note (or, if the Indebtedness evidenced by the Note has been paid in full, refunded to Borrowers). The terms and provisions of this Section 11.9 shall control and supersede every other provision of the Loan Documents and the Environmental Indemnity Agreement. The Loan Documents and the Environmental Indemnity Agreement are contracts made under and shall be construed in accordance with and governed by the laws of the State of Illinois, except that if at any time the laws of the United States of America permit Administrative Agent or the Lenders to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State of Illinois (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which Administrative Agent or the Lenders may contract for, take, reserve, charge or receive under the Loan Documents and the Environmental Indemnity Agreement.

Section 11.10 Invalid Provisions. If any provision of any Loan Document or the Environmental Indemnity Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Environmental Indemnity Agreement and the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Environmental Indemnity Agreement or such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 11.11 Reimbursement of Expenses.

(a) Any action taken by any Borrower Party under or with respect to any Loan Document or the Environmental Indemnity Agreement, even if required under any Loan Document or the Environmental Indemnity Agreement or at the request of any Secured Party, shall be at the

expense of such Borrower Party, and no Secured Party shall be required under any Loan Document or the Environmental Indemnity Agreement to reimburse any Borrower Party therefor except as expressly provided therein. In addition, Borrowers jointly and severally agree to pay or reimburse upon demand (a) Administrative Agent for all reasonable out-of-pocket costs and expenses incurred by it or any of its Related Persons in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document or the Environmental Indemnity Agreement (recognizing that LCRA is not a party to the Environmental Indemnity Agreement), any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein (including periodic audits in connection therewith and environmental audits and assessments), in each case including the reasonable fees, charges and disbursements of legal counsel to Administrative Agent or such Related Persons, fees, costs and expenses incurred in connection with Intralinks® or any other E-System and allocated to the Loan by Administrative Agent in its sole discretion and fees, charges and disbursements of the auditors, appraisers, printers and other of their Related Persons retained by or on behalf of any of them or any of their Related Persons, charges for wire transfers and check processing charges, charges for security delivery fees, charges for overnight delivery, recording fees, treasury, management and other service fees and overdraft charges, (b) Administrative Agent and each Lender for all reasonable out-of-pocket costs and expenses incurred by them or any of their Related Persons in connection with internal audit reviews, field examinations, financial investigation, and Collateral examinations, including any tax service company (which shall be reimbursed, in addition to the reasonable out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by Administrative Agent for its examiners), (c) each of Administrative Agent, its Related Persons, and each Lender for all reasonable out-of-pocket costs and expenses incurred in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out”, (ii) the enforcement or preservation of any right or remedy with respect to any Obligation, the Collateral or under any Loan Document or the Environmental Indemnity Agreement (recognizing that LCRA is not a party to the Environmental Indemnity Agreement), or any other related right or remedy or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Borrower Party, any Loan Document, the Environmental Indemnity Agreement (recognizing that LCRA is not a party to the Environmental Indemnity Agreement), any Obligation or related transaction (or the response to and preparation for any subpoena or request for document production relating thereto), including reasonable out-of-pocket fees and disbursements of counsel (including allocated costs of internal counsel), (d) costs incurred in connection with settlement of Condemnation and Casualty awards, premiums for title insurance and endorsements thereto to the extent required under this Agreement, and (e) following an Event of Default, fees and costs for Uniform Commercial Code and litigation searches and background checks.

(b) Intentionally Omitted.

Section 11.12 Approvals; Third Parties; Conditions. All approval rights retained or exercised by Administrative Agent or the Lenders with respect to Leases, contracts, plans, studies and other matters are solely to facilitate Administrative Agent’s and the Lenders’ credit

underwriting, and shall not be deemed or construed as a determination that Administrative Agent or the Lenders have passed on the adequacy thereof for any other purpose and may not be relied upon by Borrowers, Kansas City Master Lessee or any other Person. This Agreement is for the sole and exclusive use of Administrative Agent (and its successors and permitted assigns), the Lenders (and their successors and permitted assigns and participants), Borrowers and Kansas City Master Lessee and may not be enforced, nor relied upon, by any Person other than Administrative Agent (and its successors and permitted assigns), the Lenders (and their successors and permitted assigns and participants), Borrowers and Kansas City Master Lessee. All conditions of the obligations of Administrative Agent and the Lenders hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders, their successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that any Lender will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by any Lender at any time in such Lender's sole discretion.

Section 11.13 Administrative Agent and Lenders Not in Control; No Partnership.

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

Section 11.14 Contest of Certain Claims. Borrowers may contest the validity of Taxes or any mechanic's or materialman's lien asserted against any Project so long as (a) Borrowers

notify Administrative Agent that they intend to contest such Taxes or liens, as applicable, (b) if the aggregate amount of any contested amounts is in excess of \$200,000, Borrowers provide Administrative Agent with cash, an indemnity, bond or other security reasonably satisfactory to Administrative Agent assuring the discharge of Borrowers' obligations for such Taxes or liens, as applicable, in an amount not more than one hundred twenty percent (120%) of the contested amount including interest and penalties (unless Borrowers shall have paid the contested Taxes (or shall have caused the same to be paid) under protest, in which case no such security shall be required), (c) Borrowers are diligently contesting the same by appropriate legal proceedings in good faith and at their own expense and conclude such contest at least ninety (90) days prior to the earlier to occur of the Maturity Date or the date on which any Project is scheduled to be sold for non-payment, and (d) Borrowers promptly upon final determination thereof pay the amount of any such Taxes or liens, as applicable, together with all costs, interest and penalties which may be payable in connection therewith. Notwithstanding the foregoing, Borrowers shall immediately upon request of Administrative Agent pay any such Taxes or liens, as applicable, notwithstanding such contest if, in the opinion of Administrative Agent, any Project or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost.

Section 11.15 Time of the Essence. Time is of the essence with respect to this Agreement.

Section 11.16 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders, Borrowers and Kansas City Master Lessee and their respective successors and assigns, provided that no Borrower nor any other Borrower Party shall, without the prior written consent of the Lenders, assign any of its rights, duties or obligations hereunder.

Section 11.17 Waivers.

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

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

Section 11.18 Cumulative Rights. Rights and remedies of Administrative Agent (on behalf of the Lenders) under the Environmental Indemnity Agreement and the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

Section 11.19 Joint and Several Liability of Borrowers.

(a) Subject to the provisions of Section 12.3 below with respect to LCRA, 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 Borrower hereby agrees such Borrower is, and each such Borrower's successors and assigns are, jointly and severally liable for, and hereby absolutely and unconditionally guarantees to Administrative Agent and Lenders and their respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all of the Indebtedness and all other Obligations of Borrowers, it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of Borrowers without preferences or distinction among them. Each Borrower agrees that its guaranty obligation hereunder is a continuing guaranty of payment and performance and not of collection, that its obligations under this Section 11.19 shall not be discharged until payment and performance, in full, of the Obligations has occurred, and that its obligations under this Section 11.19 shall be absolute and unconditional.

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

(d) The guaranty obligations of each Borrower under the provisions of this Section 11.19 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, including the following:

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

(ii) the absence of any action to enforce this Agreement (including this Section 11.19) or any other Loan Document or the waiver or consent by Administrative Agent and Lenders with respect to any of the provisions thereof;

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

(iv) the insolvency of any other Borrower;

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

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

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

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

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

(e) Except as otherwise expressly provided herein, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of occurrence of any Potential 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 (except to the extent demand is expressly required to be given pursuant to the terms of this Agreement), notice of any action at any time taken or omitted by Administrative Agent or any Lender under or in respect of any of the Obligations hereunder, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Agreement. Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations hereunder, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Administrative Agent 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 Administrative Agent or any Lender, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with Requirements of Law or regulations thereunder which might, but for the provisions of this Section 11.19, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from any of its obligations under this Section 11.19, 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 11.19 shall not be discharged except by performance and then only to the extent of such performance. The obligations of each Borrower under this Section 11.19 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower, Administrative Agent or any Lender. The joint and several liability of 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, Administrative Agent or any Lender.

(f) Notwithstanding anything to the contrary in this Agreement or in any other Loan Document or the Environmental Indemnity Agreement, and except as set forth in Section 11.19(j), each Borrower hereby expressly and irrevocably subordinates to payment of the Obligations any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification or set off and any and all defenses available to a surety, guarantor or accommodation co-obligor until the Obligations are indefeasibly paid in full in cash. Each Borrower acknowledges and agrees that this subordination is intended to benefit Administrative Agent and Lenders and shall not limit or otherwise affect such Borrower's liability hereunder or the enforceability of this Section 11.19, and that Administrative Agent, Lenders and their respective successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 11.19.

(g) If Administrative Agent or any Lender may, under Requirements of Law, proceed to realize its benefits under any of the Loan Documents or the Environmental Indemnity Agreement giving Administrative Agent or such Lender a lien upon any Collateral, whether owned by any Borrower or by any other Person, either by judicial foreclosure or by non-judicial sale or enforcement, Administrative Agent or any Lender may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of its rights and remedies under this Section 11.19. If, in the exercise of any of its rights and remedies, Administrative Agent or any Lender shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against any Borrower or any other Person, whether because of any applicable Requirements of Law pertaining to "election of remedies" or the like, each Borrower hereby consents to such action by Administrative Agent or such Lender and waives any claim based upon such action, even if such action by Administrative Agent or such Lender shall result in a full or partial loss of any rights of subrogation that each Borrower might otherwise have had but for such action by Administrative Agent or such Lender. Any election of remedies that results in the denial or impairment of the right of Administrative Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. In the event Administrative Agent or any Lender shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Loan Documents, Administrative Agent or such Lender may bid all or less than the amount of the Obligations and the amount of such bid need not be paid by Administrative Agent or such Lender but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Administrative Agent, Lender or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 11.19, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Administrative Agent or any Lenders might otherwise be entitled but for such bidding at any such sale.

