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**ZH INTERNATIONAL HOLDINGS LIMITED**

**正恒國際控股有限公司**

*(Incorporated in Hong Kong with limited liability)*

(Stock Code: 185)

## **OVERSEAS REGULATORY ANNOUNCEMENT**

Please refer to the attached Form 8-K filed by Global Medical REIT, Inc., a subsidiary company of the Company whose shares are listed on the Over-The-Counter Board in the United States of America.

By Order of the Board  
**ZH International Holdings Limited**  
**Zhang Jingguo**  
*Chairman, Chief Executive Officer  
and Executive Director*

Hong Kong, 7 April, 2016

*As at the date of this announcement, the executive Directors are Mr. Zhang Jingguo, Mr. Zhang Guoqiang, Mr. Eric Jackson Chang; the non-executive Director is Ms. Huang Yanping and the independent non-executive Directors are Dr. Liu Qiao, Mr. Liu Da and Mr. Ma Yuntao.*

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

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FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): April 6, 2016 (March 31, 2016)

**Global Medical REIT Inc.**

(Exact name of registrant as specified in its charter)

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

**8091371022**  
(Commission File No.)

**46-4757266**  
(IRS Employer Identification No.)

**4800 Montgomery Lane, Suite 450**  
**Bethesda, MD**  
(Address of principal executive offices)

**20814**  
(Zip Code)

Registrant's telephone number, including area code

**202-524-6851**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

## **Item 1.01 Entry into a Material Definitive Agreement**

### Cantor Commercial Real Estate, LP

On March 31, 2016, through certain of our subsidiaries, Global Medical REIT Inc. (“GMR” or the “Company”) entered into a portfolio commercial mortgage-backed securities loan with Cantor Commercial Real Estate Lending, LP (“Cantor”). The subsidiaries are GMR Melbourne, LLC, GMR Westland, LLC, GMR Memphis, LLC, and GMR Plano, LLC (“GMR Loan Subsidiaries”). The loan with Cantor (the “Cantor Loan”) has cross-default and cross-collateral terms. As described in more detail below, the Company used the proceeds of this loan to acquire the Marina Towers (Melbourne, FL) and the Surgical Institute of Michigan (Westland, MI) properties, and to refinance the Star Medical (Plano, TX) assets, and we granted a security interest in the Gastro One (Memphis, TN) assets.

The Cantor Loan has a maturity date of April 6, 2026 and accrues annual interest at 5.22%. The first five years of the term require interest only payments and after that payments will include interest and principal, amortized over a 30 year schedule. Prepayment can only occur within four months prior to the maturity date, except that after the earlier of (a) 2 years after the loan is placed in a securitized mortgage pool, or (ii) 4 years after the closing date, the Cantor Loan can be fully and partially defeased upon payment of amounts due under the Cantor Loan and payment of a defeasance amount that is sufficient to purchase U.S. government securities equal to the scheduled payments of principal, interest, fees, and any other amounts due related to a full or partial defeasance under the Cantor Loan.

The Company is securing the payment of the Cantor Loan with the assets, including property, facilities, and rents, held by the GMR Loan Subsidiaries. GMR has agreed to guarantee certain customary recourse obligations, including findings of fraud, gross negligence, or breach of environmental covenants by GMR Loan Subsidiaries. The GMR Loan Subsidiaries will be required to maintain monthly debt service coverage ratio of 1.45:1.00 for all of the collateral properties in the aggregate. Additional details of the Loan are disclosed as Exhibit 10.1 to this Current Report on Form 8-K.

### Star Medical Center, Plano, Texas

With the proceeds from the Cantor Loan, the Company, through its subsidiary GMR Plano, LLC, also pre-paid its loan from East West Bank on the Star Medical Center property in Plano, Texas. As previously reported in its Current Report on Form 8-K filed on February 3, 2016, the Company entered into a loan with East West Bank in the amount of \$9,223,500.00.

### Gastro One, Memphis, Tennessee

As part of the Cantor Loan, the Company agreed to issue a security interest on five of the six Gastro One properties in favor of Cantor to secure repayment of the Cantor Loan. The Company previously reported the acquisition of the Gastro One properties in its Current Report on Form 8-K filed on January 7, 2016. The Asset Purchase Agreement for the Gastro One properties was previously filed as Exhibit 10.1 to the Current Report on Form 8-K filed on December 17, 2015.

## **Item 2.01 Completion of an Acquisition or Disposition of Assets**

### Marina Towers, Melbourne, Florida

On March 31, 2016, the Company, through its subsidiary GMR Melbourne, LLC, closed on an Asset Purchase Agreement (the “Agreement”) with an unrelated party, Marina Towers, LLC, a Florida limited liability company (the “Seller”), to acquire a 75,899 square-foot medical office building for a purchase price of \$15.45 million (the “Purchase Price”). The facility is located at 709 S. Harbor City Blvd., Melbourne, FL on 1.9 acres of riverfront land. The acquisition includes the land and building, an easement on the adjacent property to the north for surface parking, all tenant leases, and above and below ground parking (the “Marina Property”).

The Property was leased back to Marina Towers, LLC (the “Tenant”) via a 10-year absolute triple-net master lease agreement that expires in 2026. The Tenant has two successive options to renew the lease for five-year periods on the same terms and conditions as the primary non-revocable lease term with the exception of rent, which will be adjusted to the prevailing fair market rent at renewal and will escalate in successive years during the extended lease period at two percent (2%) annually. The Tenant’s obligations under its lease with the Company are fully guaranteed by its parent company, First Choice Healthcare Solutions, Inc. (FCHS: OTCQB), a Delaware corporation.

Funding for this transaction was provided by equity from the Company, and third-party debt from Cantor as described above. The Company utilized \$9,270,000.00 of the Cantor Loan to purchase the Marina Property. The proceeds of the Loan were used to (i) acquire the real property and all other assets under the Agreement; and (ii) pay transaction costs. Additional equity funding for the acquisition and related transaction costs was provided by the Company in the amount of \$6,549,538.83. . The Agreement was previously filed as Exhibit 10.1 to the Current Report on Form 8-K filed on December 17, 2015.

Surgical Institute of Michigan, Westland, Michigan

On March 31, 2016, with the proceeds of the Cantor Loan, the Company, through its subsidiary GMR Westland, LLC, purchased 15,018 square foot medical building located in Westland, Michigan from Cherry Hill Real Estate, LLC for the purchase price of \$4,750,000.

Also on March 31, 2016, GMR Westland, LLC entered into a new lease with the current tenant, the Surgical Institute of Michigan, LLC. The Westland property will be leased via an absolute triple-net lease agreement that expires on March 31, 2026. The tenant has two successive options to renew the lease for ten year periods on the same terms and conditions as the primary non-revocable lease term with the exception of rent, which will be computed at the same rate of escalation used during the fixed lease term.

The foregoing description of the loan and agreements does not purport to be complete and is qualified in its entirety by the respective loan and agreements.

**Item 9.01 Financial Statements and Exhibits**

**(a) Financial Statements of Business Acquired**

Information about First Choice Healthcare Solutions, Inc., including its audited historical financial statements, can be obtained from its Annual Report on Form 10-K and other reports and filings available on its website at <http://www.myfchs.com/> or on the SEC website at [www.sec.gov](http://www.sec.gov).

**(d) Exhibits**

<b>Exhibit</b>	<b>Description</b>
10.1	Loan with Cantor Commercial Real Estate LP
10.2	Purchase Agreement with Cherry Hill Real Estate, LLC
10.3	Lease between GMR Westland, LLC and Surgical Institute of Michigan, LLC

**SIGNATURES**

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

**Global Medical REIT Inc.**

Date: April 6, 2016

By: /s/ David Young  
David Young  
Chief Executive Officer (Principal Executive Officer)

**LOAN AGREEMENT**

Dated as of March 31, 2016

between

**GMR MEMPHIS, LLC, GMR PLANO, LLC, GMR MELBOURNE, LLC AND GMR WESTLAND, LLC**  
collectively, as Borrower

and

**CANTOR COMMERCIAL REAL ESTATE LENDING, L.P.,**  
as Lender

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## LOAN AGREEMENT

This LOAN AGREEMENT, dated as of March 31, 2016 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “*Agreement*”), between CANTOR COMMERCIAL REAL ESTATE LENDING, L.P., a Delaware limited partnership, having an address at 110 East 59th Street, 6th Floor, New York, New York 10022 (“*Lender*”), and GMR MEMPHIS, LLC, a Delaware limited liability company (“*Borrower 1*”), GMR PLANO, LLC, a Delaware limited liability company (“*Borrower 2*”), GMR MELBOURNE, LLC, a Delaware limited liability company (“*Borrower 3*”) and GMR WESTLAND, LLC, a Delaware limited liability company (“*Borrower 4*”), each having its principal place of business at 4800 Montgomery Lane, Suite 450 Bethesda, Maryland 20814 (Borrower 1, Borrower 2, Borrower 3 and Borrower 4 are hereinafter referred to as, individually or collectively as the context may require, “*Borrower*”).

### WITNESSETH:

WHEREAS, Borrower desires to obtain a loan in the original principal amount of Thirty-Two Million Ninety Seven Thousand Four Hundred and No/100 Dollars (\$32,097,400.00) from Lender pursuant to this Agreement (the “*Loan*”); and

WHEREAS, Lender is willing to make the Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

### ARTICLE I

#### DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1            Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“*2020 Exeter Parcel*” shall mean that portion of the Gastro Property located at 2020 Exeter Road, Germantown, Tennessee and more particularly described on Exhibit A-1 attached hereto and labeled “[2020 EXETER ROAD LEGAL DESCRIPTION]”, but no other portion of the Gastro Property.

“*Above the Line SPE Triggers*” shall have the meaning set forth in Section 3.1(b) hereof.

“*Acceptable Estoppel*” shall mean a tenant estoppel certificate in form and substance acceptable to Lender that is executed by the applicable Tenant, certifying, among other things, that such Tenant has taken possession of and is in occupancy of the premises demised under such Tenant’s Lease, that no free rent or rent abatement period then exists, that each such Tenant is currently paying full rent, that no default or event of default exists under each such Tenant’s Lease, and that such Tenant is Continuously Operating.

“*Acceptable Lease Extension*” shall mean a duly executed and delivered renewal or extension of the Occupancy Reserve Lease between Borrower, as landlord, and the Occupancy Reserve Tenant that triggered the applicable Lease Trigger Period, which renewal or extension (including the documentation evidencing the same) is consented to in advance by Lender, such consent not to be unreasonably withheld.

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“ **Acceptable Replacement Lease** ” shall mean each Lease duly executed and delivered by Borrower, as landlord, and a Tenant acceptable to Lender, which is upon terms and in form and substance acceptable to Lender and otherwise complies with the terms and conditions of Section 5.1.20 hereof.

“ **ACM Maintenance Program** ” shall have the meaning set forth in Section 5.1.27(a) hereof.

“ **ACM's** ” shall have the meaning set forth in Section 5.1.27(a) hereof.

“ **Additional Insolvency Opinion** ” shall have the meaning set forth in Section 5.2.12(b) hereof.

“ **Adjusted Release Amount** ” shall mean in connection with a Partial Defeasance Event with respect to any of the Properties, an amount equal to the greater of (a) one hundred thirty percent (130%) of the Allocated Loan Amount with respect to such Property that is the Release Parcel and (b) ninety-five percent (95%) of the Net Sale Proceeds with respect to such Release Parcel.

“ **Affiliate** ” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, 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.

“ **Affiliated Manager** ” shall mean any Manager in which Sponsor or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

“ **Agreement** ” shall mean this Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“ **Allocated Loan Amount** ” shall mean (i) with respect to the Gastro One Property, \$10,727,400.00, (ii) with respect to the Star Medical Center Property, \$9,250,000.00, (iii) with respect to the Marina Towers Property \$9,270,000.00 and (iv) with respect to the Surgical Institute of Michigan Property \$2,850,000.00.

“ **Allocated Loan Ratio** ” shall mean, with respect to each individual Property, the ratio of (a) the Allocated Loan Amount with respect to such Property to (b) the original principal amount of the Loan.

“ **ALTA** ” shall mean American Land Title Association or any successor thereto.

“ **Annual Budget** ” shall mean the operating budget, including all planned Capital Expenditures, for each of the Properties prepared by Borrower in accordance with Section 5.1.11(d) hereof for the applicable Fiscal Year or other period.

“ **Approved Accounting Method** ” means the income tax method of accounting or another accounting method commonly used for individuals or assets similarly situated to the Properties which is consistently applied and reasonably acceptable to Lender; *provided, however*, to the extent the use of another accounting method would result in the qualification, downgrade or withdrawal of the credit rating of the applicable Securities, Borrower agrees, upon notice from Lender, to immediately commence using GAAP.

“ **Approved Annual Budget** ” shall have the meaning set forth in Section 5.1.11(d) hereof.

“ **Approved Bank** ” shall mean a domestic bank or the U.S. agency, or branch of a foreign bank, or other financial institution (having locations acceptable to Lender) which has the Required Rating.

“ **Approved Leasing Expenses** ” shall mean actual out-of-pocket expenses incurred by Borrower, on market terms and conditions, in leasing space at any of the Properties pursuant to Leases entered into in accordance with the Loan Documents, including brokerage commissions and tenant improvements, which expenses (a) are (i) specifically approved by Lender in connection with approving the applicable Lease, (ii) incurred in the ordinary course of business and on market terms and conditions in connection with Leases which do not require Lender’s approval under the Loan Documents, and with respect to which Lender shall have received a budget for such tenant improvement costs and a schedule of leasing commissions payments payable in connection therewith (which leasing commission payments shall be deemed

“ **Approved Leasing Expenses** ” for purposes of this Agreement so long as same are comparable to existing local market rates), or (iii) otherwise approved in writing by Lender, and (b) are substantiated by executed Lease documents and brokerage agreements.