(h) The provisions of this Section 11.19 are made for the benefit of Administrative Agent, the Lenders and their respective successors and assigns, and may be enforced by any such Person from time to time against any of Borrowers as often as occasion therefor may arise and without requirement on the part of Administrative Agent or any Lender first to marshal any of its

claims or to exercise any of its rights against any of the other Borrowers or to exhaust any remedies available to it against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations or to elect any other remedy. The provisions of this Section 11.19 shall remain in effect until all the Obligations hereunder shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Lenders upon the insolvency, bankruptcy or reorganization of any of Borrowers, or otherwise, the provisions of this Section 11.19 will forthwith be reinstated and in effect as though such payment had not been made.

(i) Each Borrower's liability under this Section 11.19 shall be limited to an amount not to exceed as of any date of determination the greater of the following:

(i) Allocated Loan Amount allocated to the Project owned by such Borrower;
and

(ii) the amount that could be claimed by Administrative Agent and any Lender from such Borrower under this Section 11.19 without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, such Borrower's right of contribution and indemnification from each other Borrower under Section 11.19(j) below.

(j) Contribution with Respect to Guaranty Obligations:

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

(ii) This Section 11.19(j) is intended only to define the relative rights of Borrowers and nothing set forth in this Section 11.19(j) is intended to or shall impair the obligations of Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement, including Section 11.19(a) above. Nothing contained in this Section 11.19(j) shall limit the liability of any Borrower to pay all or any part of the Loan made directly or indirectly to that Borrower and accrued interest, fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(iii) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of Borrowers to which such contribution and indemnification is owing.

(iv) The rights of the indemnifying Borrowers against other Borrowers under this Section 11.19(j) shall be exercisable only upon the full and indefeasible payment of the Obligations.

(k) The liability of Borrowers under this Section 11.19 is in addition to and shall be cumulative with all liabilities of each Borrower to Administrative Agent and Lenders under this Agreement, the other Loan Documents and the Environmental Indemnity Agreement to which such Borrower is a party or in respect of any Obligations or obligation of the other Borrowers, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

(l) Each Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Borrower to honor all of its obligations in respect of Swap Obligations under any Secured Hedge Agreement (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 11.19(l) for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 11.19(l), voidable under applicable Requirements of Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section 11.19(l) shall remain in full force and effect until the guarantees in respect of Swap Obligations under each Secured Hedge Agreement have been discharged, or otherwise released or terminated in accordance with the terms of this Agreement. Each Qualified ECP Guarantor intends that this Section 11.19(l) constitute, and this Section 11.19(l) shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Borrower for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

(m) So long as LCRA is a Borrower, this Section 11.19 shall not apply to LCRA. LCRA’s liability for the Obligations hereunder is strictly limited to its interest in the Kansas City Project and is subject to the provisions of Section 12.3 below in all instances.

Section 11.20 Singular and Plural. Words used in this Agreement, the other Loan Documents and the Environmental Indemnity Agreement, in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement, the other Loan Documents, and the Environmental Indemnity Agreement shall apply to such words when used in the plural where the context so permits and vice versa.

Section 11.21 Exhibits and Schedules. The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 11.22 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement, the other Loan Documents, and the Environmental Indemnity Agreement or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 11.23 Promotional Material. Borrowers and Kansas City Master Lessee authorize Administrative Agent and any Lender to issue press releases, advertisements and other promotional materials in connection with Administrative Agent's or such Lender's own promotional and marketing activities and such materials may describe the Loan in general terms or in detail and Administrative Agent's and such Lender's participation therein in the Loan. All references to Administrative Agent or any Lender contained in any press release, advertisement or promotional material issued by Borrowers or Kansas City Master Lessee shall be approved in writing by Administrative Agent in advance of issuance.

Section 11.24 Survival. All of the representations, warranties, covenants, and indemnities hereunder, under the indemnification provisions of the other Loan Documents and under the Environmental Indemnity Agreement, shall survive the repayment in full of the Loan and the release of the liens evidencing or securing the Loan, and shall survive the transfer (by sale, foreclosure, conveyance in lieu of foreclosure, exercise of LCRA Termination Right or otherwise) of any or all right, title and interest in and to the Projects to any party, whether or not an Affiliate of any Borrower or Kansas City Master Lessee. As stated in Article 13 below, Kansas City Master Lessee has assumed certain of LCRA's representations, warranties, covenants and indemnities hereunder, and under the indemnification provisions of the other Loan Documents and such obligations of Kansas City Master Lessee, including, specifically, Kansas City Master Lessee's indemnification of LCRA in Section 13.2, shall survive as provided in this Section 11.24

Section 11.25 WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH BORROWER, KANSAS CITY MASTER LESSEE, ADMINISTRATIVE AGENT, AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE ENVIRONMENTAL INDEMNITY AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS AND THE ENVIRONMENTAL INDEMNITY AGREEMENT OR IN ANY WAY RELATING TO THE LOAN OR THE PROJECTS (INCLUDING ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER INTO THIS AGREEMENT.

Section 11.26 Waiver of Punitive or Consequential Damages. None of Administrative Agent, any Lender, nor any Borrower or Kansas City Master Lessee shall be responsible or liable to the other or to any other Person for any punitive, exemplary or consequential damages which may be alleged as a result of the Loan or the transaction contemplated hereby, including any breach or other default by any party hereto. Borrowers and Kansas City Master Lessee represent and warrant to Administrative Agent and each Lender that as of the Closing Date no Borrower nor any other Borrower Party has any claims against Administrative Agent or any Lender in connection with the Loan.

Section 11.27 Governing Law. **UNLESS OTHERWISE NOTED THEREIN TO THE CONTRARY, THE LOAN DOCUMENTS AND THE ENVIRONMENTAL INDEMNITY AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS (WITHOUT GIVING EFFECT TO ILLINOIS' PRINCIPLES OF CONFLICTS OF LAW) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT FOR THOSE PROVISIONS IN THE LOAN DOCUMENTS AND THE ENVIRONMENTAL INDEMNITY AGREEMENT PERTAINING TO THE CREATION, PERFECTION, PRIORITY OR VALIDITY OF OR EXECUTION ON LIENS OR SECURITY INTERESTS ON PROPERTY LOCATED IN THE STATES WHERE THE PROJECTS ARE LOCATED, WHICH PROVISIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATES WHERE THE PROJECTS ARE LOCATED AND APPLICABLE UNITED STATES FEDERAL LAW.**

Section 11.28 Entire Agreement. This Agreement, the other Loan Documents and the Environmental Indemnity Agreement embody the entire agreement and understanding between Administrative Agent, each Lender, Borrowers and Kansas City Master Lessee and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents and the Environmental Indemnity Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between the Term Sheet and this Agreement, any of the other Loan Documents, or the Environmental Indemnity Agreement, the terms of this Agreement, the other Loan Documents, and the Environmental Indemnity Agreement, as applicable, shall control.

Section 11.29 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 11.30 Consents and Approvals. To the extent that Administrative Agent, Lenders or Required Lenders provide any consent or approval as provided for in this Agreement, such consent shall be limited to the specific matter approved and shall NOT be construed to (a) relieve Borrowers or Kansas City Master Lessee from compliance with all of the other terms and obligations of this Agreement, or (b) constitute a consent to any further similar action (as to which a prospective consent or approval shall be required and may not necessarily be granted), or (c) constitute a consent to any other obligation to which any Lender may be a party.

Section 11.31 Effectiveness of Facsimile Documents and Signatures. The Loan Documents and Environmental Indemnity Agreement may be transmitted or signed by facsimile or by Electronic Transmission. The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as manually signed originals and shall be binding on all parties to the Loan Documents and Environmental Indemnity Agreement, as applicable. Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

Section 11.32 Venue. EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS AND IRREVOCABLY AGREES THAT, SUBJECT TO ADMINISTRATIVE AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER AND KANSAS CITY MASTER LESSEE HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS. BORROWERS AND KANSAS CITY MASTER LESSEE AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWERS AND KANSAS CITY MASTER LESSEE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWERS AND KANSAS CITY MASTER LESSEE, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE DEEMED COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 11.33 PATRIOT Act and KYC Information.

(a) Each of Administrative Agent and Lenders hereby notifies the Borrower Parties that in order to comply with the Patriot Act, each Lender may be required to obtain, verify and record information that identifies Borrowers, Kansas City Master Lessee and each Guarantor, which information includes the name, address, tax identification number and other information regarding Borrowers, Kansas City Master Lessee and each Guarantor that will allow such Lender to identify Borrowers, Kansas City Master Lessee and each Guarantor in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective as to each Lender.

(b) Upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, Borrowers and Kansas City Master Lessee shall provide to such Lender the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act, in each case at least five (5) days prior to the Closing Date.

Section 11.34 Method of Payment. All amounts payable under this Agreement and the other Loan Documents must be paid by Borrowers or Kansas City Master Lessee in accordance with Section 2.6(c). Payments in the form of cash, money order, third party payment, cashier's

check, a check drawn on a foreign bank or non-bank financial institution, or any form of payment other than those provided in the preceding sentence will not be accepted. All payments under this Agreement and the other Loan Documents made by Kansas City Master Lessee on behalf of LCRA shall be to and for the credit of Borrowers.

Section 11.35 Non-Public Information; Confidentiality. Each Borrower and Kansas City Master Lessee authorize Administrative Agent and each Lender to disclose information about such Borrower and any other Borrower Party that Administrative Agent or such Lender may at any time possess to any Affiliate of a Lender or Administrative Agent, whether such information was supplied by such Borrower or Kansas City Master Lessee or otherwise obtained by Administrative Agent or the Lender; provided to the extent Administrative Agent or any Lender receives material non-public information hereunder concerning such Borrower, the other Borrower Parties and their Affiliates, Administrative Agent and each Lender agrees to use such information in compliance with all relevant policies, procedures and contractual obligations and applicable Requirements of Law (including United States federal and state security laws and regulations), including maintaining the confidential nature of any non-public, confidential information. The parties acknowledge that LCRA is a public entity, that the Loan Documents were considered at a public meeting duly held for LCRA to approve and authorize the Loan, and that LCRA is subject to Missouri Sunshine Law, Chapter 610 of the Revised Statutes of Missouri, as amended, requirements concerning, among other things, requests for disclosure of public records.

Section 11.36 Post-Closing Obligations of Borrowers. Notwithstanding the fact that Borrowers have not satisfied certain of the conditions to the advance of the Loan proceeds as of the Closing Date, Lenders have agreed to advance the proceeds of the Loan to Borrowers, subject to the satisfaction of the other conditions to funding contained herein and each of the requirements set forth in Schedule 11.36 attached hereto (the “Post-Closing Obligations”). Borrowers shall provide evidence reasonably satisfactory to Administrative Agent of the completion of the Post-Closing Obligations, all of which shall be performed in a manner satisfactory to Administrative Agent.

Section 11.37 Intentionally Omitted.

Section 11.38 Component Notes. Administrative Agent, without in any way limiting Administrative Agent’s other rights hereunder, in its sole and absolute discretion, shall have the right at any time to require Borrowers to execute and deliver “component” notes (which shall not include senior and junior notes or any A/B/C or other subordinate note structure) in replacement of the Notes as evidence of the Loan, which notes shall be pari-passu (with any payments applied on a pro rata basis), provided that (i) the aggregate principal amount of such “component” notes shall equal the outstanding principal balance of the Loan immediately prior to the creation of such “component” notes, plus any Commitments of each Lender not yet funded, (ii) the weighted average interest rate of all such “component” notes shall at all times equal the Contract Rate which would be applicable had such “component” notes not been required, (iii) the Debt Service on all such “component” notes shall on the date created equal the Debt Service which was due under the Loan immediately prior to the creation of such component notes and (iv) the other terms and provisions of each of the “component” notes shall be identical in substance and substantially similar in form to the Loan Documents. Borrowers, at their cost and expense, shall cooperate with

all reasonable requests of Administrative Agent in order to establish the “component” notes and shall execute and deliver such documents as shall reasonably be required by Administrative Agent in connection therewith, all in form and substance reasonably satisfactory to Administrative Agent and Borrowers, including the severance of security documents if requested; provided that no such documents or severance of security documents shall increase Borrowers’ obligations or decrease Borrowers’ rights in any material respect.

Section 11.39 Intentional Omitted.

Section 11.40 Waivers. No waiver of any provision of the Loan Documents or Environmental Indemnity Agreement shall be effective unless in writing and signed by the party against whom enforcement is sought, provided that a written waiver signed by Administrative Agent on behalf of the Lenders shall be deemed to have been signed by the Lenders.

ARTICLE 12
LIMITATIONS ON LIABILITY

Section 12.1 Limitation on Liability.

(a) Subject to the qualifications below, neither Administrative Agent nor any Lender shall enforce the liability and obligation of Borrowers to perform and observe the Obligations by any action or proceeding wherein a money judgment shall be sought against Borrowers, except that Administrative Agent and the Lenders may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Administrative Agent and the Lenders to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Projects, or any other Collateral given to Administrative Agent and the Lenders pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrowers only to the extent of Borrowers’ interest in the Projects (and not to assets of LCRA other than the Kansas City Project) and in any other Collateral given to Administrative Agent and the Lenders to secure the Obligations, and Administrative Agent and each Lender, as applicable, by accepting the Note, this Agreement, the Mortgage and the other Loan Documents, shall not sue for, seek or demand any deficiency judgment against Borrowers in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents.

(b) The provisions of this Section 12.1 shall not, however, (i) constitute a waiver, release or impairment of any Obligation evidenced or secured by any of the Loan Documents; (ii) impair the right of Administrative Agent or any Lender to name any Borrower or Kansas City Master Lessee as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (iii) affect the validity or enforceability of any guaranty made in connection with the Loan or any of the rights and remedies of Administrative Agent or any Lender thereunder; (iv) impair the right of Administrative Agent or any Lender to obtain the appointment of a receiver; (v) impair the enforcement of the assignment of leases and rents contained in the Mortgage (vi) constitute a prohibition against Administrative Agent or any Lender from commencing any appropriate action or proceeding in order for Administrative Agent or any Lender to exercise its

remedies against the Collateral; or (vii) constitute a waiver of the right of Administrative Agent or any Lender to enforce the liability and obligation of Borrowers, subject to the provisions of Section 12.3, by money judgment or otherwise, to the extent of any Liability, which may be imposed upon, incurred by or awarded against Administrative Agent or any Lender or any Affiliate thereof as a result of, arising out of or in connection with (and Borrowers, subject to the provisions of Section 12.3, shall be personally liable and shall indemnify Administrative Agent and such Lender for) the following:

(i) any failure by any Borrower Party or Affiliated Manager after the occurrence and during the continuance of any Event of Default to apply any portion of the gross income from the Projects at any time received by or payable to any Borrower Party, Affiliated Manager or any of their respective Affiliates to amounts due under the Loan or to customary operating expenses of the Projects;

(ii) commission of a criminal act by any Borrower Party or any Affiliate or agent of any Borrower Party (which agent is under the Control of such Borrower Party) which results in the exercise by any Person of Forfeiture Rights with respect to any Project;

(iii) the failure by any Borrower Party or Affiliated Manager to apply any insurance proceeds and Condemnation awards in accordance with the terms of the Loan Documents;

(iv) any material misrepresentation by Borrowers or any other Borrower Party made in or in connection with the Loan Documents or the Loan;

(v) any Borrower's, Kansas City Master Lessee's or Affiliated Manager's collection of rents more than one month in advance or entering into, modifying or canceling Leases in violation of this Agreement or any of the other Loan Documents;

(vi) any Borrower, Kansas City Master Lessee, Guarantor or Affiliate of any of them contesting or in any way interfering in bad faith with, directly or indirectly (collectively, a "**Contest**"), any foreclosure action or sale commenced by Administrative Agent or any Lender or with any other enforcement of Administrative Agent's or any Lender's rights, powers or remedies under any of the Loan Documents or under any document evidencing, securing or otherwise relating to any of the Security (whether by making any motion, bringing any counterclaim, claiming any defense, seeking any injunction or other restraint, commencing any action seeking to consolidate any such foreclosure or other enforcement with any other action, or otherwise); provided, however, any Contest while Event of Default resulting from the failure of pay any principal, interest, Taxes, insurance premiums or other material monetary amount exists shall be deemed to be in bad faith (for the avoidance of doubt, this clause (vi) shall not apply if any Borrower, Kansas City Master Lessee, Guarantor or such Affiliate successfully asserts a Contest and obtains a final non-appealable order as to same);

(vii) any Borrower's, Kansas City Master Lessee's or Affiliated Manager's failure to turn over to Administrative Agent all Security Deposits upon Administrative

Agent's demand following an Event of Default, except to the extent any such Security Deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of such Event of Default;

(viii) any Borrower's or Kansas City Master Lessee's failure to maintain insurance as required by this Agreement;

(ix) any Borrower's or Kansas City Master Lessee's failure to pay any Taxes or assessments affecting the Projects, in each case (A) to the extent that such Borrower or Kansas City Master Lessee failed to apply cash flow from the Projects to do so, and (B) less any funds deposited by or on behalf of Borrowers in the Tax Impound which have not been used to pay such Taxes or assessments, provided that Administrative Agent is not restricted from applying such sums for the purpose of paying such items as a result of actions by Borrowers or Kansas City Master Lessee;

(x) damage or destruction to any Project caused by the negligent or intentional acts or omissions of any Borrower Party;

(xi) any Borrower's or Kansas City Master Lessee's failure to perform its obligations under the Environmental Indemnity Agreement (recognizing that LCRA is not a party to the Environmental Indemnity Agreement and that LCRA has no liability thereunder);

(xii) any physical waste of any Project (excluding alterations made in good faith);

(xiii) the removal or disposal by any Borrower or Kansas City Master Lessee of any personal property from any Project in which Administrative Agent or the Lenders have a security interest in violation of the terms and conditions of the Loan Documents;

(xiv) the payment of any distributions by any Borrower or Kansas City Master Lessee in violation of Section 7.11;

(xv) any fees paid by Borrowers or Kansas City Master Lessee to any Guarantor or any Affiliate of a Borrower Party after the occurrence and during the continuation of an Event of Default under the Loan Documents;

(xvi) the commission of fraud by any Borrower or any other Borrower Party in connection with the Loan;

(xvii) any Borrower's or Kansas City Master Lessee's failure to comply with the provisions of Section 7.13(b); or

(xviii) any Borrower's (other than LCRA) or Kansas City Master Lessee failure to deposit any revenues generated by such Borrower or Kansas City Master Lessee or a Project into the Master Account.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents all of the Obligations shall be fully recourse to Borrowers and Borrowers shall be personally liable therefor, subject to the provisions of Section 12.3, in the event of:

(i) other than with respect to a Permitted Transfer, any Transfer of any Project or any part thereof or any legal or beneficial interest therein (but excluding the execution or approval or modification by Borrower or Kansas City Master Lessee of a Lease in contravention of the terms of this Agreement or Transfers of personal property in any Property), any Transfer of a direct or indirect interest in any Restricted Party; provided, however, there shall be no liability under this clause (i) if the only breach by Borrower or Kansas City Master Lessee was a failure to provide notice to Administrative Agent of such Transfer;

(ii) any Borrower's or Kansas City Master Lessee failure to comply with the covenants in Section 5.17 hereof and such failure results in the actual or substantive consolidation in whole or in part of any Borrower's or Kansas City Master Lessee's assets with the assets of another Person in any bankruptcy or insolvency proceeding;

(iii) intentionally omitted;

(iv) any Borrower Party files a voluntary petition under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law;