“ **Approved Rating Agencies** ” shall mean each of S&P, Moody’s, Fitch and Morningstar or any other nationally-recognized statistical rating agency which has been approved by Lender and designated by Lender to assign a rating to the Securities.

“ **Assignments of Leases** ” shall mean, collectively, those certain first priority Assignments of Leases and Rents, dated as of the date hereof, from each Borrower, as assignor, to Lender, as assignee, assigning to Lender all of each such Borrower’s interest in and to the Leases and Rents of each of the applicable Properties as security for the Loan, as any of the same may be amended, restated, replaced, supplemented or otherwise modified from time to time (each, individually, an “ **Assignment of Leases** ”).

“ **Assignment of Management Agreement** ” shall mean an assignment of management agreement and subordination of management fees with the Manager, if required hereunder, from Borrower and Manager, if required hereunder, in favor of Lender, which agreement must be in form and substance acceptable to Lender, together with any amendments, replacements, supplements or other modifications thereto from time to time.

“ **Award** ” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or part of any Property.

“ **Bankruptcy Action** ” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner for such Person or any portion of any Property; (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets or (g) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“ **Bankruptcy Code** ” shall mean Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“ **Basic Carrying Costs** ” shall mean, for any period, the sum of the following costs: (a) Taxes, (b) Other Charges and (c) Insurance Premiums.

“ **Borrower** ” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“ **Borrower’s Account** ” shall mean that certain deposit account specified in Section 5(a) of each Clearing Account Agreement (collectively, the “ **Borrower’s Accounts** ”).

“ **Building** ” shall mean, as the context may require, (i) the Improvements now or hereafter constructed on the Gastro One Property, (ii) the Improvements now or hereafter constructed on the Star Medical Center Property, (iii) the Improvements now or hereafter constructed on the Marina Towers Property or (iv) the Improvements now or hereafter constructed on the Surgical Institute of Michigan Property.

“ **Business Day** ” shall mean any day other than a Saturday, Sunday or any other day on which any of the following institutions is not open for business: (i) banks and savings and loan institutions in New York, New York, (ii) the trustee under a Securitization (or, if no Securitization has occurred, Lender), (iii) any Servicer, (iv) the financial institution that maintains any collection account for or on behalf of any Servicer or any Reserve Funds, (v) the New York Stock Exchange or (vi) the Federal Reserve Bank of New York.

“ **Cantor** ” shall have the meaning set forth in Section 2.5.3 hereof.

“ **Capital Expenditures** ” shall mean, for any period, the amount expended for items capitalized under the Approved Accounting Method (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

“ **Cash Management Account** ” shall have the meaning set forth in Section 2.7.2(a) hereof.

“ **Cash Management Agreement** ” shall mean that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Deposit Bank and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“ **Cash Management Period** ” shall be deemed to (a) commence upon: (i) the commencement of any Cash Trap Period; (ii) the failure by Borrower, after the end of two (2) consecutive calendar quarters, to maintain the Debt Service Coverage Ratio of at least 1.35 to 1.0 or (iii) the occurrence from time to time of a Lease Trigger Period; and (b) end upon Lender giving notice to Borrower and Clearing Bank that the Cash Management Period has ended, which notice Lender shall only be required to give if: (1) the Loan and all other obligations under the Loan Documents have been repaid in full; (2) there has been a full Defeasance Event; (3) in the case of the foregoing clause (a)(i) or (a)(ii), for two (2) consecutive calendar quarters since the commencement of the existing Cash Management Period (A) no Cash Trap Period, Lease Trigger Period, Default or Event of Default has occurred or remains in effect during such period, (B) no other Cash Management Period is then in effect and no event that would trigger another Cash Management Period has occurred and (C) the Debt Service Coverage Ratio after the end of each of such two (2) consecutive calendar quarters has been at least equal to 1.40 to 1.0.

“ **Cash Trap Period** ” shall be deemed to (a) commence upon: (i) the occurrence of any Event of Default; (ii) the occurrence of any Bankruptcy Action of Borrower, Principal, Guarantor or Manager (if required hereunder); or (iii) the failure by Borrower to maintain the Debt Service Coverage Ratio of at least 1.20 to 1.0 after the end of any calendar quarter; and (b) have terminated, if ever: (i) in the case of the foregoing clause (a)(i), Lender accepts a cure of the Event of Default giving rise to such Cash Trap Period and no other Event of Default has occurred which is continuing; (ii) in the case of a Bankruptcy Action of Manager only, if Borrower replaces the Manager with a Qualified Manager under a Replacement Management Agreement; or (iii) in the case of the foregoing clause (a)(ii) only, for two (2) consecutive calendar quarters since the commencement of the existing Cash Trap Period, (1) the Debt Service Coverage Ratio has been at least equal to 1.40 to 1.0 at the end of each such quarter, and (2) no other Cash Trap Period has occurred or remains in effect during such period.

“ **Casualty** ” shall have the meaning set forth in Section 6.2 hereof.

“ **Casualty Consultant** ” shall have the meaning set forth in Section 6.4(b)(iii) hereof.

“ **Clearing Account(s)** ” shall have the meaning set forth in Section 2.7.1(a) hereof.

“ **Clearing Account Agreement(s)** ” shall mean those certain Deposit Account Control Agreements, dated the date hereof among the applicable Borrower, Lender and Clearing Bank, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, relating to funds deposited in the Clearing Accounts (each, individually, a “ **Clearing Account Agreement** ”).

“ **Clearing Bank** ” shall mean Wells Fargo Bank, N.A. or any successor or permitted assigns thereof.

“ **Closing Date** ” shall mean the date of the funding of the Loan.

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

“ **Collateral** ” shall have the meaning ascribed to such term in the Security Instruments.

“ **Condemnation** ” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of any Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting any Property or any part of any of them.

“ **Condemnation Proceeds** ” shall have the meaning set forth in Section 6.4(b) hereof.

“ **Continuously Operate** ” or “ **Continuously Operating** ” shall mean the uninterrupted operation of a Tenant’s regular and customary business, open to the public, fully staffed, during the normal business hours of the medical centers and/or office buildings located on the Property by the Tenant, its subtenants or combination thereof. An interruption for a period of thirty (30) consecutive days shall be conclusive evidence that a Tenant or subtenant has failed to Continuously Operate. Temporary cessation of normal business operations during an alteration of the Improvements that is being conducted in accordance with Section 5.1.21 or after a Casualty or Condemnation during a Restoration performed in accordance with the terms of this Agreement shall not, in either instance, constitute an interruption of Tenant’s or subtenant’s regular and customary business for the purposes of this definition.

“ **Contribution Agreement** ” shall mean that certain Contribution Agreement dated as of the date hereof by and between each Borrower, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“ **Control** ” shall mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of such Person, whether through ownership of voting securities, by contract or otherwise. “ **Controlled** ” and “ **Controlling** ” shall have correlative meanings.

“ **Covered Rating Agency Information** ” shall have the meaning set forth in Section 10.13(d) hereof.

“ **Debt** ” shall mean the Outstanding Principal Balance together with all interest accrued and unpaid thereon and all other sums (including the Defeasance Payment Amount, and any Yield Maintenance Premium) due to Lender in respect of the Loan under the Note, this Agreement, the Security Instruments or any other Loan Document.

“ **Debt Service** ” shall mean, with respect to any particular period of time, the greater of (a) the sum of all interest and, if applicable, principal payments actually due with respect to the Loan over such period and (b) the sum of all principal and interest payments that would be due and payable over such period with respect to a loan in a principal amount equal to the original principal amount of the Loan, assuming a thirty (30) year amortization period and an interest rate equal to the Interest Rate.

“ **Debt Service Coverage Ratio** ” shall mean, as of any date, the ratio calculated by Lender of (a) the Net Operating Income for the Properties (as a whole) for the twelve (12) month period ending with the most recently completed calendar month to (b) the Debt Service with respect to such period.

“ **Default** ” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“ **Default Rate** ” shall mean a rate per annum equal to the lesser of (a) the Maximum Legal Rate and (b) five percent (5%) above the Interest Rate.

“ **Defeasance Date** ” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

“ **Defeasance Deposit** ” shall mean an amount equal to the sum of (x) an amount sufficient to purchase U.S. Obligations which provide payments that will meet the Scheduled Defeasance Payments, (y) costs and expenses incurred or to be incurred in the purchase of the U.S. Obligations which provide payments that will meet the Scheduled Defeasance Payments and (z) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the Defeasance Event (including, without limitation, any fees and expenses of accountants, attorneys and Rating Agencies).

“ **Defeasance Event** ” shall have the meaning set forth in Section 2.5.1(a) hereof.

“ **Defeasance Payment Amount** ” shall mean the amount which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

“ **Defeased Note** ” shall have the meaning set forth in Section 2.5.4 hereof.

“ **Deposit Bank** ” shall mean Wells Fargo Bank, N.A. or any successor Eligible Institution acting as “Deposit Bank” under the Cash Management Agreement.

“ **Disclosure Document** ” shall mean a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents or marketing materials, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

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

“ **Eligible Account** ” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a Federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a Federal or state chartered depository institution or trust company acting in its fiduciary capacity that has a Moody’s rating of at least “Baa3” and which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. § 9.10(b), having in either case a combined capital and surplus of at least \$50,000,000.00 and subject to supervision or examination by Federal and state authority, as applicable. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“ **Eligible Institution** ” shall mean a depository institution or trust company insured by the Federal Deposit Insurance Corporation, the short-term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P and “P-1” by Moody’s, in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “A+” by S&P and “Aa3” by Moody’s).

“ **Embargoed Person** ” shall mean any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA Patriot Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law.

“ **Environmental Indemnity** ” shall mean that certain Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.



“ **Environmental Statutes** ” shall mean any present and future Federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, and/or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term “Environmental Statutes” includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term “Environmental Statutes” also includes, but is not limited to, any present and future Federal, state and local laws, statutes ordinances, rules, regulations, permits or authorizations and the like, as well as common law, that (a) condition transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of any Property; (b) require notification or disclosure of releases of Hazardous Substances or other environmental condition of a property to any Governmental Authority or other Person, whether or not in connection with any transfer of title to or interest in such property; (c) impose conditions or requirements in connection with permits or other authorization for lawful activity; (d) relate to nuisance, trespass or other causes of action related to any Property; or (e) relate to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of any Property.

“ **ERISA** ” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the ruling issued thereunder.

“ **ERISA Affiliate** ” shall mean each person (as defined in section 3(9) of ERISA) that together with Borrower would be deemed to be a “single employer” within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ **Event of Default** ” shall have the meaning set forth in Section 8.1(a) hereof.

“ **Excess Cash** ” shall have the meaning set forth in Section 2.7.2(b)(viii) hereof.

“ **Excess Cash Reserve Account** ” shall have the meaning set forth in Section 7.5.1 hereof.

“ **Excess Cash Reserve Funds** ” shall have the meaning set forth in Section 7.5.1 hereof.

“ **Exchange Act** ” shall mean the Securities Exchange Act of 1934, as the same may be amended, modified or replaced, from time to time.

“ **Exchange Act Filing** ” shall have the meaning set forth in Section 5.1.11(f) hereof.

“ **Extraordinary Expense** ” shall have the meaning set forth in Section 5.1.11(e) hereof.

“ **First Payment Date** ” shall mean May 6, 2016.

“ **Fiscal Year** ” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“ **Fitch** ” shall mean Fitch, Inc.

“ **Force Majeure** ” shall mean an extraordinary event or circumstance beyond the reasonable control of Borrower, including war, strike, riot, crime, fire, flood or other act of God, which causes complete business interruption at the applicable Property; provided, however, that (i) any lack of funds except to the extent same is due to a default by Lender in advancing funds pursuant to the terms and conditions of this Agreement and/or (ii) a dislocation in capital or financial markets or economic conditions generally shall not be deemed to be a condition beyond the control of Borrower.

“ **Full Defeasance Event** ” shall have the meaning set forth in Section 2.5.1(a) hereof.

“ **Full Replacement Cost** ” shall have the meaning set forth in Section 6.1(a)(i).

“ **GAAP** ” shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

“ **Gastro One** ” shall mean Gastroenterology Center of the MidSouth, P.C., a Tennessee professional corporation, together with its permitted successors or assigns.

“ **Gastro One Lease** ” shall mean that certain Lease, dated January 1, 2016, by and between Borrower 1, as landlord, and Gastro One, as tenant and as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time, subject to and in accordance with Section 5.1.20 hereof.

“ **Gastro One Property** ” shall mean each parcel of real property described on Exhibit A-1, the Improvements thereon and all Personal Property owned by Borrower 1 and encumbered by the applicable Security Instruments, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clause of such Security Instrument.