(v) an Affiliate of any Borrower Party, officer or director of any Borrower Party, or representative which Controls any Borrower Party files, or joins in the filing of, an involuntary petition against any Borrower or Kansas City Master Lessee under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against any Borrower or Kansas City Master Lessee from any Person, unless at the direction or request of Administrative Agent or any Lender;

(vi) any Borrower Party files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against any Borrower or Kansas City Master Lessee, by any other Person under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against any Borrower or Kansas City Master Lessee from any Person, unless at the direction or request of Administrative Agent or any Lender;

(vii) any Affiliate, officer, director, representative or other Person that Controls Borrowers or Kansas City Master Lessee consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for any Borrower or Kansas City Master Lessee or any portion of the Collateral, unless at the direction or request of Administrative Agent or any Lender;

(viii) any Borrower or Kansas City Master Lessee makes a general assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due ;

(ix) the modification, termination or surrender of any Ground Lease or Declaration;

(x) intentionally omitted;

(xi) intentionally omitted;

(xii) intentionally omitted;

(xiii) intentionally omitted;

(xiv) except in connection with the exercise of a LCRA Termination Right exercised in accordance with the terms of this Agreement, the modification, termination or surrender of any of the Master Lease Documents without the prior written consent of Administrative Agent; or

(xv) except in connection with the exercise of a LCRA Termination Right exercised in accordance with the terms of this Agreement, the modification or termination of the LCRA Documents without the prior written consent of Administrative Agent; or

(xvi) Kansas City Master Lessee's failure to comply with the covenants in Section 7.24(a) or Section 7.25

(c) Notwithstanding anything to the contrary contained in clauses (xiv), (xv) and (xvi) above, any liability resulting solely from the occurrence of any of the events described in any of clauses (xiv), (xv) or (xvi) above, shall terminate if within thirty (30) days after Borrowers receive notice from Administrative Agent of the occurrence of any such event, LCRA or Kansas City Master Lessee exercises a LCRA Termination Right in compliance with the terms of this Agreement.

(d) Subject to the provisions of Section 12.3, Borrowers also shall be personally liable to Administrative Agent and the Lenders for any and all attorneys' fees and expenses and court costs incurred by Administrative Agent and the Lenders in enforcing this Section 12.1 or otherwise incurred by Administrative Agent or any Lender in connection with any of the foregoing matters, regardless whether such matters are legal or equitable in nature or arise under tort or contract law. The limitation on the personal liability of Borrowers in this Section 12.1 shall not modify, diminish or discharge the personal liability of any Guarantor. Nothing herein shall be deemed to be a waiver of any right which Administrative Agent or any Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Federal Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to

Administrative Agent and the Lenders under the Loan Documents or to require that all Collateral shall continue to secure the amounts due under the Loan Documents.

Section 12.2 Limitation on Liability of Administrative Agent's and Lender's Officers, Employees, etc. Any obligation or liability whatsoever of Administrative Agent or any Lender which may arise at any time under this Agreement, any other Loan Document, or the Environmental Indemnity Agreement shall be satisfied, if at all, out of Administrative Agent's or such Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Administrative Agent's or such Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 12.3 Specific Limitation on Liability of LCRA.

(a) To the extent of any conflict between the provisions of this Section 12.3 and the other provisions of this Agreement or any other Loan Document, the provisions of this Section 12.3 shall control.

(b) Notwithstanding any other provision herein to the contrary, at any time that LCRA constitutes a "Borrower" hereunder, the obligations, liabilities and any amounts due and owing by LCRA pursuant to the provisions hereof or any other Loan Document (including, without limitation, any indemnification obligations) shall be nonrecourse as to LCRA. No provision, representation, covenant or agreement contained in this Agreement or any other Loan Document, or any obligation herein or therein imposed upon LCRA, or the breach thereof, shall constitute or give rise to or impose upon LCRA a pecuniary liability. No provision hereof or any other Loan Document shall be construed to impose a charge against the general credit of LCRA or any personal or pecuniary liability upon any commissioner, officer, agent or employee of LCRA. All covenants, obligations and agreements of LCRA contained in this Agreement and any other Loan Document shall be effective with respect to LCRA to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future commissioner, officer, agent or employee of LCRA in other than his or her official capacity, and no official executing this Agreement or any other Loan Document shall be liable personally for this Agreement or any other Loan Document or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement or any other Loan Document or by reason of the covenants, obligations or agreements of LCRA contained in this Agreement or any other Loan Document. No provision, covenant or agreement contained in this Agreement or any other Loan Document, or any obligation herein or therein imposed upon LCRA, or the breach thereof, shall constitute or give rise to or impose upon LCRA a pecuniary liability or a charge.

(c) Subject to and without limiting the non-recourse provisions of Section 12.3(b) concerning LCRA, this Section 12.3 shall not (i) constitute a waiver, release or impairment of any Obligation evidenced or secured by any of the Loan Documents; (ii) impair the right of Administrative Agent or any Lender to name LCRA or Kansas City Master Lessee as a party defendant in any action or suit for foreclosure and sale under a Mortgage; (iii) affect the validity or enforceability of any guaranty made in connection with the Loan or any of the rights and

remedies of Administrative Agent or any Lender thereunder; (iv) impair the right of Administrative Agent or any Lender to obtain the appointment of a receiver; (v) constitute a prohibition against Administrative Agent or any Lender to commence any appropriate action or proceeding in order for Administrative Agent or any Lender to exercise its remedies against any Project; (vi) constitute a waiver of the right of Administrative Agent or any Lender to enforce the liability and obligation of Kansas City Master Lessee or any Borrower (other than LCRA) for amounts owed under Sections 12.1(b)-(d) or (vii) limit or affect in any way the liability or obligations of the Borrower Parties other than LCRA under the Loan Documents and the Environmental Indemnity Agreement.

ARTICLE 13 **KANSAS CITY MASTER LEASE**

Section 13.1 Performance by Kansas City Master Lessee. Pursuant to the Kansas City Master Lease, Kansas City Master Lessee is obligated to perform certain obligations of LCRA as a “Borrower” under this Agreement and the other Loan Documents. Accordingly, LCRA hereby authorizes and directs Kansas City Master Lessee to perform all of the obligations and covenants of LCRA contained in this Agreement and the other Loan Documents, other than LCRA’s obligation to pay the Loan pursuant to the terms and conditions of the Loan Documents. Kansas City Master Lessee hereby agrees to perform such obligations and covenants on behalf of LCRA; recognizing, however, that Kansas City Master Lessee is not entitled to the benefits of Section 12.3 or any similar provision in any other Loan Document. Administrative Agent acknowledges and agrees to accept performance by Kansas City Master Lessee of all obligations and covenants imposed upon LCRA pursuant to this Agreement and the other Loan Documents as though the same had been performed by LCRA. Notwithstanding anything to the contrary in this Agreement, the other Loan Documents or the Environmental Indemnity Agreement, Administrative Agent further acknowledges and agrees that LCRA is not a party to the Environmental Indemnity Agreement and that Administrative Agent and any Lender shall look solely to the other Borrowers, Kansas City Master Lessee and Guarantor for performance of all obligations and covenants under the Environmental Indemnity Agreement and the survival of the same as provided in Section 11.24. Subject to the provisions of Section 12.3 hereof, nothing herein is intended, nor shall it be deemed to release LCRA of any of its representations, warranties, covenants or other obligations under this Agreement or the other Loan Documents.

Section 13.2 Representations, Warranties and Covenants of Kansas City Master Lessee. Master Lessee covenants and agrees with Lenders and Administrative Agent as follows:

(a) Kansas City Master Lessee (i) makes the representations and warranties set forth in the Sections and Articles noted below, (ii) agrees to indemnify and hold LCRA harmless as more particularly described in Section 13.4; and (iii) agrees to perform all the obligations and covenants set forth in the Sections and Articles noted below (specifically including, without limitation, all indemnification obligations and covenants), in each case under Section 13.2(a)(i) and Section 13.2(a)(iii) as if all references in such Sections and Articles to LCRA (or to LCRA in its capacity as a “Borrower”) were references to Kansas City Master Lessee (notwithstanding the fact that Kansas City Master Lessee may also be referenced in such Sections and Articles or the fact that this Agreement may expressly state that LCRA is not liable under any such Section or Article, and

recognizing in each instance that Kansas City Master Lessee is not entitled to the benefits of Section 12.3):

Section 2.4 (Prepayment)	Article 6 (Financial Reporting)
Section 2.5 (Security, Establishment of Funds)	Article 7 (Covenants)
Section 2.8 (Capital Adequacy; Increased Costs; Illegality)	Section 9.3 (Administrative Agent's Right to Perform the Obligations)
Section 2.9 (Interest Rate Protection)	Article 10 (Administrative Agent)
Section 2.10 (Benchmark Replacement)	Section 11.5 (Indemnities)
Section 2.13 (Substitution of Lenders)	Section 11.11 (Reimbursement of Expenses)
Section 2.15 (Fees)	Section 11.14 (Contest of Certain Claims)
Section 2.16 (Withholding Taxes)	Section 11.19 (Joint and Several Liability)
Section 2.17 (Partial Releases)	Section 11.24 (Survival)
Article 3 (Insurance, Condemnation and Impounds)	Section 11.38 (Component Notes)
Article 4 (Leasing Matters)	Section 12.1(b)-(d) (Limitation on Liability)
Article 5 (Representations and Warranties)	Schedule 2.1 (Conditions to Advance of Loan Proceeds), Schedule 6.2 (Compliance Certificate), Schedule 7.13 (Excess Cash Flow Certificate), and Schedule 11.36 (Post Closing Obligations)

(b) Kansas City Master Lessee's obligations under this Section 13.2 and Section 13.4 shall survive the termination of this Agreement.

(c) Kansas City Master Lessee agrees to perform all the obligations and covenants of LCRA set forth in (i) this Agreement, other than LCRA's obligation to pay the Loan pursuant to the terms and conditions of the Loan Documents (including, but not limited to, the certain specific provisions enumerated in Section 13.2(a) above), (ii) the other Loan Documents and (iii) the Environmental Indemnity Agreement to the extent that an obligation or covenant thereunder may be made an obligation or covenant of LCRA despite the fact that LCRA is not a party to the Environmental Indemnity Agreement; recognizing, however, that Kansas City Master Lessee is not entitled to the benefits of Section 12.3 or any similar provision in any other Loan Document or the Environmental Indemnity Agreement.

Section 13.3 Additional Covenants of Kansas City Master Lessee.

(a) **Conditions to Exercise of Rights.** Kansas City Master Lessee hereby waives any right it may now or hereafter have to require Administrative Agent (which term, for purposes of this Section 13.3, shall include Lenders), as a condition to the exercise of any remedy or other right against Kansas City Master Lessee hereunder or under any other document executed by Kansas

City Master Lessee in connection with the Indebtedness: (i) to proceed against LCRA or any other Person, or against any other collateral assigned Administrative Agent by LCRA or any other Person; (ii) to pursue any other right or remedy in Administrative Agent's power; (iii) to give notice of the time, place or terms of any public or private sale of real or personal property collateral assigned to Administrative Agent by LCRA or any other Person (other than Kansas City Master Lessee, as the case may be), or otherwise to comply with Sections 9.609 and 9.610 of the UCC (as modified or recodified from time to time) with respect to any such personal property collateral; or (iv) to make or give (except as otherwise expressly provided in Loan Documents and the Environmental Indemnity Agreement) any presentment, demand, protest, notice of dishonor, notice of protest, notice of intention to accelerate, notice of acceleration, or other demand or notice of any kind in connection with any Indebtedness or any collateral (other than the Project) for any Indebtedness.

(b) **Defenses.** Kansas City Master Lessee hereby waives any defense it may now or hereafter have that relates to: (i) any disability or other defense of LCRA or any other Person; (ii) the cessation, from any cause other than full performance, of the obligations of LCRA or any other Person; (iii) the application of the proceeds of any Indebtedness, by LCRA or any other Person, for purposes other than the purposes represented to Kansas City Master Lessee by LCRA or otherwise intended or understood by Kansas City Master Lessee or LCRA; (iv) any act or omission by Administrative Agent which directly or indirectly results in or contributes to the release of LCRA or any other Person or any collateral for any Indebtedness; (v) the unenforceability or invalidity of any collateral assignment or guaranty with respect to any Indebtedness, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien of the Mortgage encumbering the Kansas City Project) which secures any Indebtedness; (vi) any failure of Administrative Agent to marshal assets in favor of Kansas City Master Lessee or any other Person; (vii) any modification of any Indebtedness, including any renewal, extension, acceleration or increase in interest rate; (viii) any and all rights and defenses arising out of an election of remedies by Administrative Agent, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, may have an adverse effect on Kansas City Master Lessee's rights of subrogation and reimbursement against the principal; (ix) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (x) any failure of Administrative Agent to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person; (xi) the election by Administrative Agent, in any bankruptcy proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Federal Bankruptcy Code; (xii) any extension of credit or the grant of any lien under Section 364 of the Federal Bankruptcy Code; (xiii) any use of cash collateral under Section 363 of the Federal Bankruptcy Code; or (xiv) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person. Kansas City Master Lessee further waives any and all rights and defenses that Kansas City Master Lessee may have because LCRA's debt is secured by real property; this means, among other things, that: (1) Administrative Agent may collect from Kansas City Master Lessee without first foreclosing on any real or personal property collateral pledged by LCRA; (2) if Administrative Agent forecloses on any real property collateral pledged by LCRA, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold

at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Administrative Agent may collect from Kansas City Master Lessee even if Administrative Agent, by foreclosing on the real property collateral, has destroyed any right Kansas City Master Lessee may have to collect from LCRA. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Kansas City Master Lessee may have because LCRA's debt is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Kansas City Master Lessee further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Kansas City Master Lessee under applicable law.

(c) **Subrogation.** Kansas City Master Lessee hereby waives, until such time as all Indebtedness is fully performed: (i) any right of subrogation against LCRA that relates to any Indebtedness; (ii) any right to enforce any remedy Kansas City Master Lessee may now or hereafter have against LCRA that relates to any Indebtedness; and (iii) any right to participate in any collateral now or hereafter assigned to Administrative Agent with respect to any Indebtedness.

(d) **Borrower Information.** Kansas City Master Lessee warrants and agrees: (i) that Administrative Agent would not enter into this Agreement but for the Loan Documents and the Environmental Indemnity Agreement entered into by Kansas City Master Lessee; (ii) that Kansas City Master Lessee has not relied, nor will it rely, on any representations or warranties by Administrative Agent to Kansas City Master Lessee with respect to the creditworthiness of LCRA or the prospects of repayment of any Indebtedness from sources other than the Projects; (iii) that Kansas City Master Lessee has established and/or will establish adequate means of obtaining from LCRA on a continuing basis financial and other information pertaining to the business operations, if any, and financial condition of LCRA; (iv) that Kansas City Master Lessee assumes full responsibility for keeping informed with respect to LCRA's business operations, if any, and financial condition; (v) that Administrative Agent shall have no duty to disclose or report to Kansas City Master Lessee any information now or hereafter known to Administrative Agent with respect to LCRA, including, without limitation, any information relating to any of LCRA's business operations or financial condition; and (vi) that Kansas City Master Lessee is familiar with the terms and conditions of the Loan Documents and the Environmental Indemnity Agreement and consents to all provisions thereof.

(e) **Reinstatement of Lien.** Administrative Agent's rights under this Article 13 with respect to Kansas City Master Lessee shall be reinstated and revived with respect to any amount at any time paid on account of any Indebtedness which Administrative Agent is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to LCRA.

(f) **Subordination.** Until all of the Indebtedness has been fully paid and performed: (i) Kansas City Master Lessee hereby agrees that all existing and future indebtedness and other obligations of LCRA to Kansas City Master Lessee (collectively, the "**Kansas City Master Lessee Subordinated Debt**") shall be and are hereby subordinated to all Indebtedness of LCRA, and the payment thereof is hereby deferred in right of payment to the prior payment and performance of all Indebtedness; (ii) Kansas City Master Lessee shall not collect or receive any cash or non-cash

payments on any Kansas City Master Lessee Subordinated Debt or transfer all or any portion of the Kansas City Master Lessee Subordinated Debt; and (iii) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, LCRA with respect to any Kansas City Master Lessee Subordinated Debt is received by Kansas City Master Lessee, such payment or distribution shall be held in trust and immediately paid over to Administrative Agent, is hereby assigned to Administrative Agent as security for the Indebtedness, and shall be held by Administrative Agent in an interest bearing account until all Indebtedness has been fully paid and performed.

(g) **Savings Clause.** If the liability of Kansas City Master Lessee under the Loan Documents or Environmental Indemnity Agreement with respect to the Indebtedness would, but for the application of this sentence, be unenforceable under applicable law, such liability shall be valid and enforceable to the maximum extent that would not cause such liability to be unenforceable under applicable law, and such liability shall be deemed to have been automatically amended accordingly at all times (notwithstanding any provisions in the Loan Documents and the Environmental Indemnity Agreement concerning the necessity of all agreements in writing).

(h) **Lawfulness and Reasonableness.** Kansas City Master Lessee warrants that all of the waivers in this Section 13.3, the other Loan Documents and the Environmental Indemnity Agreement, are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Kansas City Master Lessee may destroy or impair rights which Kansas City Master Lessee would otherwise have against Administrative Agent, LCRA and other Persons, or against collateral. Kansas City Master Lessee agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.

(i) **Enforceability.** Kansas City Master Lessee hereby acknowledges that: (i) the obligations undertaken by Kansas City Master Lessee under the Loan Documents and the Environmental Indemnity Agreement are complex in nature, and (ii) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (iii) as part of Administrative Agent's consideration for entering into this transaction, Administrative Agent has specifically bargained for the waiver and relinquishment by Kansas City Master Lessee of all such defenses, and (iv) Kansas City Master Lessee has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Kansas City Master Lessee does hereby represent and confirm to Administrative Agent that Kansas City Master Lessee is fully informed regarding, and that Kansas City Master Lessee does thoroughly understand: (A) the nature of all such possible defenses, and (B) the circumstances under which such defenses may arise, and (C) the benefits which such defenses might confer upon Kansas City Master Lessee, and (D) the legal consequences to Kansas City Master Lessee of waiving such defenses. Kansas City Master Lessee acknowledges that it has entered into the Loan Documents and the Environmental Indemnity Agreement with the intent that such Loan Documents and the Environmental Indemnity Agreement and all of the informed waivers herein and therein shall each and all be fully

enforceable by Administrative Agent, and that Administrative Agent is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

Section 13.4 Indemnification of LCRA by Kansas City Master Lessee. Kansas City Master Lessee shall indemnify LCRA and defend and save LCRA harmless from and against any and all Liens, taxes, special assessments, claims, judgments, penalties, fines, actions, damages, injuries, environmental remediation costs or enforcement actions, liabilities, court costs, and expenses of any kind and nature whatsoever (including reasonable out-of-pocket expenses, attorney's fees and other professional consultant fees) resulting, directly or indirectly, from (except to the extent the same results from the gross negligence or intentional misconduct of LCRA, its agents or employees) (a) any action or suit for foreclosure and sale or enforcement of other remedy under a Mortgage, this Agreement, or other Loan Document, (b) any claim, dispute, action, or proceeding relating, in whole or in part, to Kansas City Master Lessee's performance or failure to perform all obligations, representations, warranties and covenants of LCRA that Kansas City Master Lessee is obligated to perform under the Kansas City Ground Lease, the Kansas City Master Lease, the LCRA Documents, this Agreement, or any other Loan Document, (c) any claim, dispute, action, or proceeding between or among Administrative Agent, any Lender, any Borrower, any Borrower Party, any Loan Party Guarantor, or any Guarantor in connection with the Obligations, this Agreement, or any other Loan Document, (d) the enforcement or exercise of rights (including, without limitation, a LCRA Termination Right) or the performance or non-performance of obligations under, or any contest, claim, dispute, action, or proceeding in connection with, the Kansas City Ground Lease, the Kansas City Master Lease, the LCRA Documents, this Agreement, any other Loan Document, or the Kansas City Project, (e) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Projects, or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways, or (f) any use, nonuse or condition in, on or about the Projects or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways.