“ **Governmental Authority** ” shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (Federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“ **Gross Income from Operations** ” shall mean, for any period, all income, computed in accordance with the Approved Accounting Method, derived from the ownership and operation of the Properties or any individual Property, as applicable, from whatever source during such period, including, but not limited to, Rents from Tenants that are (directly or through subtenants) in occupancy, open for business and paying full contractual rent without right of offset or credit, utility charges, escalations, forfeited security deposits, interest (if any) on credit accounts and on Reserve Funds, business interruption or other loss of income or rental insurance proceeds, service fees or charges, license fees, parking fees, rent concessions or credits, and other pass-through or reimbursements paid by Tenants under the Leases of any nature but excluding (i) Rents from month to month Tenants, from Tenants during a free rent period or from Tenants that are included in any Bankruptcy Action, (ii) sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, (iii) refunds and uncollectible accounts, (iv) proceeds from the sale of furniture, fixtures and equipment, (v) Insurance Proceeds and Condemnation Proceeds (other than business interruption or other loss of income insurance), and (vi) any disbursements to Borrower from any of the Reserve Funds.

“ **Guarantor** ” shall mean Global Medical REIT Inc., a Maryland corporation.

“ **Guaranty** ” shall mean that certain Guaranty of Recourse Obligations (Unsecured), dated as of the date hereof, from Guarantor in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“ **Hazardous Substances** ” shall include, but is not limited to, (a) any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Statutes or that may have a negative impact on human health or the environment, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, but excluding substances of kinds and in amounts ordinarily and customarily used or stored in properties similar to the Property for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Statutes, and (b) mold, mycotoxins, microbial matter, and/or airborne pathogens (naturally occurring or otherwise) which pose a threat (imminent or otherwise) to human health or the environment or adversely affect any Property.

“ **Improvements** ” shall have the meaning set forth in the granting clause of each Security Instrument.

“ **Indebtedness** ” shall mean for any Person, on a particular date, the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt and preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than Permitted Encumbrances).

“ **Indemnified Liabilities** ” shall have the meaning set forth in Section 10.13(b) hereof.

“ **Indemnified Parties** ” shall mean Lender and any Affiliate or designee of Lender that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of Lender that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, any Person who is or will have been involved in the origination of the Loan, any Person who is or will have been involved in the servicing of the Loan, any Person in whose name the encumbrances created by the Security Instruments are or will have been recorded, any Person who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties) as well as the respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to, any other Person who holds or acquires or will have held a participation or other full or partial interest in the Loan, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to any successors by merger, consolidation or acquisition of all or a substantial portion of Lender’s assets and business).

“ **Indemnifying Person** ” shall mean Borrower and Guarantor, on a joint and several basis.

“ **Independent Director** ” shall mean a natural Person who (a) is not (at the time of initial appointment as director or manager, or at any time while serving as a director or manager) and is not, has never been, and will not be (at any time while serving as a director or manager): (i) a stockholder, partner, member or other equity owner, director (with the exception of serving as the Independent Director of Borrower), officer, employee, attorney or counsel of Borrower, Guarantor or any Affiliate of Borrower or Guarantor, (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Borrower, Guarantor or any Affiliate of Borrower or Guarantor, (iii) a Person Controlling or under common Control with any such stockholder, partner, member or other equity owner, director, officer, customer, supplier or other Person, (iv) a member of the immediate family of any such stockholder, partner, member, equity owner, director, officer, employee, manager, customer, supplier or other Person, or (v) otherwise affiliated with Borrower, Guarantor or any stockholder, member, partner, director, officer, employee, attorney or counsel of Borrower or any Guarantor, and (b) has (i) prior experience as an independent director or independent manager for a corporation, a trust or a limited liability company whose charter documents required the unanimous consent of all independent directors or independent managers thereof before such corporation, trust or limited liability company could consent to the institution of bankruptcy or insolvency proceedings against it or could file a petition seeking relief under any applicable Federal or state law relating to bankruptcy and (ii) at least three (3) years of employment experience with one or more nationally-recognized professional service companies that provides, inter alia, professional independent directors or independent managers in the ordinary course of their respective business to issuers of securitization or structured finance instruments, agreements or securities or lenders originating commercial real estate loans for inclusion in securitization or structured finance instruments, agreements or securities and is at all times during his or her service as an Independent Director of Borrower an employee of such a company or companies. A natural Person who otherwise satisfies the foregoing definition other than subclause (a)(i) of this definition by reason of being the Independent Director of a Special Purpose Entity affiliated with Borrower shall not be disqualified from serving as an Independent Director of the Borrower, provided that the fees that such individual earns from serving as Independent Director of affiliates of the Borrower in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year.

As used in this definition and in the definition of “Special Purpose Entity,” the term “nationally recognized professional service company” shall mean Corporation Service Company, CT Corporation, Stewart Management Corporation, National Registered Agents, Inc. and Independent Director Services, Inc. and any other Person approved in writing by Lender.

“ **Individual Property Debt Service** ” shall mean, with respect to any Property and any particular period of time, the amount equal to the Allocated Loan Ratio for such Property multiplied by the Debt Service for such period.

“ **Individual Property Debt Service Coverage Ratio** ” shall mean, with respect to any Property as of any date, the ratio calculated by Lender of (a) the Net Operating Income with respect to such Property for the twelve (12) month period ending with the most recently completed calendar month to (b) the Individual Property Debt Service for such Property with respect to such period.

“ **Individual Property Loan to Value Ratio** ” shall mean, with respect to any Property as of the date of its calculation, the ratio of (a) the amount equal to the Outstanding Principal Balance multiplied by the Allocated Loan Ratio for such Property to (b) the fair market value of such Property, as determined, in Lender’s sole discretion, by any commercially reasonable method permitted to a REMIC.

“ **Initial Insurance Premiums Deposit** ” shall mean the amount set forth on Schedule IV .

“ **Initial Rollover Reserve Deposit** ” shall mean the amount set forth on Schedule IV .

“ **Initial Tax Deposit** ” shall mean the amount set forth on Schedule IV .

“ **Insolvency Opinion** ” shall mean that certain substantive non-consolidation opinion letter, dated the date hereof, in connection with the Loan.

“ **Insurance Premiums** ” shall have the meaning set forth in Section 6.1(b) hereof.

“ **Insurance Proceeds** ” shall have the meaning set forth in Section 6.4(b) hereof.

“ **Interest Only Period** ” shall mean the period of time beginning on the Closing Date and continuing thereafter until and including the Payment Date occurring on April 6, 2021.

“ **Interest Period** ” shall mean (i) initially, the period commencing on and including the Closing Date and ending on and including the fifth (5<sup>th</sup>) day of the calendar month following the Closing Date, and (ii) thereafter, for any specified Payment Date including the Maturity Date, the period commencing on and including the sixth (6th) day of the calendar month prior to such Payment Date and ending on and including the fifth (5<sup>th</sup>) day of the calendar month in which such Payment Date occurs.

“ **Interest Rate** ” shall mean a fixed rate of 5.22000% per annum.

“ **Investor** ” shall have the meaning set forth in Section 9.1 hereof.

“ **IPO** ” shall mean a one-time sale of the stock in Sponsor, in connection with an initial public offering of such stock on the New York Stock Exchange or another nationally recognized stock exchange.

“ **Lease** ” shall mean any lease, sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property by or on behalf of Borrower, and (a) every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement, and (b) every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

“ **Lease Cure Event** ” shall mean: (a) in the case of a Lease Trigger Period under clause (a)(i) thereof, (i) either (A) an Acceptable Lease Extension is delivered to Lender, or (B) at least 80% of the space demised under the Occupancy Reserve Lease which triggered the applicable Lease Trigger Period has been re-leased pursuant to one or more Acceptable Replacement Leases delivered to Lender and the Proforma Debt Service Coverage Ratio is equal to or greater than 1.40 to 1.0 at the end of the third consecutive full calendar month succeeding any such delivery to Lender, (ii) Lender has received an Acceptable Estoppel for each Acceptable Lease Extension or Acceptable Replacement Lease, as applicable, and (iii) no other Lease Trigger Period is then in effect and no event that would trigger another Lease Trigger Period has occurred; or (b) in the case of a Lease Trigger Period under clause (a)(ii) thereof, (i) at least 80% of the space demised under the Occupancy Reserve Lease which triggered the applicable Lease Trigger Period has been re-leased pursuant to one or more Acceptable Replacement Leases delivered to Lender and the Proforma Debt Service Coverage Ratio is equal to or greater than 1.40 to 1.0 at the end of the third consecutive full calendar month succeeding any such delivery to Lender, (ii) Lender has received an Acceptable Estoppel for each Acceptable Replacement Lease, and (iii) no other Lease Trigger Period is then in effect and no event that would trigger another Lease Trigger Period has occurred. For the purposes of determining the space demised under each such Occupancy Reserve Lease for this definition, such demised space shall be equal to the space demised under such Occupancy Reserve Lease as of the Closing Date plus any additional space demised under such Occupancy Reserve Lease after the Closing Date. In order to facilitate Lender’s determination that a Lease Cure Event has occurred, during any Lease Trigger Period, Borrower must deliver to Lender each monthly financial reporting item set forth in Section 5.1.11(c) hereof (including all related certificates) on a monthly basis, notwithstanding any provision contained therein which allows Borrower to deliver such items on a quarterly basis instead of a monthly basis.

“ **Lease Trigger Period** ” shall: (a) commence upon the occurrence from time to time of any one or more of the following: (i) with respect to any Occupancy Reserve Tenant: the date which is the earlier to occur of (A) twelve (12) calendar months prior to each expiration date under such Tenant’s Lease, or (B) the date set forth in such Tenant’s Lease on or before which such Tenant is required to notify the landlord of its intent to either renew or terminate such Lease; and/or (ii) with respect to any Occupancy Reserve Tenant: (A) such Tenant fails to Continuously Operate, (B) such Tenant, or the guarantor of such Tenant’s obligations under such Tenant’s Lease, is the subject of a Bankruptcy Action, (C) such Tenant gives notice of its intent to terminate its Lease or to vacate or surrender its demised premises or otherwise vacates or surrenders its demised premises, or (D) such Tenant’s Lease terminates or expires, and (b) terminate, if ever, upon Lender giving notice to Borrower that an applicable Lease Cure Event has occurred.

“ **Legal Requirements** ” shall mean all Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including, without limitation, any Environmental Statutes, the Americans with Disabilities Act of 1990, as amended, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower, any Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to any Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“ **Lender** ” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“ **Letter of Credit** ” shall have the meaning set forth in Section 7.10(a) hereof.

“ **Liabilities** ” shall have the meaning set forth in Section 9.2 hereof.

“ **Licenses** ” shall have the meaning set forth in Section 4.1.22 hereof.

“ **Lien** ” shall mean any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien (statutory or otherwise), pledge, hypothecation, easement, restrictive covenant, preference, assignment, security interest, or any other encumbrance, charge or transfer of, or any agreement to enter into or create any of the foregoing, on or affecting Borrower, the Properties or any Property, or any portion thereof or any interest therein, or any direct or indirect interest in Borrower, including, without limitation, any conditional sale (other than a purchase and sale agreement where the Loan will be assumed by the purchaser or paid in full or defeased with respect to the applicable Property at the time of closing thereunder, all as in accordance with the terms hereof) or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“ **Liquid Assets** ” shall mean assets in the form of cash, cash equivalents, obligations of (or fully guaranteed as to principal and interest by) the United States or any agency or instrumentality thereof (provided the full faith and credit of the United States supports such obligation or guarantee), certificates of deposit issued by a commercial bank having net assets of not less than \$500 million, securities listed and traded on a recognized stock exchange or traded over the counter and listed in the National Association of Securities Dealers Automatic Quotations, or liquid debt instruments that have a readily ascertainable value and are regularly traded in a recognized financial market.

“ **Loan** ” shall have the meaning set forth in the recitals hereof.

“ **Loan Documents** ” shall mean, collectively, this Agreement, the Note, the Security Instruments, the Assignments of Leases, the Environmental Indemnity, the Assignments of Management Agreements, the Guaranty, the Clearing Account Agreements, the Cash Management Agreement, the Contribution Agreement and all other documents executed and/or delivered in connection with the Loan.

“ **Loan to Value Ratio** ” shall mean, as of the date of its calculation, the ratio of (i) the sum of the Outstanding Principal Balance of the Loan as of the date of such calculation to (ii) the fair market value of the Properties, as determined, in Lender’s sole discretion, by any commercially reasonable method permitted to a REMIC.

“ **Management Agreement** ” shall mean a management agreement entered into by and between Borrower and Qualified Manager which is in form and substance acceptable to Lender, pursuant to which Qualified Manager is to provide management and other services with respect to the Properties, or, if the context requires, the Replacement Management Agreement.

“ **Manager** ” shall mean a Qualified Manager who is managing the Properties in accordance with the terms and provisions of this Agreement pursuant to a Management Agreement.

“ **Marina Towers** ” shall mean Marina Towers, LLC, a Florida limited liability company, together with its permitted successors or assigns.

“ **Marina Towers Lease** ” shall mean that certain Lease, dated on or about the date hereof, by and between Borrower 3, as landlord, and Marina Towers, as tenant and as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time, subject to and in accordance with Section 5.1.20 hereof.

“ **Marina Towers Property** ” shall mean each parcel of real property described on Exhibit A-3, the Improvements thereon and all Personal Property owned by Borrower 3 and encumbered by the applicable Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clause of such Security Instrument.

“ **Material Action** ” means, with respect to Borrower, to consolidate or merge Borrower with or into any Person, or sell all or substantially all of the assets of Borrower, or to institute a Bankruptcy Action or take action in furtherance of any such action, or, to the fullest extent permitted by law, to dissolve or liquidate Borrower.

“ **Material Adverse Change** ” shall mean the business, operations, prospects, property, assets, liabilities or financial condition of any applicable Person and each of their subsidiaries, taken as a whole, or in the ability of any such Person to perform its obligations under the Loan Documents has changed in a manner which could impair the value of Lender’s security for the Loan or 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 the Lease, as the case may be, as determined by Lender in its reasonable discretion.