EXECUTED as of the date first written above.

[SIGNATURE PAGES FOLLOW]

**SIGNATURE PAGE OF ADMINISTRATIVE AGENT
TO LOAN AGREEMENT**

CAPITAL ONE, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: Authorized Signatory

DRAFT

**SIGNATURE PAGE OF LENDER
TO LOAN AGREEMENT**

CAPITAL ONE, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: Authorized Signatory

DRAFT

**SIGNATURE PAGE OF LENDER
TO LOAN AGREEMENT**

***ADDITIONAL LENDER SIG BLOCKS TO BE**

DRAFT

SIGNATURE PAGE OF BORROWERS TO LOAN AGREEMENT

**LAND CLEARANCE FOR
REDEVELOPMENT AUTHORITY OF
KANSAS CITY, MISSOURI**, a public body
corporate and politic organized under the laws of
Missouri and the ordinances of the City of Kansas
City, Missouri

By: _____
Name: Daniel Moye
Title: Executive Director

STATE OF MISSOURI)

COUNTY OF JACKSON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Daniel Moye, as Executive Director of Land Clearance for Redevelopment Authority of Kansas City, Missouri, a public body corporate and politic organized under the laws of Missouri and the ordinances of the City of Kansas City, Missouri, on behalf of the corporation, who is personally known to me to be the same person who executed the within instrument or writing and such person duly acknowledged the execution of the same for and on behalf of said entity and acknowledged said instrument to be the free act and deed of said entity.

Notary Public, State of _____
Commission Expires: _____

SIGNATURE PAGE OF BORROWERS TO LOAN AGREEMENT

***BORROWER SIG BLOCK TO BE ADDED**

DRAFT

EXHIBIT A-1

DESCRIPTION OF BRANDON PROJECT

Borrower:	TG Brandon Healthplex, LLC
Name of Project	TGH Brandon Healthplex
Address of Project:	*TO BE ADDED
Number of Rentable Square Feet	*TO BE ADDED
Number of On Site Parking Spaces:	*TO BE ADDED

Legal Description of Land:

*TO BE ADDED

EXHIBIT A-2

DESCRIPTION OF JACKSONVILLE PROJECT

Borrower:	Jacksonville Medical Office Building, LLC
Name of Project	UF Health North Medical Building
Address of Project:	*TO BE ADDED
Number of Rentable Square Feet	*TO BE ADDED
Number of On Site Parking Spaces:	*TO BE ADDED

Legal Description of Land:

***TO BE ADDED**

EXHIBIT A-3

DESCRIPTION OF OLD BRIDGE PROJECT

Borrower:	Old Bridge Medical Office Building, LLC
Name of Project	Old Bridge Medical Office Building
Address of Project:	*TO BE ADDED
Number of Rentable Square Feet	*TO BE ADDED
Number of On Site Parking Spaces:	*TO BE ADDED

Legal Description of Land:

***TO BE ADDED**

EXHIBIT A-4

DESCRIPTION OF PETOSKEY PROJECT

Borrower:	Petoskey Medical Office Building, LLC
Name of Project	Burns Professional Building
Address of Project:	*TO BE ADDED
Number of Rentable Square Feet	*TO BE ADDED
Number of On Site Parking Spaces:	*TO BE ADDED

Legal Description of Land:

***TO BE ADDED**

EXHIBIT A-5

DESCRIPTION OF KANSAS CITY PROJECT

Borrower:	Land Clearance for Redevelopment Authority of Kansas City, Missouri
Master Lessee:	Hospital Hill Medical Office Building, LLC
Name of Project	Hospital Hill Medical Office Building
Address of Project:	*TO BE ADDED
Number of Rentable Square Feet	*TO BE ADDED
Number of On Site Parking Spaces:	*TO BE ADDED

Legal Description of Land:

*TO BE ADDED

EXHIBIT A-6

DESCRIPTION OF PETOSKEY PROJECT

Borrower:	Lafayette Medical Complex I, LLC
Name of Project	Lafayette Medical Office Building
Address of Project:	*TO BE ADDED
Number of Rentable Square Feet	*TO BE ADDED
Number of On Site Parking Spaces:	*TO BE ADDED

Legal Description of Land:

*TO BE ADDED

EXHIBIT A-7

DESCRIPTION OF ROCHESTER PROJECT

Borrower:	Rochester Hills Health and Wellness Building, LLC
Name of Project	Beaumont Health and Wellness Center
Address of Project:	*TO BE ADDED
Number of Rentable Square Feet	*TO BE ADDED
Number of On Site Parking Spaces:	*TO BE ADDED

Legal Description of Land:

*TO BE ADDED

EXHIBIT B-1

LIST OF BORROWERS

1. Land Clearance for Redevelopment Authority of Kansas City, Missouri, a public body corporate and politic organized under the laws of Missouri and the ordinances of the City of Kansas City, Missouri
2. Jacksonville Medical Office Building, LLC, a Delaware limited liability company
3. Lafayette Medical Complex I, LLC, a Delaware limited liability company
4. Old Bridge Medical Office Building, LLC, a Delaware limited liability company
5. Petoskey Medical Office Building, LLC, a Delaware limited liability company
6. TG Brandon Healthplex, LLC, a Delaware limited liability company
7. Rochester Hills Health and Wellness Building, LLC, a Delaware limited liability company

EXHIBIT C
COMMITMENTS

Lender's Name	Lender's Address for Notices	Lender's Commitment	Lender's Proportionate Share
Capital One, National Association	<p>Capital One, National Association 77 West Wacker Drive, 10th Floor Chicago, Illinois 60601 Attention: Dan Eppley, Senior Director Facsimile: (855) 544-4044 Reference: Welltower Landmark MOB Portfolio 1A</p> <p>Capital One, National Association 77 West Wacker Drive, 10th Floor Chicago, Illinois 60601 Attention: Jeffrey M. Muchmore, Credit Executive Facsimile: (855) 332-1699 Reference: Welltower Landmark MOB Portfolio 1A</p> <p>Capital One, National Association 5804 Trailridge Drive Austin, Texas 78731 Attention: Diana Pennington, Senior Director, Associate General Counsel Facsimile: (855) 438-1132 Reference: Welltower Landmark MOB Portfolio 1A</p>	*TBD	*TBD

EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “Assignor”) and the Assignee identified in item 2 below (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below, (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below, and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

- 1. Assignor: _____
- 2. Assignee: _____
- 3. Borrowers: Jacksonville Medical Office Building, LLC, a Delaware limited liability company, Old Bridge Medical Office Building, LLC, a Delaware limited liability company, Lafayette Medical Complex I, LLC, a Delaware limited liability company, Petoskey Medical Office Building, LLC, a Delaware limited liability company, TG Brandon

Healthplex, LLC, a Delaware limited liability company, Rochester Hills Health and Wellness Building, LLC, a Delaware limited liability company, and Land Clearance for Redevelopment Authority of Kansas City, Missouri

- 4. Administrative Agent: Capital One, National Association, as the administrative agent under the Loan Agreement.
- 5. Loan Agreement: Loan Agreement, dated as of * _____, 20__, among Borrowers, the Persons party thereto from time to time as Lenders, and Capital One, National Association, as Administrative Agent.
- 6. Assigned Interest:

Assignor	Assignee	Aggregate Amount of Commitment / Loans for all Lenders \$	Amount of Commitment / Loans Assigned \$	Percentage Assigned of Commitment / Loans %	CUSIP Number
----------	----------	--	---	---	-----------------

The terms set forth in this Assignment and Assumption are hereby agreed to.

Effective Date: _____

[Remainder of Page Intentionally Left Blank.]

Signature Pages Follow.]

SIGNATURE PAGE OF ASSIGNOR TO ASSIGNMENT AND ASSUMPTION

By: _____

Name: _____

Title: _____

DRAFT

SIGNATURE PAGE OF ASSIGNEE TO ASSIGNMENT AND ASSUMPTION

By: _____

Name: _____

Title: _____

DRAFT

SIGNATURE PAGE OF ADMINISTRATIVE AGENT TO
ASSIGNMENT AND ASSUMPTION

Consented to and Accepted:

CAPITAL ONE, NATIONAL ASSOCIATION,
as Administrative Agent

By: _____

Name: _____

Title: Duly Authorized Signatory

DRAFT

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement, any other Loan Document or the Environmental Indemnity Agreement, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or the Environmental Indemnity Agreement or any Collateral thereunder, (iii) the financial condition of Borrowers or Guarantor or their Affiliates or any other Person obligated in respect of any Loan Document or the Environmental Indemnity Agreement, or (iv) the performance or observance by Borrowers or Guarantor or their Affiliates or any other Person of any of their respective obligations under any Loan Document or the Environmental Indemnity Agreement.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all the requirements to be an assignee under Section 11.3(b) of the Loan Agreement (subject to such consents, if any, as may be required under Section 11.3(b) of the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 5.3 thereof or delivered pursuant to Section 6.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon Administrative Agent, the Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vi) if it is a Non-U.S. Lender Party, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance upon Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and Environmental Indemnity Agreement, and (ii) it will perform in

accordance with their terms all of the obligations which by the terms of the Loan Documents and Environmental Indemnity Agreement are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption.

4. THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

EXHIBIT E

ALLOCATED LOAN AMOUNTS

Project	Borrower Owning Project	Allocated Loan Amount
Brandon Project	TG Brandon Healthplex, LLC	\$36,300,000
Jacksonville Project	Jacksonville Medical Office Building LLC	\$98,069,006
Kansas City Project	LCRA	\$34,517,041
Lafayette Project	Lafayette Medical Complex I, LLC	\$29,508,686
Old Bridge Project	Jacksonville Medical Office Building LLC	\$35,870,651
Petoskey Project	Jacksonville Medical Office Building LLC	\$25,515,538
Rochester Project	Rochester Hills Health and Wellness Building, LLC	\$29,113,178
TOTAL		\$288,894,100

EXHIBIT F

MAJOR LEASES

***TO BE ADDED**

DRAFT

SCHEDULE 2.1

CONDITIONS TO ADVANCE OF LOAN PROCEEDS

The advance of the Loan proceeds shall be subject to the terms of the Loan Documents, and Administrative Agent's receipt, review, approval or confirmation of the following items set forth in this Schedule 2.1, and any other items or conditions specified in the Term Sheet, at Borrowers' cost and expense, each in form and content satisfactory to Administrative Agent in its sole discretion:

1. Loan Documents. The Loan Documents and Environmental Indemnity Agreement executed by Borrowers, any other Borrower Party or Property Manager, as applicable.

2. Title Insurance Policy. An ALTA (or equivalent) mortgagee policy or policies of title insurance in the maximum amount of the Loan, with reinsurance and endorsements as Administrative Agent may require, containing no exceptions to title (printed or otherwise) which are unacceptable to Administrative Agent, and insuring that the Mortgage creates a first-priority Lien on the Projects and related collateral (the "Title Policy").

3. Organizational and Authority Documents. Certified copies of all documents evidencing the formation, organization, valid existence, good standing, and due authorization of and for each Borrower and each other Borrower Party for the execution, delivery, and performance of the Loan Documents and the Environmental Indemnity Agreement by each Borrower and each other Borrower Party, as applicable.

4. Legal Opinions. Legal opinions issued by counsel for Borrowers and each other Borrower Party, opining as to the due organization, valid existence and good standing of Borrowers and each other Borrower Party, and the due authorization, execution, delivery, enforceability and validity of the Loan Documents and Environmental Indemnity Agreement with respect to Borrowers and each other Borrower Party (except that LCRA counsel's opinion is not required to contain any opinion as to the due organization, valid existence and good standing of any other Borrower or Borrower Party or as to the due authorization, execution, delivery, enforceability or validity of the Environmental Indemnity Agreement or any other Loan Document to which LCRA is not a party); that the Loan, as reflected in the Loan Documents, is not usurious; and as to such other matters as Administrative Agent and Administrative Agent's counsel reasonably may specify.

5. Searches. Current Uniform Commercial Code, tax, judgment lien and litigation searches for Borrowers and each other Borrower Party, and the immediately preceding owners of the Projects.

6. Insurance. Evidence of insurance as required by this Agreement, and conforming in all respects to the requirements of Administrative Agent.

7. Survey. Three (3) originals of a current "as built" survey of each Project, dated or updated to a date not earlier than forty-five (45) days prior to the Closing Date, prepared by a

registered land surveyor in accordance with the American Land Title Association American Congress on Surveying and Mapping Standards and containing Administrative Agent's approved form of certification in favor of Administrative Agent (on behalf of itself and the Lenders) and the title insurer (collectively, the "**Survey**"). Each Survey shall conform to Administrative Agent's current survey requirements and shall be sufficient for the title insurer to remove the general survey exception.

8. **Property Condition Report.** A current engineering report or architect's certificate with respect to each Project, covering, among other matters, inspection of heating and cooling systems, roof and structural details and showing no failure of compliance with building plans and specifications, applicable Requirements of Law (including requirements of the Americans with Disabilities Act) and fire, safety and health standards (the "**Property Condition Report**," whether one or more). As requested by Administrative Agent, the Property Condition Report shall also include an assessment of each Project's tolerance for earthquake and seismic activity.

9. **Environmental Reports.** A current Site Assessment (as defined in the Environmental Indemnity Agreement) for each Project.

10. **Rent Roll.** A current rent roll for each Project, certified by Borrowers or the current owner or the Property Manager of each Project. Such rent roll shall include such information as reasonably required by Administrative Agent.

11. **Operating Agreements.** A copy of each fully executed Operating Agreement in form and substance satisfactory to Administrative Agent, certified by Borrowers (other than LCRA) and Kansas City Master Lessee as being true, correct and complete.

12. **Intentionally Omitted.**

13. **Compliance With Laws.** Evidence that each Project and the operation thereof comply in all material respects with all Requirements of Law, including that all requisite certificates of occupancy, building permits, and other licenses, certificates, approvals or consents required of any Governmental Authority have been issued without variance or condition and that there is no litigation, action, citation, injunctive proceedings, or like matter pending or threatened with respect to the validity of such matters.

14. **No Casualty or Condemnation.** No Condemnation or adverse zoning or usage change proceeding shall have occurred or shall have been threatened against any Project; no Project shall have suffered any significant damage by fire or other Casualty which has not been repaired; no law, regulation, ordinance, moratorium, injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any Governmental Authority, which would have, in Administrative Agent's judgment, a material adverse effect on Borrowers, any other Borrower Party or the Projects.

15. **Broker's Fees.** All fees and commissions payable to real estate brokers, mortgage brokers, or any other brokers or lenders in connection with the Loan or the acquisition of the

Projects have been paid, such evidence to be accompanied by any waivers or indemnifications deemed necessary by Administrative Agent.

16. Costs and Expenses. Payment of Administrative Agent's and each Lender's costs and expenses in underwriting, documenting, and closing the transaction, including fees and expenses of Administrative Agent's and such Lender's inspecting engineers, consultants and counsel.

17. Representations and Warranties. The representations and warranties contained in this Agreement and in all other Loan Documents and Environmental Indemnity Agreement are true and correct.

18. No Defaults. No Potential Default or Event of Default or default shall have occurred or exist.

19. Appraisal. Administrative Agent shall obtain an appraisal report for each Project, in form and content acceptable to Administrative Agent, prepared by an independent MAI appraiser in accordance with the Financial Institutions Reform, Recovery and Enforcement Act ("**FIRREA**") and the regulations promulgated pursuant to such act.

20. KYC Information.

(a) Upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, Borrowers or Kansas City Master Lessee shall have provided to such Lender the documentation and other information so requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act, in each case at least five (5) days prior to the Closing Date.

(b) At least five (5) days prior to the Closing Date, each Borrower or Kansas City Master Lessee that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, such Borrower or Kansas City Master Lessee shall deliver a Beneficial Ownership Certification in relation to such Borrower or Kansas City Master Lessee.

21. Management. The Property Manager and any Management Agreement for the Projects shall be satisfactory to Administrative Agent in its sole discretion.

22. Other Items. Administrative Agent and Lenders shall have received such other items as Administrative Agent and the Lenders may reasonably require.

SCHEDULE 5.1

ORGANIZATION; FORMATION

A. **Borrowers' Organizational Structure.** See attached chart.

B. **Organizational Information.** (Borrowers and each entity comprising any other Borrower Party).

<u>Legal Name</u>	<u>State of Formation</u>	<u>Type of Entity</u>	<u>State Organization ID No.</u>	<u>Federal Tax ID No.</u>
Jacksonville Medical Office Building, LLC	Delaware	limited liability company	*TBD	*TBD
Old Bridge Medical Office Building, LLC	Delaware	limited liability company	*TBD	*TBD
Petoskey Medical Office Building, LLC	Delaware	limited liability company	*TBD	*TBD
TG Brandon Healthplex, LLC	Delaware	limited liability company	*TBD	*TBD
Hospital Hill Medical Office Building, LLC	Delaware	limited liability company	*TBD	*TBD
Lafayette Medical Complex I, LLC	Delaware	limited liability company	*TBD	*TBD
Land Clearance for Redevelopment Authority of Kansas City, Missouri	Missouri	Public body corporate and politic	N/A	44-6005869
Rochester Hills Health and Wellness Building, LLC	Delaware	limited liability company	*TBD	*TBD
Welltower Inc.	Delaware	limited liability company	*TBD	*TBD

C. **Location Information.**

1.	Borrowers:	
a.	Chief Executive Office:	*TO BE PROVIDED
b.	Location of any prior Chief Executive Office (during last 5 years):	*TO BE PROVIDED
c.	Other Office Location:	None
d.	Location of Collateral:	At the Projects

2.	Borrower Parties:		
	a.	Chief Executive Office	*TO BE PROVIDED
	b.	Location of any prior Chief Executive Office (during last 5 years):	*TO BE PROVIDED
	c.	Other Office Location:	None

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ORGANIZATIONAL CHART

***TO BE ADDED**

DRAFT

SCHEDULE 6.2

COMPLIANCE CERTIFICATE

Compliance Certificate

Date: _____, _____

Capital One, National Association
as Administrative Agent
77 West Wacker Drive, 10th Floor
Chicago, Illinois 60601
Attention: Credit Executive

Re: Compliance Certificate

Ladies and Gentlemen:

This certificate is given in accordance with Section 6.2 of the Loan Agreement dated * _____ (as amended from time to time, the "**Loan Agreement**"), among Jacksonville Medical Office Building, LLC, a Delaware limited liability company, Old Bridge Medical Office Building, LLC, a Delaware limited liability company, Petoskey Medical Office Building, LLC, a Delaware limited liability company, Lafayette Medical Complex I, LLC, a Delaware limited liability company, TG Brandon Healthplex, LLC, a Delaware limited liability company, Rochester Hills Health and Wellness Building, LLC, a Delaware limited liability company, and Land Clearance for Redevelopment Authority of Kansas City, Missouri (each a "**Borrower**" and collectively, the "**Borrowers**"), Hospital Hill Medical Office Building, LLC, a Delaware limited liability company ("**Kansas City Master Lessee**") and Capital One, National Association, as collateral agent and Administrative Agent for the lenders under the Loan Agreement (in such capacity, the "**Administrative Agent**"). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

I hereby certify that:

1. I am an authorized representative of Borrower (other than LCRA) and Kansas City Master Lessee (collectively, the "**Welltower Loan Parties**").
2. Based on my review of the financial statements delivered with this certificate in accordance with Section 6.1 of the Loan Agreement, such financial statements (a) fairly present the financial condition of Welltower Loan Parties as the dates of such financial statements in all material respects and (b) have been prepared in accordance with GAAP or such other accounting methodology as is reasonably acceptable to Administrative Agent, consistently applied.