“ **Material Agreements** ” shall mean each contract and agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of each of the Properties, or any individual Property, other than the Management Agreement and the Leases, as to which either (a) there is an obligation of the applicable Borrower to pay more than \$100,000, in the aggregate, or (b) the term thereof extends beyond one year (unless cancelable on thirty (30) days or less notice without requiring the payment of termination fees or payments of any kind).

“ **Maturity Date** ” shall mean the date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

“ **Maximum Legal Rate** ” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“ **Monthly Debt Service Payment Amount** ” shall mean (a) during the Interest Only Period, a monthly payment of interest only on the Outstanding Principal Balance calculated in accordance with Section 2.2 hereof, and (b) after the Interest Only Period, a constant monthly payment of \$176,647.09.

“ **Moody’s** ” shall mean Moody’s Investors Service, Inc.

“ **Morningstar** ” shall mean Morningstar Credit Ratings, LLC.

“ **Multiemployer Plan** ” shall mean a multiemployer plan, as defined in Section 4001(a)(3) of ERISA to which Borrower or any ERISA Affiliate is making or accruing an obligation to make contributions or has within any of the preceding three plan years made or accrued an obligation to make contributions.

“ **Multiple Employer Plan** ” shall mean an employee benefit plan, other than a Multiemployer Plan, to which Borrower or any ERISA Affiliate, and one or more employers other than Borrower or an ERISA Affiliate, is making or accruing an obligation to make contributions or, in the event that any such plan has been terminated, to which Borrower or an ERISA Affiliate made or accrued an obligation to make contributions during any of the five plan years preceding the date of termination of such plan.

“ **Net Cash Flow** ” shall mean, for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“ **Net Cash Flow Schedule** ” shall have the meaning set forth in Section 5.1.11(b) hereof.

“ **Net Operating Income** ” shall mean, for any period, the amount obtained by subtracting Operating Expenses for such period from Gross Income from Operations for such period.

“ **Net Proceeds** ” shall have the meaning set forth in Section 6.4(b) hereof.

“ **Net Proceeds Account** ” shall have the meaning set forth in Section 6.4(b)(ii) hereof.

“ **Net Proceeds Deficiency** ” shall have the meaning set forth in Section 6.4(b)(vi) hereof.



“ **Net Proceeds Threshold Amount** ” shall mean five percent (5%) of the amount equal to (a) the Outstanding Principal Balance of the Loan as of the date Net Proceeds are received by Lender multiplied by (b) the Allocated Loan Ratio for the Property to which such Net Proceeds are attributable, but in no event shall the Net Proceeds Threshold Amount be greater than \$1,000,000.00.

“ **Net Sale Proceeds** ” shall mean, with respect to a sale of any individual Property, the gross proceeds of such sale less all reasonable and customary transaction costs (i.e., broker’s fees and commissions, attorney’s fees and expenses, defeasance costs, transfer taxes and other closing costs), such fees, expenses, taxes and other costs shall not exceed ten percent (10%) of the gross proceeds unless approved by Lender in its reasonable discretion.

“ **Net Worth** ” shall mean, as of a given date (x) the total assets of a Person as of such date less (y) the total liabilities of such Person as of such date, determined in accordance with GAAP.

“ **New Appraisal** ” shall mean an appraisal in form and substance acceptable to Lender dated no more than sixty (60) days prior to the Defeasance Date.

“ **New Mezzanine Loan** ” shall have the meaning set forth in Section 9.4(a) hereof.

“ **Note** ” shall mean that certain Promissory Note of even date herewith in the principal amount of Thirty-Two Million Ninety Seven Thousand Four Hundred and No/100 Dollars (\$32,097,400.00), made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time. Following the occurrence of one or more Partial Defeasance Events hereunder, the “Note” shall be deemed to mean, collectively, all Defeased Notes and all Undeafed Notes from time to time outstanding (other than any Undeafed Note with respect to which substitute notes have been executed and delivered to Lender in accordance with Section 2.5.4(i) in connection with a subsequent Partial Defeasance Event), as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“ **Obligations** ” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“ **Occupancy Reserve Account** ” shall have the meaning set forth in Section 7.7.1 hereof.

“ **Occupancy Reserve Cap** ” shall mean: (a) (i) \$1,441,570.00, if a Lease Trigger Period is continuing solely as a result of an event solely relating to Gastro One (and no other Lease Trigger Period is continuing); (ii) \$785,443.00, if a Lease Trigger Period is continuing solely as a result of an event solely relating to Star Medical Center (and no other Lease Trigger Period is continuing); (iii) \$1,866,103.00, if a Lease Trigger Period is continuing solely as a result of an event solely relating to Marina Towers (and no other Lease Trigger Period is continuing); or (iv) \$394,469, if a Lease Trigger Period is continuing solely as a result of an event solely relating to Surgical Institute of Michigan (and no other Lease Trigger Period is continuing); or (b) if a Lease Trigger Period is continuing solely as a result of a Lease Trigger Period relating to more than one Occupancy Reserve Tenant, the combined total of the amounts set forth in clause (a) of this definition for each such Occupancy Reserve Tenant shall be the Occupancy Reserve Cap.

“ **Occupancy Reserve Cap Condition** ” shall have the meaning set forth in Section 7.7.1 hereof.

“ **Occupancy Reserve Funds** ” shall have the meaning set forth in Section 7.7.1 hereof.

“ **Occupancy Reserve Lease** ” shall mean each of the Gastro One Lease, the Star Medical Center Lease, the Marina Towers Lease, the Surgical Institute of Michigan Lease and any Acceptable Replacement Lease therefor.

“ **Occupancy Reserve Tenant** ” shall mean each of Gastro One, Star Medical Center, Marina Towers and Surgical Institute of Michigan and any other Tenant under an Occupancy Reserve Lease.

“ **OFAC** ” shall mean the Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

“ **Officer's Certificate** ” shall mean a certificate delivered to Lender by Borrower which is signed by an authorized officer of (i) the general partner or managing member of Borrower or (ii) Manager, provided Borrower agrees that such shall be deemed to be signed and bind Borrower.

“ **Open Prepayment Date** ” shall mean the date which is the Payment Date occurring four (4) months prior to the Stated Maturity Date.

“ **Operating Expenses** ” shall mean, for any period, the greater of (a) the total of all expenditures, computed in accordance with the Approved Accounting Method, of whatever kind relating to the operation, maintenance and management of the Properties or any individual Property, as applicable, which expenditures are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, Taxes, Other Charges, advertising expenses, management fees, accounting fees, payroll and related taxes, computer processing charges, tenant improvements and leasing commissions (except to the extent the same constitute Capital Expenditures), operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation, debt service, Capital Expenditures, and contributions to any of the Reserve Funds, and (b) the Underwritten Stabilized Expense Amount for the Properties or any individual Property, as applicable.

“ **Other Charges** ” shall mean all ground rents, maintenance charges, impositions other than Taxes, any “common expenses” or other expenses allocated to and required to be paid by Borrower under the REA and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Property, now or hereafter levied or assessed or imposed against any Property or any part thereof.

“ **Other Obligations** ” shall mean (a) the performance of all obligations of Borrower contained herein; (b) the performance of each obligation of Borrower or Guarantor contained in any other Loan Document; (c) the payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender's rights or remedies under the Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and (d) the payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower and/or Guarantor to Lender, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation, each liability and obligation of Borrower and Guarantor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

“ **Outstanding Principal Balance** ” shall mean, as of any date, the outstanding principal balance of the Loan.

“ **Partial Defeasance Event** ” shall have the meaning set forth in Section 2.5.1(a) hereof.

“ **Passive Owner** ” shall mean a Person, which (a) owns no indirect or direct interest in Borrower, Guarantor or any other Restricted Party (other than equity interest of less than 2% in a publicly traded company on the New York stock exchange or another nationally or internationally recognized stock exchange) and (b) does not Control Borrower, Guarantor or any other Restricted Party.

“ **Payment Date** ” shall mean, commencing with the First Payment Date, the sixth (6<sup>th</sup>) day of each calendar month during the term of the Loan until and including the Maturity Date or, for purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if such day is not a Business Day, the immediately preceding Business Day.

“ **Payment Reserve** ” shall have the meaning set forth in Section 7.6 hereof.

“ **Payment Reserve Account** ” shall have the meaning set forth in Section 7.6 hereof.

“ **Payment Reserve Funds** ” shall have the meaning set forth in Section 7.6 hereof.

“ **Permitted Encumbrances** ” shall mean, collectively (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in “Schedule B-I” of the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority which are not yet due or delinquent, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Properties or any Property or Borrower’s ability to repay the Loan.

“ **Permitted Indebtedness** ” shall mean, with respect to each Borrower, (a) the Loan, (b) unsecured trade and operational debt incurred in the ordinary course of business relating to the ownership and operation of the Property owned by such Borrower and the routine administration of such Borrower, in amounts not to exceed one percent (1%) of the Allocated Loan Amount with respect to the Property owned by such Borrower, in the aggregate, which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (c) such other liabilities that are permitted pursuant to this Agreement.

“ **Permitted Release Date** ” shall mean the date that is the earlier of (i) the date that is the fourth (4th) anniversary of the First Payment Date, or (ii) the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC which holds the portion of the Note last contributed to a Securitization.

“ **Permitted Transfer** ” means any of the following: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto, (b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto and (c) any transfer permitted pursuant to Section 5.2.10.

“ **Person** ” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

“ **Personal Property** ” shall have the meaning set forth in the granting clause of each Security Instrument.

“ **Physical Conditions Report** ” shall mean a structural engineering report or reports prepared by a company satisfactory to Lender regarding the physical condition of the Properties or any Property, satisfactory in form and substance to Lender in its sole discretion, which report shall, among other things, (a) confirm that the Properties or any particular Property and their respective uses comply, in all material respects, with all applicable Legal Requirements (including zoning, subdivision and building codes and laws), and (b) include a copy of a final certificate of occupancy with respect to all improvements, to the extent available from the applicable authorities.

“ **Policies** ” shall have the meaning specified in Section 6.1(b) hereof.

“ **Post-Defeasance Debt Service Coverage Ratio** ” shall mean with respect to the Undeferred Note, as of the Defeasance Date, the ratio calculated by Lender of: (i) the Net Operating Income with respect to the Remaining Parcel for the twelve (12) month period ending with the most recently completed calendar month to (ii) the Debt Service under the Undeferred Note for the twelve (12) calendar month period immediately succeeding the Defeasance Date, as estimated by Lender.

“ **Post-Defeasance Loan-to-Value Ratio** ” shall mean, with respect to the Remaining Parcel, the ratio of (x) the principal amount of the Undeferred Note as of the Defeasance Date (immediately after giving effect to the Partial Defeasance Event) to (y) fair market value of the Remaining Parcel as of the Defeasance Date as determined, in Lender’s sole discretion, by any commercially reasonable method permitted to a REMIC.

“ **Pre-Securitization Period** ” shall mean the period commencing on the Closing Date and ending on the date that is ten (10) days before Lender sells, transfers or contributes all or any portion of the Note in connection with a Securitization.

“ **Prepayment Rate** ” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in the “Treasury Bonds, Notes and Bills” section in The Wall Street Journal as of such Prepayment Rate Determination Date. If more than one issue of United States Treasury Securities has the remaining term to the Maturity Date, the “Prepayment Rate” shall be the yield on such United States Treasury Security most recently issued as of the Prepayment Rate Determination Date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

“ **Prepayment Rate Determination Date** ” shall mean the date which is five (5) Business Days prior to the date that a prepayment is received by Lender under Section 2.4.3 hereof.

“ **Principal** ” shall mean: (i) if Borrower is a limited partnership, each general partner of Borrower, all of which are and shall continue to be Special Purpose Entities, or (ii) if Borrower is a multi-member limited liability company, the managing member of Borrower which is and shall continue to be a Special Purpose Entity, if any, or (iii) if Borrower is a single member limited liability company, its sole member or non-member manager. As of the Closing Date, Principal is Global Medical REIT L.P., a Delaware limited partnership, which, notwithstanding anything herein to the contrary, shall not be required to be a Special Purpose Entity. See Section 10.31 hereof.

“ **Prior Lender** ” shall mean East West Bank, a California corporation.

“ **Prior Loan** ” shall mean any and all Indebtedness owing from Borrower to Prior Lender.

“ **Private Sale of Stock** ” shall mean a one-time sale of fifty percent (50%) or more of the stock in Sponsor to a Person that is not a Restricted Party.

“ **Proforma Debt Service Coverage Ratio** ” shall mean, as of any date, the ratio calculated by Lender of (i) the Projected Net Operating Income, to (ii) the Debt Service with respect to such period.

“ **Projected Net Operating Income** ” shall mean, for the twelve (12) month period succeeding the date of determination, the amount obtained by (i) subtracting Lender’s estimate of Operating Expenses for such period (based on, among other things, the actual Operating Expenses for the twelve (12) month period preceding the date of determination and the applicable Approved Annual Budget), from (ii) Lender’s estimate of Gross Income from Operations projected for collection during such period (based on, among other things, the most recent Rent Roll, in-place Leases, and the applicable Approved Annual Budget).

“ **Prohibited Transaction** ” shall mean any action or transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code.

“ **Properties** ” shall mean, collectively, the Gastro One Property, the Star Medical Center Property, the Marina Towers Property and the Surgical Institute of Michigan Property.

“ **Property** ” shall mean any of the Gastro One Property, the Star Medical Center Property, the Marina Towers Property or the Surgical Institute of Michigan Property, individually. Any one of such Properties may be referred to herein as an individual Property.

“ **Provided Information** ” shall mean any and all financial and other information provided at any time by, or on behalf of, any Indemnifying Person with respect to the Properties or any Property, Borrower, Guarantor and/or Manager.

“ **Qualified Letter of Credit** ” shall mean an irrevocable, evergreen/auto-renewing, unconditional, transferable, clean sight draft letter of credit, issued by an Approved Bank in favor of Lender, that is freely transferable without cost or the consent of any Person other than Lender, has an initial term of not less than one (1) year with automatic renewals for one (1) year periods, is in form and substance reasonably satisfactory to Lender, for which Borrower shall have no reimbursement obligation and for which no reimbursement obligation is secured by the Property or any other property pledged to secure the Note, entitling Lender, but no other Person, to draw or make demand thereon, unconditionally, in New York, New York, without notice to Borrower or any Guarantor, based solely on a statement that Lender has the right to draw thereon purportedly executed by an officer or authorized signatory of Lender, and which shall permit partial draws.

“ **Qualified Manager** ” shall mean, in the reasonable judgment of Lender, a Person which is a reputable and experienced management organization possessing experience in managing properties similar in size, scope, use and value as the Properties, *provided*, that (i) Borrower shall have obtained a Rating Agency Confirmation from each Approved Rating Agency with respect to the change of management of the Properties, and (ii) such Person shall have entered into a Management Agreement and Assignment of Management Agreement.

“ **Rating Agencies** ” shall mean each of S&P, Moody’s, Fitch and Morningstar or any other nationally recognized statistical rating agency which has assigned a rating to the Securities.

“ **Rating Agency Confirmation** ” shall mean a written affirmation from a Rating Agency that the credit rating of the Securities issued by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion; provided, however, if (a) a Securitization has not occurred or (b) a Securitization has occurred but any Rating Agency, within the period of time provided in the Securitization’s pooling and servicing agreement (or similar agreement), has not responded to the request for a Rating Agency Confirmation or has responded in a manner that indicates that such Rating Agency is neither reviewing such request nor waiving the requirement for a Rating Agency Confirmation, then Lender’s written approval shall be required in lieu of a Rating Agency Confirmation from such Rating Agency, which such approval shall be based on Lender’s reasonable determination of whether such Rating Agency would issue a Rating Agency Confirmation (unless Lender has an independent approval right in respect of the matter at issue pursuant to the terms of this Agreement, in which case the discretion afforded to Lender in connection with such independent approval right shall apply instead).

“ **REA** ” shall mean, collectively, as the same may be amended, restated, supplemented or otherwise modified from time to time, those certain documents more specifically described on Schedule VI attached hereto.

“ **Regulation AB** ” shall mean Regulation AB under the Securities Act and the Exchange Act, as such Regulation may be amended from time to time.

“ **REIT Required Distributions** ” shall mean the declaration and/or payment (and the incurring of any obligation (contingent or otherwise) to declare and/or pay) by the Operating Partnership of pro rata dividends on its Equity Interests or make pro rata distributions with respect thereto, in an amount for any fiscal year of the Sponsor equal to the greater of (i) 95% of funds from operations for such fiscal year and (ii) such amount that will result in the Sponsor receiving the necessary amount of funds required to be distributed to its equity holders in order for the Sponsor to (x) maintain its status as a REIT for federal and state income tax purposes and (y) avoid the payment of federal or state income or excise tax; *provided, however*, (1) if an Event of Default shall have occurred and be continuing or would result therefrom, the Operating Partnership shall only be permitted to declare and/or pay (and incur any obligation (contingent or otherwise) to declare and/or pay) pro rata dividends on its Equity Interests or make pro rata distributions with respect thereto in an amount that will result in the Parent receiving the minimum amount of funds required to be distributed to its equity holders in order for the Parent to maintain its status as a REIT for federal and state income tax purposes and (2) notwithstanding clause (1) of this proviso, no payment pursuant to this paragraph shall be permitted following an acceleration of the Indebtedness pursuant to Section 8.2 or following the occurrence of an Event of Default under Section 8.1(a)(vii) or (viii).

“ **Related Entities** ” shall have the meaning specified in Section 5.2.10(f)(v) hereof.

“ **Related Loan** ” shall mean a loan to an Affiliate of Borrower or secured by a Related Property, that is included in a Securitization with the Loan, and any other loan that is cross-collateralized with the Loan.

“ **Related Property** ” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related” within the meaning of the definition of Significant Obligor, to the Property.

“ **Release** ” shall have the meaning set forth in Section 2.6.3 hereof.

“ **Release Date** ” shall mean the date (which must be a Business Day) specified by Borrower in its written request for the Release pursuant to Section 2.6.3(a) hereof.

“ **Release Parcel** ” shall have the meaning set forth in Section 2.5.1(a) hereof.

“ **Remaining Parcel** ” shall mean, collectively, the Properties remaining subject to the lien of the Security Instruments after the occurrence of a Partial Defeasance Event with respect to a Release Parcel.

“ **Remaining Post-Release Parcel** ” shall mean, collectively, the Properties remaining subject to the lien of the Security Instruments after the occurrence of a Release with respect to the 2020 Exeter Parcel.

“ **REMIC** ” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D(a) of the Code.

“ **Rents** ” shall mean all rents (including additional rents of any kind and percentage rents), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payments and consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or any of their agents or employees from any and all sources arising from or attributable to the Properties or any Property, and the Improvements, including charges for oil, gas, water, steam, heat, ventilation, air-conditioning, electricity, license fees, maintenance fees, charges for Taxes, operating expenses or other amounts payable to Borrower (or for the account of Borrower), revenues, if any, from telephone services, laundry, vending, television and all receivables, customer obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Properties or any Property or rendering of services by Borrower, Manager, or any of their respective agents or employees and proceeds, if any, from business interruption or other loss of income insurance.

“ **Replacement Letter of Credit** ” shall have the meaning set forth in Section 7.10(b) hereof.

“ **Replacement Management Agreement** ” shall mean, collectively, (a) a management agreement with a Qualified Manager which is acceptable to Lender in form and substance, *provided that*, Lender, at its option, may require that Borrower obtain a Rating Agency Confirmation from each Approved Rating Agency with respect to each such management agreement; and (b) an Assignment of Management Agreement executed and delivered to Lender by Borrower and such Qualified Manager at Borrower’s expense.

“ **Replacement Reserve Account** ” shall have the meaning set forth in Section 7.3.1 hereof.

“ **Replacement Reserve Cap Condition** ” shall have the meaning set forth in Section 7.3.1 hereof.

“ **Replacement Reserve Funds** ” shall have the meaning set forth in Section 7.3.1 hereof.

“ **Replacement Reserve Monthly Deposit** ” shall mean the amount set forth on **Schedule IV**.

“ **Replacements** ” shall have the meaning set forth in Section 7.3.1 hereof.

“ **Required Rating** ” shall mean a long-term unsecured debt rating at the time such letter of credit is delivered to Lender and throughout the term of such letter of credit, of not lower than “A” and a short-term unsecured debt rating of not less than “A-1” (or such comparable rating) by the Rating Agencies, or, if a Securitization has not occurred, such other rating that is acceptable to Lender or, if a Securitization shall have occurred, such other rating with respect to which Lender shall have received a Rating Agency Confirmation.

“ **Required Records** ” shall have the meaning set forth in Section 5.1.11(k) hereof.

“ **Required Repair Account** ” shall have the meaning set forth in Section 7.1.1 hereof.

“ **Required Repair Funds** ” shall have the meaning set forth in Section 7.1.1 hereof.

“ **Required Repairs** ” shall have the meaning set forth in Section 7.1.1 hereof.

“ **Required Repairs Amount** ” shall mean the amount set forth on **Schedule IV**.

“ **Reserve Accounts** ” shall mean, collectively, the Tax and Insurance Escrow Account, the Replacement Reserve Account, the Required Repair Account, the Rollover Reserve Account, the Occupancy Reserve Account, the Excess Cash Reserve Account, the Net Proceeds Account, the Payment Reserve Account, the TI/LC Reserve Account and any other escrow or reserve account established pursuant to the Loan Documents.

“ **Reserve Funds** ” shall mean, collectively, the Tax and Insurance Escrow Funds, the Replacement Reserve Funds, the Rollover Reserve Funds, the Required Repair Funds, the Occupancy Reserve Funds, the Excess Cash Reserve Funds, the Payment Reserve Funds, the TI/LC Reserve Funds and any other escrow or reserve fund established pursuant to the Loan Documents.

“ **Restoration** ” shall mean the repair and restoration of any Property after a Casualty or Condemnation as nearly as possible to the condition such Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“ **Restricted Party** ” shall mean, collectively (a) Borrower, Principal, Guarantor and any Affiliated Manager, and (b) any shareholder, partner, member, non-member manager, direct or indirect legal or beneficial owner, agent or employee of, Borrower, Guarantor, any Affiliated Manager or any non-member manager, provided that “Restricted Party” shall not include any of the foregoing Persons or any Person if such Person is a publicly traded company on the New York stock exchange or another nationally or internationally recognized stock exchange.

“ **Retention Amount** ” shall have the meaning set forth in Section 6.4(b)(iv) hereof.

“ **RICO** ” shall mean the Racketeer Influenced and Corrupt Organizations Act.

“ **Rollover Reserve Account** ” shall have the meaning set forth in Section 7.4.1(a) hereof.

“ **Rollover Reserve Cap Conditions** ” shall have the meaning set forth in Section 7.4.1(a) hereof.

“ **Rollover Reserve Funds** ” shall have the meaning set forth in Section 7.4.1(a) hereof.



“**Rollover Reserve Monthly Deposit**” shall mean the amount set forth on Schedule IV.

“**S&P**” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Companies.

“**Sale or Pledge**” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of an option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

“**Scheduled Defeasance Payments**” shall have the meaning set forth in Section 2.5.1(b) hereof.

“**Securities**” shall have the meaning set forth in Section 9.1 hereof.

“**Securities Act**” shall mean the Securities Act of 1933, as the same shall be amended from time to time.

“**Securitization**” shall have the meaning set forth in Section 9.1 hereof.

“**Security Agreement**” shall have the meaning set forth in Section 2.5.1(a)(v) hereof.

“**Security Instruments**” shall mean those certain first priority mortgages, deeds of trust, deeds to secure debt or similar security agreements, dated the date hereof, executed and delivered by each Borrower as security for the Obligations which, collectively, encumber one or more of the Properties, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time (each, individually, a “**Security Instrument**”).

“**Servicer**” shall have the meaning set forth in Section 9.3 hereof.

“**Servicing Agreement**” shall have the meaning set forth in Section 9.3 hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c) hereof.

“**Significant Obligor**” shall have the meaning set forth in Item 1101(k) of Regulation AB under the Securities Act.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times prior to, on and after the date hereof:

(a) was, is and will be organized solely for the purpose of (i) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the applicable Property (and no other property), entering into this Agreement with Lender and performing its obligations under the Loan Documents, refinancing the applicable Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing, or (ii) in the case of Principal, acting as a general partner of the limited partnership that owns the Property or member of the limited liability company that owns the Property;

(b) has not been, is not, and will not be engaged, in any business unrelated to (i) in the case of Borrower, the acquisition, development, ownership, management or operation of the applicable Property, and (ii) in the case of Principal, acting as general partner of the limited partnership that owns the applicable Property, or acting as a member of the limited liability company that owns the applicable Property, as applicable;

(c) has not had, does not have, and will not have, any assets other than (i) in the case of Borrower, those related to the applicable Property or (ii) in the case of Principal, its partnership interest in the limited partnership or the membership interest in the limited liability company that owns the Property or acts as the general partner or managing member thereof, as applicable;

(d) has not engaged, sought or consented to, and will not engage in, seek or consent to, any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;

(e) if such entity is a limited partnership, has, had, now has, and will have as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company or multimember Delaware limited liability company treated as a single member limited liability company that complies with the requirements set forth in Section (h) hereof, (B) has one (1) Independent Director, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.5% (or 0.1%, if the limited partnership is a Delaware entity);

(f) if such entity is a corporation, has had, now has and will have at least one (1) Independent Director, and has not caused or allowed, and will not cause or allow, the board of directors of such entity to take any Bankruptcy Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless the Independent Director shall have participated in such vote and shall have voted in favor of such action;

(g) if such entity is a limited liability company with more than one member, has had, now has and will have at least one member that is a Special Purpose Entity (A) that is a corporation, (B) that has at least one (1) Independent Director, and (C) that directly owns at least one-half-of-one percent (0.5%) of the equity of the limited liability company (or 0.1% if the limited liability company is a Delaware entity);

(h) if such entity is a limited liability company with only one member, has been, now is, and will be a limited liability company organized in the State of Delaware that (A) intentionally omitted, (B) has at least one (1) Independent Director, (C) has not caused or allowed, and will not cause or allow the members or managers of such entity to take any Bankruptcy Action, either with respect to itself or, if the company is a Principal, with respect to Borrower, in each case unless the Independent Director then serving as managers of the company shall have consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company's limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(i) has been, is and intends to remain solvent and has paid and shall pay its debts and liabilities from its then available assets (including a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) as the same shall become due, and has maintained and shall intend to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; *provided, however*, that nothing herein shall be deemed to obligate any member of Borrower to make an additional capital contribution, loan or other financial accommodation available to Borrower in order to meet such capital requirement nor to prohibit any REIT Required Distributions by the Operating Partnership or Sponsor;