3. I have no knowledge of the existence during or at the end of such accounting period or as of the date hereof, of any condition or event that constitutes a Potential Default or an Event of Default, or if any Potential Default or Event or Default existed or exists, attached as **Schedule 1** hereto is a description of the nature and period of existence thereof and what action Welltower Loan Parties have taken or propose to take with respect thereto.

4. Guarantor is in compliance with the covenants contained in the Recourse Guaranty Agreement constituting a part of the Loan Documents [, as demonstrated by the calculation of such covenants below, except as set forth in **Schedule 4** attached hereto]¹.

5. Except as noted on **Schedule 2** attached hereto, the undersigned has no knowledge of any federal or state tax liens having been filed against any Welltower Loan Party, any Affiliated Manager or all or any portion of the Project.

6. Except as noted on **Schedule 2** attached hereto, the undersigned has no knowledge of any failure of any Welltower Loan Party, Guarantor or any Affiliated Manager to make required payments of withholding or other tax obligations of such Welltower Loan Party, Guarantor or Affiliated Manager during the accounting period to which the attached statements pertain or any subsequent period.

7. If the Loan Agreement contemplates a lien on the Deposit Accounts of Welltower Loan Parties in favor of Administrative Agent, **Schedule 3** attached hereto contains a complete and accurate statement of all deposit or investment accounts maintained by Welltower Loan Parties, Guarantor or any Property Manager (with respect to any Project).

8. With respect to each of the Projects:

a. there are no current, pending or, to the undersigned's knowledge, threatened in writing proceedings relating to a condemnation or other public taking of the Project;

b. no Project has suffered a casualty or other damage or loss of the type typically covered by hazard insurance in excess of \$50,000;

c. all insurance required to be maintained by Borrowers or Kansas City Master Lessee under the Loan Agreement is in force and premiums therefor have been paid as and when due;

d. all real estate taxes or other assessments pertaining to the Project have been paid as and when due or are being contested in accordance with the Loan Documents; and

e. the undersigned have no knowledge of any current, pending or threatened changes to the zoning classification or permitted uses of the Projects.

9. All of the other covenants (i.e., those not specifically described in the prior paragraphs above) set forth in the Loan Agreement and Loan Documents are fully performed and

¹ Can be deleted so long as Guarantor is a publically traded entity.

the representations and warranties set forth in the Loan Agreement and Loan Documents are and remain true, correct, and complete (except as set forth on *Schedule 4* attached hereto).

10. Except as set forth in the Loan Agreement or on *Schedule 5* attached hereto, no Welltower Loan Party has received (a) any written notice of default under other obligations relating to the Projects or otherwise material to such Welltower Loan Party's business, including any notices of violations of any laws, regulations, codes or ordinances; (b) any written notice of threatened or pending legal, judicial or regulatory proceedings, including any dispute between any Welltower Loan Party and any Governmental Authority, materially adversely affecting any Welltower Loan Party, any Borrower Party or any Project; (c) any written notice of Healthcare Investigations; (d) any written notice of default or termination given or made to any Property Manager by any Welltower Loan Party or received from any Property Manager; and (e) any written notice of default or termination under any license or permit necessary for the operation of any Project in the manner required by the Loan Agreement. If any such notices or Healthcare Investigations have been received or commenced, they are listed on *Schedule 5* and Welltower Loan Parties have provided (or are providing concurrently with this Certificate) Administrative Agent with copies of such notices and relevant materials referred to herein.

11. The calculations set forth on *Schedule 6* have been made to determine compliance with Section 7.13 and Section 7.18 of the Loan Agreement, which calculations are true, correct, and complete.

12. The calculations set forth on *Schedule 7* have been made to determine Guarantor's compliance with Section 5.3 of the Recourse Guaranty Agreement, which calculations are true, correct, and complete.²

Notwithstanding anything to the contrary contained herein, all representation, warranties and certifications made here in with respect to LCRA are limited to the knowledge of Borrower or Kansas City Master Lessee.

Signatures Follow

² Can be deleted so long as Guarantor is a publically traded entity.

The forgoing certification and computations are made as of _____, 20__ and delivered this ____ day of _____, 20__.

Sincerely,

[*Borrower]

***ADD SIGNATURE FOR GUARANTOR**

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SCHEDULE 1

**Description of Defaults or Potential
Defaults and Cures Being Undertaken**

DRAFT

SCHEDULE 2

Tax Liens or Withholding Obligations

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SCHEDULE 3

List of all Deposit Accounts

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SCHEDULE 4

Exceptions to Covenant Compliance

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SCHEDULE 5

Schedule of Notices of Default, Litigation, etc.

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SCHEDULE 6

Financial Covenant Analysis

As of: _____, 20__

A. <u>ADJUSTED NET OPERATING INCOME:</u>	
(1) Aggregate Projected Rental Revenue for all Projects (3 month period):	(1) \$ _____
(2) Aggregate Revenue In Place Adjustment for all Projects (3-month period):	(2) \$ _____
(3) Aggregate Adjusted Revenue for all Projects ((Line 1 + Line 2) x 4):	(3) \$ _____
(4) Aggregate Adjusted Expenses for all Projects(prior 12-month period):	(4) \$ _____
(5) Adjusted Net Operating Income (Line 3 – Line 4):	(5) \$ _____
B. <u>PROJECT YIELD:</u>	
(1) Outstanding principal balance of Loan:	(1) \$ _____
(2) Calculated Project Yield:	(2) _____
(3) Required Project Yield:	(3) <input type="checkbox"/> 7.00% <input type="checkbox"/> 7.50% <input type="checkbox"/> 8.00%
(4) In Compliance:	(4) <input type="checkbox"/> Yes <input type="checkbox"/> No
C. <u>DEBT SERVICE COVERAGE RATIO:</u>	
(1) Debt Service:	(1) \$ _____
(2) Calculated Debt Service Coverage Ratio:	(2) _____:1.00
(3) Required Debt Service Coverage Ratio:	(3) 1.25:1.00
(4) In Compliance:	(4) <input type="checkbox"/> Yes <input type="checkbox"/> No

SCHEDULE 7³

Guarantor Financial Covenant Analysis

As of: _____, 20__

<u>GUARANTOR'S SHARE HOLDER EQUITY:</u>	
Required:	\$1,000,000,000
In Compliance:	<input type="checkbox"/> Yes <input type="checkbox"/> No

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³ Can be deleted so long as Guarantor is a publically traded entity.

SCHEDULE 7.13

FORM OF EXCESS CASH FLOW CERTIFICATE

Excess Cash Flow Certificate

Date: _____, _____

Capital One, National Association
as Administrative Agent
77 West Wacker Drive, 10th Floor
Chicago, Illinois 60601
Attention: Credit Executive

Re: Excess Cash Flow Certificate

Ladies and Gentlemen:

This certificate is given in accordance with Section 7.13 of the Loan Agreement dated * _____ (as amended from time to time, the "Loan Agreement"), among Jacksonville Medical Office Building, LLC, a Delaware limited liability company, Old Bridge Medical Office Building, LLC, a Delaware limited liability company, Petoskey Medical Office Building, LLC, a Delaware limited liability company, Lafayette Medical Complex I, LLC, a Delaware limited liability company, TG Brandon Healthplex, LLC, a Delaware limited liability company, Rochester Hills Health and Wellness Building, LLC, a Delaware limited liability company, and Land Clearance for Redevelopment Authority of Kansas City, Missouri (each a "Borrower" and collectively, the "Borrowers"), Hospital Hill Medical Office Building, LLC, a Delaware limited liability company ("Kansas City Master Lessee") and Capital One, National Association, as collateral agent and Administrative Agent for the lenders under the Loan Agreement (in such capacity, the "Administrative Agent"). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

I hereby certify that:

1. I am an authorized representative of Borrower (other than LCRA) and Kansas City Master Lessee (collectively, the "Welltower Loan Parties").
2. Based on my review of the financial statements delivered with this certificate in accordance with the Section 7.13 of the Loan Agreement, such (a) financial statements fairly present the financial condition of Welltower Loan Parties as the dates of such financial statements in all material respects and (b) have been prepared in accordance with GAAP consistently applied. There have been no material changes in accounting policies or financial reporting practices of any Borrower Party since _____, 20__ [insert date of last year-end financial statement

provided by Borrowers], or, if any such change has occurred, I have attached a description of such changes.

3. Attached as Schedule 1 hereto is true, complete and correct calculation of the Excess Cash Flow for the following month: _____. Welltower Loan Parties have caused an amount equal to such Excess Cash Flow to be deposited into the Project Yield Fund.

4. As of the date of this Excess Cash Flow Certificate, no condition or event that constitutes a Potential Default or an Event of Default is in existence, or if any Potential Default or Event or Default existed or exists, the following is a description of the nature and period of existence thereof and what action Welltower Loan Parties have taken or proposes to take with respect thereto: _____.

The forgoing certification and computations are made as of _____, 20__ and delivered this ____ day of _____, 20__.

Sincerely,

[*Borrower]

Schedule 1

Calculation of Excess Cash Flow

DRAFT

SCHEDULE 11.36

POST-CLOSING OBLIGATIONS

<u>Project</u>	<u>Description of Post-Closing Obligation</u>	<u>Required Completion Date</u>
*TBD	*TBD	*TBD

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