- (j) has not failed, and will not fail, to correct any known misunderstanding regarding the separate identity of such entity and has not and shall not identify itself as a division of any other Person;
- (k) has maintained and will maintain its accounts, books and records separate from any other Person and has filed and will file its own tax returns, except to the extent that it has not been or is not required to file tax returns under applicable law, and, if it is a corporation, has not filed and shall not file a consolidated Federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;
- (l) has maintained and will maintain its own records, books, resolutions and agreements;
- (m) other than with respect to the other Borrowers as provided in the Cash Management Agreement, (i) has not commingled, and will not commingle, its funds or assets with those of any other Person and (ii) has not participated and will not participate in any cash management system with any other Person;
- (n) has held and will hold its assets in its own name;
- (o) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;
- (p) has maintained and will maintain its books, bank accounts, balance sheets, financial statements, accounting records and other entity documents separate from any other Person and has not permitted, and will not permit, its assets to be listed as assets on the financial statement of any other entity except as required by the Approved Accounting Method; *provided, however*, that appropriate notation shall be made on any such consolidated statements to indicate its separateness from such Affiliate and to indicate that its assets and credit are not available to satisfy the debt and other obligations of such Affiliate or any other Person and such assets shall be listed on its own separate balance sheet;
- (q) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- (r) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable;
- (s) has had no and will have no Indebtedness (including loans, whether or not such loans are evidenced by a written agreement) other than Permitted Indebtedness;
- (t) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for, the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except with respect to the other Borrowers as permitted pursuant to this Agreement;

- (u) has not acquired and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate except with respect to the other Borrowers as permitted pursuant to this Agreement;
- (v) has allocated and will allocate, fairly and reasonably, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;
- (w) has maintained and used, now maintains and uses, and will maintain and use, separate stationery, invoices and checks bearing its name, which stationery, invoices, and checks utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses have borne, shall bear its own name and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;
- (x) except with respect to the other Borrowers pursuant to the Loan Documents, has not pledged and will not pledge its assets for the benefit of any other Person;
- (y) has held itself out and identified itself, and will hold itself out and identify itself, as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person, except for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in clause (z) below of this definition, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;
- (z) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (aa) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);
- (bb) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself, and shall not identify itself, as a division of any other Person;
- (cc) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are substantially similar to those that would be obtained in a comparable arm's-length transaction with an unrelated third party, (ii) in connection with this Agreement, and (iii) capital contributions and distributions permitted under the terms of its organizational documents;
- (dd) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;
- (ee) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(ff) does not and will not have any of its obligations guaranteed by any Affiliate except for the Guarantor as provided in the Loan Documents;

(gg) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion are true;

(hh) has complied and will comply in all material respects with all of the terms and provisions contained in its organizational documents concerning its status as a Special Purpose Entity and cause statements of facts concerning its status as a Special Purpose Entity contained in its organizational documents to be and to remain true and correct;

(ii) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts except with respect to the other Borrowers as permitted under the Loan Documents; and

(jj) has not held and will not hold out the assets or credit of any Affiliate as being available to satisfy its debts or obligations, except for the Guarantor's as permitted pursuant to this Agreement.

“**Sponsor**” shall mean Global Medical REIT Inc., a Maryland corporation.

“**Sponsor Controlled Party**” shall mean an entity Controlled by the Sponsor.

“**Sponsor Related Entities**” shall have the meaning set forth in the definition of Sponsor Transfer Conditions.

“**Sponsor Transfer**” shall mean either (i) an IPO, or (ii) a Private Sale of Stock, provided that, in each instance, the applicable Sponsor Transfer Conditions are satisfied as determined by Lender.

“**Sponsor Transfer Conditions**” shall mean (A) in connection with an IPO, each of the following conditions: (i) Sponsor, both immediately before and after the consummation of the IPO, shall not be in default of its obligations under the Guaranty or the Environmental Indemnity, including the covenants set forth in Section 5.2 of the Guaranty, (ii) Sponsor shall reaffirm in a writing acceptable to Lender its obligations and liabilities under the Guaranty and the Environmental Indemnity, (iii) each Approved Rating Agency shall have issued a Rating Agency Confirmation with respect to the IPO, if such confirmation is required by Lender, (iv) no Default or Event of Default shall have occurred and be continuing and shall not occur as a result of the consummation of the IPO, and (v) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such IPO, including Lender's counsel fees and disbursements and fees of the Approved Rating Agencies; and (B) in connection with a Private Sale of Stock, each of the following conditions: (i) Sponsor, both immediately before and after the consummation of the Private Sale of Stock, shall not be in default of its obligations under the Guaranty or the Environmental Indemnity, including the covenants set forth in Section 5.2 of the Guaranty, (ii) the reputation, experience and qualifications of the Stock Transferees and the Stock Transferees' Principals shall be reasonably acceptable to Lender, (iii) the Stock Transferees, the Stock Transferees' Principals and all entities which may be owned or Controlled directly or indirectly by the Stock Transferees' Principals, or any of them (the “**Sponsor Related Entities**”) shall not have been subject to a Bankruptcy Action within the seven (7) years prior to the date of the consummation of the Private Sale of Stock, (iv) Sponsor shall reaffirm in a writing acceptable to Lender its obligations and liabilities under the Guaranty and the Environmental Indemnity, (v) there shall be no material litigation or regulatory action pending or threatened against the Stock Transferees, the Stock Transferees' Principals or the Sponsor Related Entities that is not reasonably acceptable to Lender, (vi) each Approved Rating Agency shall have issued a Rating Agency Confirmation with respect to the Private Sale of Stock, (vii) no Default or Event of Default shall have occurred and be continuing and shall not occur as a result of the consummation of the Private Sale of Stock, and (viii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Private Sale of Stock, including Lender's counsel fees and disbursements and fees of the Approved Rating Agencies; *provided, however*, that, in either case, under no circumstances shall Borrower or Sponsor be required to pay a transfer fee in connection with a Sponsor Transfer that satisfies the requirements of this Agreement.

“ **Star Medical Center** ” shall mean Star Medical Center, LLC, a Texas limited liability company, together with its permitted successors or assigns.

“ **Star Medical Center Lease** ” shall mean that certain Lease, dated January 28, 2016, by and between Borrower 2, as landlord, and Star Medical Center, as tenant, and as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time, subject to and in accordance with Section 5.1.20 hereof.

“ **Star Medical Center Property** ” shall mean each parcel of real property described on Exhibit A-2, the Improvements thereon and all Personal Property owned by Borrower 2 and encumbered by the applicable Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clause of such Security Instrument.

“ **State** ” shall mean the State or Commonwealth in which each Property or any part thereof is located.

“ **Stated Maturity Date** ” shall mean April 6, 2026.

“ **Stock Transferees** ” shall mean the proposed transferees of Sponsor’s stock.

“ **Stock Transferees’ Principals** ” shall mean collectively (i) each such Stock Transferees’ managing members, general partners or principal shareholders and (ii) such other members, partners or shareholders which directly or indirectly shall own fifty-one percent (51%) or greater economic and voting interest in each such Stock Transferee.

“ **Successor Borrower** ” shall have the meaning set forth in Section 2.5.3 hereof.

“ **Surgical Institute of Michigan** ” shall mean The Surgical Institute of Michigan, LLC, a Delaware limited liability company, together with its permitted successors or assigns.

“ **Surgical Institute of Michigan Lease** ” shall mean that certain Lease, dated on or about the date hereof, by and between Borrower 4, as landlord, and Surgical Institute of Michigan, as tenant and as the same may be further amended, restated, replaced, supplemented or otherwise modified from time to time, subject to and in accordance with Section 5.1.20 hereof.

“ **Surgical Institute of Michigan Property** ” shall mean each parcel of real property described on Exhibit A-4, the Improvements thereon and all Personal Property owned by Borrower 4 and encumbered by the applicable Security Instrument, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clause of such Security Instrument.

“ **Survey** ” shall mean collectively, the survey of each Property prepared by a surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

“**Swap**” shall mean, collectively, any and all interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether the applicable Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such applicable Person otherwise assures a creditor against loss, and any other transactions entered into in connection therewith.

“**Tax and Insurance Escrow Account**” shall have the meaning set forth in Section 7.2.1 hereof.

“**Tax and Insurance Escrow Funds**” shall have the meaning set forth in Section 7.2.1 hereof.

“**Taxes**” shall mean all taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against (a) any Property or part thereof, together with all interest and penalties thereon and (b) against the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or ad valorem real estate or personal property taxes or as income taxes.

“**Tenant**” shall mean the lessee of all or any portion of the Property under a Lease.

“**Tenant Direction Letter**” shall mean a letter to each Tenant under a Lease instructing such Tenant to deliver all Rents directly to the applicable Clearing Account, which letter shall be substantively identical to the form letter attached hereto as Exhibit B.

“**Threshold Amount**” shall mean five percent (5%) of the amount equal to (a) the Outstanding Principal Balance of the Loan as of a date as determined by Lender multiplied by (b) the Allocated Loan Ratio for the Property which is the subject of the alterations.

“**TI/LC Lease**” shall mean the Star Medical Center Lease.

“**TI/LC Reserve Account**” shall have the meaning set forth in Section 7.8.1 hereof.

“**TI/LC Reserve Funds**” shall mean the amount set forth on Schedule IV attached hereto.

“**Title Company**” shall mean the title insurance company which issued the Title Insurance Policy.

“**Title Insurance Policy**” shall mean, one or more ALTA mortgagee title insurance policies in a form acceptable to Lender (or, if a Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) with respect to the Properties and insuring the lien of the Security Instruments encumbering the Properties.

“**Transfer**” shall have the meaning set forth in Section 5.2.10(b) hereof.

“**Transferee**” shall have the meaning set forth in Section 5.2.10(f)(iii) hereof.

“**Transferee’s Principals**” shall mean collectively, (A) Transferee’s managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee.

“**UCC**” shall mean the Uniform Commercial Code as in effect on the date hereof in the State in which each Property is located, as applicable; *provided, however*, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State in which each Property is located (“**Other UCC State**”), “**UCC**” means the Uniform Commercial Code as in effect in such Other UCC State for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority.

“ **Undefeased Note** ” shall have the meaning set forth in Section 2.5.4 hereof.

“ **Underwritten Stabilized Expense Amount** ” shall mean (i) with respect to the Gastro One Property, an amount equal to \$5,575.54 per month, (ii) with respect to the Star Medical Center Property, an amount equal to \$3,124.29 per month, (iii) with respect to the Marina Towers Property, an amount equal to \$8,798.91 per month and (iv) with respect to the Surgical Institute of Michigan Property, an amount equal to \$3,865.63 per month.

“ **U.S. Obligations** ” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Approved Rating Agencies, other “government securities” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“ **Yield Maintenance Premium** ” shall mean an amount equal to the greater of (a) three percent (3%) of the outstanding principal balance of the Loan to be prepaid or satisfied; and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under the Note assuming that all scheduled payments are made timely and that the remaining outstanding principal and interest on the Loan is paid on the Stated Maturity Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount being prepaid or satisfied.

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

## ARTICLE II

### GENERAL TERMS

Section 2.1 Loan Commitment: Disbursement to Borrower.

2.1.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make, and Borrower hereby agrees to borrow, the Loan on the Closing Date.

2.1.2 Single Disbursement to Borrower. Borrower may request and receive only one disbursement hereunder in respect of the Loan and any amount borrowed and repaid or defeased hereunder in respect of the Loan may not be re-borrowed. Borrower acknowledges and agrees that the Loan has been fully funded as of the Closing Date.



2.1.3 The Note, Security Instruments and Loan Documents. The Loan shall be evidenced by the Note and secured by the Security Instruments, the Assignments of Leases and other Loan Documents for each Property. Each of the Security Instruments are cross-collateralized and cross-defaulted.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) acquire, refinance and/or recapitalize the Properties and/or repay and discharge any existing loans relating to the Properties, (b) pay all past-due Basic Carrying Costs, if any, with respect to the Properties, (c) make deposits into the Reserve Funds on the Closing Date in the amounts provided herein, (d) pay costs and expenses incurred in connection with the closing of the Loan, as approved by Lender, (e) fund any working capital requirements of the Properties, and (f) distribute the balance, if any, to Borrower for business purposes.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Subject to Section 2.2.4 hereof, interest on the Outstanding Principal Balance shall accrue from the Closing Date to but excluding the Maturity Date at the Interest Rate.

2.2.2 Interest Calculation. With respect to any applicable period, interest on the Outstanding Principal Balance shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the average Outstanding Principal Balance in effect for the applicable period as calculated by Lender.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the Outstanding Principal Balance and, to the extent permitted by law, all accrued and unpaid interest in respect thereof and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Debt Service Payments.

2.3.1 Payments Generally. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day. All amounts due pursuant to this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.2 Monthly Debt Service Payment. On the Closing Date, Borrower shall make a payment of interest only for the period commencing on and including the Closing Date through and including April 5, 2016. On each Payment Date up to and including the Maturity Date, Borrower shall make a payment to Lender of interest and, if applicable, principal in an amount equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to accrued and unpaid interest and, if applicable, the balance to principal.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender not later than 3:00 P.M., New York City time, on the Maturity Date the Outstanding Principal Balance, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Security Instruments and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents, including the payment of principal due on the Maturity Date, is not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (a) five percent (5%) of such unpaid sum, and (b) the Maximum Legal Rate, in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Security Instruments and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 1:00 P.M., New York City time, on the date when due and shall be made in Dollars in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day. Any payments required to be made hereunder or under the Cash Management Agreement by Lender or Servicer out of the Cash Management Account shall be deemed to have been timely made for purposes of this Section 2.3.5.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. (a) Except as otherwise provided herein, Borrower shall not have the right to prepay or defease the Loan in whole or in part prior to the Maturity Date.

(b) Intentionally Omitted.

(c) Open Prepayment. On the Open Prepayment Date, or on any Payment Date thereafter, so long as no Event of Default has occurred and is continuing, Borrower may, at its option and upon not less than thirty (30) days irrevocable prior written notice to Lender, prepay the entire Outstanding Principal Balance provided that such prepayment is accompanied by (i) all accrued and unpaid interest on the Outstanding Principal Balance prepaid and (ii) all other amounts due under the Note, this Agreement, or any of the other Loan Documents, without payment of the Yield Maintenance Premium. In addition, if for any reason Borrower prepays the Loan on a day other than a Payment Date, Borrower shall also pay interest on the principal amount so prepaid through the next succeeding Payment Date.

2.4.2 Mandatory Prepayments. Following any Casualty or Condemnation, on the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for Restoration, Borrower shall prepay, or authorize Lender to apply Net Proceeds as a prepayment of, the Outstanding Principal Balance of the Note in an amount equal to one hundred percent (100%) of such Net Proceeds, and provided that no Event of Default has occurred and is continuing, such prepayment to be made without payment of the Yield Maintenance Premium; *provided, however*, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Any partial prepayment under this Section 2.4.2 shall be applied to the last payments of principal due under the Loan and shall not in any event reduce or otherwise change the Monthly Debt Service Payment Amount. Notwithstanding anything to the contrary set forth herein, and provided no Event of Default has occurred and is continuing, in the event of a partial prepayment as set forth in this Section 2.4.2, for a period of one hundred eighty (180) days following such partial prepayment, Borrower may prepay the remaining Outstanding Principal Balance, without payment of the Yield Maintenance Premium, provided and on condition that: (i) Borrower shall provide Lender with not less than thirty (30) days irrevocable prior written notice of the date upon which Borrower shall prepay the Debt; and (ii) Borrower shall pay: (A) all accrued and unpaid interest on the Outstanding Principal Balance prepaid; (B) all other amounts due under the Note, this Agreement or any of the other Loan Documents; and (C) interest on the Outstanding Principal Balance so prepaid through the next succeeding Payment Date in the event that Borrower prepays the Debt on any date other than a Payment Date.

2.4.3 Prepayments Made While an Event of Default Exists. If, following the occurrence and during the continuance of an Event of Default, payment of all or any part of the Debt is tendered by Borrower for any reason or otherwise recovered by Lender (including, without limitation, through acceleration or the application of any Reserve Funds or Net Proceeds), such tender or recovery shall include (a) interest at the Default Rate on the outstanding principal amount of the Loan from the date such Event of Default occurred through the end of the Interest Period related to the Payment Date next occurring following the date of such tender or recovery, or if such tender or recovery occurs on a Payment Date, through and including the Interest Period related to such Payment Date and (b) an amount equal to the applicable Yield Maintenance Premium.

Section 2.5 Defeasance.

2.5.1 Voluntary Defeasance. (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Permitted Release Date and prior to the Open Prepayment Date, to cause the release of all of the Properties (such event being a “**Full Defeasance Event**”) or an individual Property (such event being a “**Partial Defeasance Event**”; any such Full Defeasance Event or Partial Defeasance Event is referred to herein as a “**Defeasance Event**”) from the lien of the applicable Security Instrument and the other Loan Documents upon the satisfaction of the following conditions:

(i) Borrower shall provide not less than thirty (30) days nor more than ninety (90) days prior written notice to Lender specifying the Payment Date (the “**Defeasance Date**”) on which the Defeasance Event shall occur, and, in the case of a Partial Defeasance Event, specifying the individual Property to be released (such individual Property, the “**Release Parcel**”);

(ii) in the case of a Partial Defeasance Event, Borrower shall deliver to Lender New Appraisals of the Release Parcel and the Remaining Parcel;

(iii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, Borrower shall also pay interest that would have accrued on the Note through and including the next Payment Date, unless the Defeasance Deposit shall include (or if the U.S. Obligations purchased with such Defeasance Deposit shall provide for payment of) all principal and interest computed from the Payment Date prior to the Defeasance Date through the next succeeding Payment Date;

(iv) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Security Instrument and the other Loan Documents;

(v) Borrower shall deliver to Lender the Defeasance Deposit;

(vi) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this Section 2.5 (the “*Security Agreement*”);

(vii) Borrower shall deliver an opinion of counsel for Borrower, that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (A) Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note (in the case of a Full Defeasance Event) or the Defeased Note (in the case of a Partial Defeasance Event) to the Successor Borrower, (B) Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower, (C) any REMIC formed pursuant to a Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code as a result of such Defeasance Event, (D) the Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Note as indebtedness for Federal income tax purposes, and (E) delivery of the Defeasance Deposit and the grant of a security interest therein to Lender shall not constitute an avoidable preference under Section 547 of the Bankruptcy Code or applicable state law;

(viii) Borrower shall deliver a Rating Agency Confirmation from each of the Approved Rating Agencies with respect to such Defeasance Event and, if required by the Approved Rating Agencies, Borrower shall also deliver or cause to be delivered (from counsel satisfactory to Lender) a non-consolidation opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the Approved Rating Agencies;

(ix) Borrower shall deliver an Officer’s Certificate certifying that the requirements set forth in this Section 2.5.1(a) have been satisfied;

(x) Borrower shall deliver a certificate of Borrower’s independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(xi) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xii) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Security Instrument as provided in Section 2.6 hereof, (B) reasonable attorneys’ fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Approved Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or the Defeased Note, as applicable, or otherwise required to accomplish the defeasance, and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys’ fees and expenses.

(b) In connection with each Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments (A) on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date through and including the Open Prepayment Date and (B) in amounts equal to, (x) in the case of a Full Defeasance Event, the scheduled payments due on each such Payment Date under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents) together with the entire outstanding principal balance of the Note on the Open Prepayment Date (assuming the Note is prepaid in full on the Open Prepayment Date) and (y) in the case of a Partial Defeasance Event, the scheduled payments due on each such Payment Date under the Defeased Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents) together with the entire outstanding principal balance of the Defeased Note on the Open Prepayment Date (assuming the Defeased Note is prepaid in full on the Open Prepayment Date) (the “*Scheduled Defeasance Payments*”). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the applicable Clearing Account(s) (unless otherwise directed by Lender) and applied to satisfy the Debt. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this Section 2.5 and satisfy the Debt under this Section 2.5 and Section 2.6 shall be remitted to Borrower.

(c) Notwithstanding anything to the contrary contained herein, no Partial Defeasance Event shall be permitted with respect to any Release Parcel unless, simultaneously with such Partial Defeasance Event, the applicable Borrower shall transfer fee title to such Release Parcel in connection with a bona fide arms-length transaction to a third party Person that is not a Restricted Party.

2.5.2 Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and Federal laws governing the granting of such security interests.

2.5.3 Successor Borrower. In connection with any Defeasance Event, Borrower shall transfer and assign all obligations, rights and duties under and to the Note (in the case of a Full Defeasance Event) or the Defeased Note (in the case of a Partial Defeasance Event) and the Security Agreement together with the pledged Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit to a newly-created successor entity, which entity shall be a single purpose, bankruptcy remote entity and which entity shall be designated or established by Lender, at Lender's option (the "**Successor Borrower**"). Lender shall also have the right to purchase on behalf of Borrower, or cause to be purchased on behalf of Borrower, the U.S. Obligations with the pledged Defeasance Deposit. Such rights to designate or establish the Successor Borrower as provided above or to purchase, or cause the purchase of, on behalf of Borrower the U.S. Obligations purchased with the Defeasance Deposit as provided above may be exercised by Cantor Commercial Real Estate Lending, L.P. ("**Cantor**") in its sole discretion and shall be retained by Cantor (and any successor or assign of Cantor under a specific assignment of such retained rights separate and apart from a transfer or Securitization of the Loan in whole or in part), notwithstanding any transfer or Securitization of the Loan in whole or in part. Such Successor Borrower shall assume the obligations under the Note (in the case of a Full Defeasance Event) or the Defeased Note (in the case of a Partial Defeasance Event) and any Security Agreement and shall be bound by and obligated under Sections 2.3, 3.1, 5.1.19, 5.1.15(a), 8.2, 10.13 and 10.18 of this Agreement; provided, however, that all references therein to "Property" shall be deemed to refer only to the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit delivered to Lender. Upon such assumption by Successor Borrower with respect to a Full Defeasance Event, Borrower shall be relieved of its obligations under such documents, except with respect to any provision therein which by their terms expressly survive a payment, repayment, defeasance or other satisfaction of the Loan and/or transfer of the Properties or any individual Property in connection with Lender's exercise of its remedies under this Agreement and the other Loan Documents. Upon such assumption by Successor Borrower with respect to a Partial Defeasance Event, Borrower shall be relieved of its obligations under the Defeased Note and the Security Agreement, except with respect to any provisions therein which by their terms expressly survive a payment, repayment, defeasance or other satisfaction of the Loan and/or a transfer of the Properties or any individual Property in connection with Lender's exercise of its remedies under this Agreement and the other Loan Documents. Borrower shall pay a minimum of \$1,000 to any such Successor Borrower as consideration for assuming the obligations under the Note (in the case of a Full Defeasance Event) or the Defeased Note (in the case of a Partial Defeasance Event), this Agreement and the Security Instrument. Borrower shall pay all costs and expenses incurred by Lender, including the cost of establishing the Successor Borrower and Lender's attorney's reasonable fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

2.5.4 Additional Requirements Regarding Partial Defeasance Event. With respect to a Partial Defeasance Event, Borrower shall also satisfy all of the following additional requirements:

(a) Borrower shall execute and deliver to Lender all documents necessary to amend, restate and substitute the Note with two substitute notes: one note having a principal balance equal to the Adjusted Release Amount with respect to the Release Parcel (the "**Defeased Note**") and one note having a principal balance equal to the remaining principal balance outstanding on the Note as of the Defeasance Date (the "**Undefeased Note**"). The "Monthly Debt Service Payment Amount" of the Defeased Note and the Undefeased Note shall be determined by proportionately allocating on a pro rata basis the Monthly Debt Service Payment Amount between them, as determined by Lender, such that the aggregate payment each month under the Defeased Note and the Undefeased Note equals the Monthly Debt Service Payment Amount. The Defeased Note shall mature on the Stated Maturity Date, and except as set forth above shall have identical terms as the original Note (except for the principal balance), except that a Defeased Note cannot be the subject of any further defeasance. The Undefeased Note shall have identical terms as the original Note (except for the principal balance and Monthly Debt Service Payment Amount thereunder) and may be the subject of a further defeasance in accordance with the terms of this Section 2.5. After the occurrence of a Partial Defeasance Event, the term "**Note**" as used in this Section 2.5, shall refer to the Undefeased Note that is the subject of further defeasance (and not to the Defeased Note, which is not subject to further defeasance).

(b) if applicable, an executed copy of the contract for the purchase and sale of the Release Parcel, together with any other information requested by Lender, certified as true, correct, and complete by Borrower, which contract must be received at least thirty (30) days prior to the date of the Defeasance Date.

(c) if applicable, (A) a copy of the proposed closing settlement statement for the purchase and sale of the Release Parcel, certified as true, correct, and complete by Borrower as of such date, which statement must be received at least two (2) Business Days prior to the Defeasance Date, and (B) the final, executed closing settlement statement for the purchase and sale of the Release Parcel, certified as true, correct, and complete by Borrower, which must be received prior to the consummation of the Defeasance Event.

(d) one or more endorsements to the Title Insurance Policy insuring that, after giving effect to the Partial Defeasance Event, (i) the Lien created by the Security Instrument is a first priority Lien on the Remaining Parcel, subject only to the Permitted Encumbrances; (ii) the Title Insurance Policy is in full force and effect showing no new encumbrances that were not otherwise approved by Lender and other similar materials as Lender may deem necessary at the time of such Partial Defeasance Event; (iii) the Remaining Parcel is a separate tax lot; and (iv) the Remaining Parcel is in compliance with all applicable zoning codes.

(e) Lender shall have received a copy of a deed conveying all of such Borrower's right, title and interest in and to the Release Parcel and a letter from such Borrower countersigned by a title insurance company acknowledging receipt of such deed and agreeing to record such deed in the real estate records of the appropriate recording office in which the Release Parcel is located.

(f) No partial defeasance granted by Lender shall, in any way, impair or affect the lien or priority of the applicable Security Instruments relating to the Remaining Parcel .

(g) The Remaining Parcel will be in compliance with all provisions of any Lease(s) of any portion of the Remaining Property that are then in effect;

(h) After giving effect to such Partial Defeasance Event:

(i) no Event of Default would exist;

(ii) the Post-Defeasance Debt Service Coverage Ratio is not less than the greater of (A) 1.45 to 1.00 and (B) the Debt Service Coverage Ratio as calculated immediately prior to such Partial Defeasance Event; and

(iii) the Post-Defeasance Loan to Value Ratio is not greater than the lesser of (A) sixty-percent (60%) and (B) the Loan to Value Ratio as calculated immediately prior to such Partial Defeasance Event.

(i) Notwithstanding anything contained herein to the contrary, each Property (other than the Star Medical Center Property) must be released from the Lien of the applicable Security Instruments (in accordance with the terms of this Agreement) prior to the time that any Partial Defeasance Event may occur with respect to the Star Medical Center Property. In no event may the Star Medical Center Property be defeased last.

Section 2.6 Release of Property. Except as set forth in this Section 2.6, no repayment, prepayment or defeasance (if and to the extent expressly permitted herein) of all or any portion of the Note shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the applicable Security Instrument.

2.6.1 Release of Property.

(a) If Borrower has defeased the entire Loan pursuant to a Full Defeasance Event and the requirements of Section 2.5 and this Section 2.6 have been satisfied, the Properties shall be released from the Liens of the Security Instruments and the U.S. Obligations, pledged pursuant to the each Security Agreement, shall be the sole source of collateral securing the Note. If Borrower has partially defeased the Loan pursuant to a Partial Defeasance Event and the requirements of Section 2.5 and this Section 2.6 have been satisfied, the Release Parcel shall be released from the Lien of the applicable Security Instrument and the U.S. Obligations, pledged pursuant to such Security Agreement, shall be the sole source of collateral securing the Defeased Note.

(b) In connection with the release of the Properties from the Liens of the Security Instruments (in the case of a Full Defeasance Event) or of the Release Parcel from the Lien of the applicable Security Instrument (in the case of a Partial Defeasance Event), Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Properties (in the case of a Full Defeasance Event) or the Release Parcel (in the case of a Partial Defeasance Event) for execution by Lender. Such releases shall be in a form appropriate in the jurisdiction(s) in which each individual Property is located and that would be satisfactory to a prudent lender and contains standard provisions protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement. Borrower shall reimburse Lender and Servicer for any costs and expenses Lender and Servicer incur arising from such release (including reasonable attorneys' fees and expenses) and Borrower shall pay, in connection with such release, (A) all recording charges, filing fees, taxes or other expenses payable in connection therewith, and (B) to any Servicer, the current fee being assessed by such Servicer to effect such release.

2.6.2 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of the Debt in accordance with the terms of this Agreement and the other Loan Documents, release the Liens of the Security Instruments.

2.6.3 Release of 2020 Exeter Parcel. Borrower may request that Lender release the 2020 Exeter Parcel from the Lien of the Security Instrument (the "**Release**"), which request will be granted by Lender after it determines that all of the following terms and conditions are satisfied by Borrower:

(a) Lender must have received from Borrower, at least thirty (30) (except that during the Pre-Securitization Period this number shall be reduced to five (5)) but not more than sixty (60) days' prior written notice requesting the Release on the Release Date specified in such written notice, which notice must include a certificate of Borrower stating that the Release is not detrimental in any material respect to the use, operation and value of, or cash flow from, the Remaining Post-Release Parcel;

(b) The Release must occur contemporaneously with the transfer of fee title to the 2020 Exeter Parcel to a Person that is not Borrower or Principal;

(c) No Event of Default or Cash Management Period has occurred and is continuing as of the date such notice is received by Lender or as of the specified Release Date;

(d) Lender must have received from Borrower reimbursement or payment of all reasonable costs and expenses incurred by Lender (including appraisal and title costs, reasonable attorneys' fees and disbursements, servicing fees and rating agency fees) in connection with the Release;

(e) Borrower, at its sole cost and expense, must have delivered to Lender one or more endorsements to the Title Insurance Policy insuring that, after giving effect to the Release, (i) the Lien created by the Security Instruments and insured under the Title Insurance Policy is a first priority lien on the Remaining Post-Release Parcel, subject only to the Permitted Encumbrances, (ii) the Title Insurance Policy is in full force and effect showing no new encumbrances that were not otherwise approved by Lender;



(f) Borrower must provide Lender with an opinion of counsel dated as of the Release Date in the form and substance reasonably acceptable to Lender that all consents and approvals required for the transfer of fee title to the 2020 Exeter Parcel or otherwise in connection with the Release have been obtained from the applicable Governmental Authorities and third parties, if any;

(g) No default or breach of the Gastro One Lease or the REA will occur as a result of the Release and the Gastro One Lease shall be amended to remove the 2020 Exeter Parcel from the Gastro One Lease pursuant to a lease amendment in form and substance acceptable to Lender and Borrower must deliver to Lender such lease amendment along with an updated estoppel from Gastro One certifying, among other things, that the Gastro One Lease, as so amended, remains in full force and effect;

(h) Borrower must, at its sole cost and expense, prepare any and all additional documents and instruments necessary to consummate the Release;

(i) Borrower must have delivered to Lender and the Approved Rating Agencies (if a Securitization has occurred) such other instruments, legal opinions, certificates and other documents as Lender or such Approved Rating Agencies may reasonably request;

(j) Lender shall have received (at Borrower's expense) a Rating Agency Confirmation from each of the Approved Rating Agencies with respect to the Release;

(k) Lender must have received from Borrower an Officer's Certificate certifying that all conditions precedent to the Release have been complied with;

(l) The Release must not occur within ten (10) days prior to or thirty (30) days after any Securitization; and

(m) If any REMIC owns an interest in the Loan, (I) either (A) Borrower must have delivered to the Lender and the Approved Rating Agencies (if a Securitization has occurred) an opinion of counsel (in form and substance reasonably acceptable to, and given by counsel reasonably acceptable to, Lender and, if applicable, the Approved Rating Agencies) that the Release will not cause the Loan to cease to be a qualified mortgage (within the meaning of section 860G(a)(3) of the Code) by reason of section 1.860G-2(a)(8)(i) of the Treasury Regulations promulgated under the Code, or (B) if such opinion cannot be given, then immediately prior to or simultaneously with the Release the Loan will be paid down (with payment of the Yield Maintenance Premium) by the lowest amount that permits the Release to constitute a qualified pay-down transaction (within the meaning of Section 5.03 of Revenue Procedure 2010-30, 2010-36 IRB 316), and (II) if the REMIC provisions of the Code have been amended or if the Regulation referred to above (or Regulations incorporated therein by reference) have been revoked, modified or proposed to be changed or if the Servicer does not reasonably believe that the criterion set forth in clause (I)(B) above has been satisfied (as contemplated by Section 5.06 of the Revenue Procedure referred to above) or such Revenue Procedure has been revoked, declared obsolete or modified, in each case on or after the date hereof, Borrower must have delivered to the Lender (and, if applicable, the Approved Rating Agencies) such other opinion or opinions of counsel (as described above) as Lender may request to the effect that the Release will not adversely affect any such REMIC.

Upon the satisfaction of the conditions set forth in this Section 2.6.3, the Lien of Lender under the applicable Security Instrument and the other Loan Documents will be released with respect to the 2020 Exeter Parcel, and Lender will execute and deliver any agreements reasonably requested by Borrower to release and terminate the Lien of the applicable Security Instrument as to the 2020 Exeter Parcel; provided, however, that such agreements will be made without recourse to Lender and made without any representation or warranty. Upon the consummation of the Release, all references in this Agreement and the other Loan Documents relating to the 2020 Exeter Parcel will be deemed deleted, except with respect to indemnities or guaranties relating to such 2020 Exeter Parcel (which will expressly survive such Release) and except as otherwise expressly provided in any of the other Loan Documents. All agreements, instruments and other documentation to be delivered to Lender pursuant to this Section 2.6.3 must be in form and substance reasonably satisfactory to Lender.

Notwithstanding anything herein to the contrary, so long as all other conditions for the Release have been satisfied during the Pre-Securitization Period, and the Release has been recorded in the applicable county real estate records during the Pre-Securitization Period and the title policy endorsements have been issued by the Title Company pursuant to subparagraph (e) of this Section 2.6.3 during the Pre-Securitization Period, Borrower shall not be required to satisfy the requirements set forth in subparagraphs (i), (j) and (m) of this Section 2.6.3 (and in such event no appraisal, servicing or rating agency fees would be payable pursuant to subparagraph (d) of this Section 2.6.3).

Section 2.7      Cash Management.

2.7.1      Clearing Accounts.

(a) Each Borrower shall establish and maintain a segregated Eligible Account (individually or collectively, as the context may require, the “**Clearing Account**”) with the Clearing Bank in trust for the benefit of Lender in accordance with the terms hereof and of the Clearing Account Agreements, which Clearing Accounts shall be under the sole dominion and control of Lender. The Clearing Accounts shall be entitled “[APPLICABLE BORROWER], as pledgor, for the benefit of Cantor Commercial Real Estate Lending, L.P., as Secured Party – Clearing Account,” or such other name as required by Lender from time to time. Borrower (i) hereby grants to Lender a first priority security interest in the Clearing Accounts and all deposits at any time contained therein and the proceeds thereof, and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Clearing Accounts, including, without limitation, the execution of any account control agreement required by Lender. Borrower will not in any way alter, modify or close the Clearing Accounts and will notify Lender of the account numbers thereof. Except as may be expressly permitted in the Clearing Account Agreements, Lender and Servicer shall have the sole right to make withdrawals from the Clearing Accounts and all costs and expenses for establishing and maintaining the Clearing Accounts shall be paid by Borrower. All monies now or hereafter deposited into the Clearing Accounts shall be deemed additional security for the Debt.

(b) Borrower shall, or shall cause Manager to, deliver duly executed Tenant Direction Letters to all Tenants under Leases which shall instruct each such Tenant to deliver all Rents payable thereunder directly to the applicable Clearing Account. Borrower shall, and shall cause Manager to, deposit into each applicable Clearing Account within one (1) Business Day after receipt all amounts received by Borrower or Manager constituting Rents. The Clearing Account Agreements and Clearing Accounts for each Borrower shall remain in effect until the Loan has been repaid or defeased in full with respect to all of the Property owned by such Borrower.

(c) During any Cash Management Period, Borrower shall cause the Clearing Bank to transfer to the Cash Management Account in immediately available funds by Federal wire transfer all amounts on deposit in the Clearing Accounts once every Business Day. If a Cash Management Period has not occurred or ceases to exist, the Clearing Bank shall transfer to the applicable Borrower’s Account(s) in immediately available funds by federal wire transfer all amounts in the Clearing Accounts once every Business Day.

(d) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, direct Clearing Bank to immediately pay over all funds on deposit in the Clearing Accounts to Lender and to apply any such funds to the payment of the Debt in any order in its sole discretion.

(e) Funds deposited into the Clearing Accounts shall not be commingled with other monies held by Borrower, Manager or Clearing Bank.

(f) Borrower shall not further pledge, assign or grant any security interest in the Clearing Accounts or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and Clearing Bank and hold Lender and Clearing Bank harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the Clearing Accounts, the Clearing Account Agreements or the performance of the obligations for which the Clearing Accounts were established (unless arising from the gross negligence or willful misconduct of Lender or Clearing Bank, as applicable).

2.7.2 Cash Management Account. (a) Upon the occurrence of a Cash Management Period, Lender shall establish and maintain a segregated Eligible Account (the "**Cash Management Account**") to be held by Deposit Bank in trust for the benefit of Lender, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled "GMR MEMPHIS, LLC, GMR PLANO, LLC, GMR MELBOURNE, LLC AND GMR WESTLAND, LLC, as pledgor, for the benefit of Cantor Commercial Real Estate Lending, L.P., as Secured Party – Cash Management Account," or such other name as required by Lender from time to time. Lender will also establish subaccounts of the Cash Management Account which shall at all times be Eligible Accounts (and may be ledger or book entry accounts and not actual accounts) (such subaccounts are referred to herein as "**Subaccounts**"). Borrower (i) hereby grants to Lender a first priority security interest in the Cash Management Account and the Subaccounts and all deposits at any time contained therein and the proceeds thereof, and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account and the Subaccounts, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Borrower will not in any way alter, modify or close the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account and the Subaccounts and all costs and expenses for establishing and maintaining the Cash Management Account and the Subaccounts shall be paid by Borrower. All monies now or hereafter deposited into the Cash Management Account and the Subaccounts shall be deemed additional security for the Debt.

(b) Provided no Event of Default shall have occurred and be continuing, on each Payment Date (or, if such Payment Date is not a Business Day, on the immediately preceding Business Day) all funds on deposit in the Cash Management Account shall be applied by Lender (or by Deposit Bank at Lender's direction) to the payment of the following items in the order indicated:

(i) First, payment to Lender (for deposit in the Tax and Insurance Escrow Account) in respect of the Tax and Insurance Escrow Funds in accordance with the terms and conditions of Section 7.2 hereof, to be disbursed as set forth in this Agreement;

(ii) Second, payment to Deposit Bank of the fees and expenses of Deposit Bank then due and payable pursuant to the Cash Management Agreement;

(iii) Third, payment to Lender of the Monthly Debt Service Payment Amount, applied first to the payment of interest computed at the Interest Rate with the remainder applied to the reduction of the Outstanding Principal Balance;

(iv) Fourth, payment to Lender (for deposit in the Replacement Reserve Account) in respect of the Replacement Reserve Monthly Deposit in accordance with the terms and conditions of Section 7.3.1 hereof, if the Replacement Reserve Cap Condition is not satisfied;

(v) Fifth, payment to Lender (for deposit in the Rollover Reserve Account) in respect of the Rollover Reserve Monthly Deposit in accordance with the terms and conditions of Section 7.4.1 hereof, if the Rollover Reserve Cap Conditions are not satisfied;

(vi) Sixth, payment to Lender of any other amounts then due and payable under the Loan Documents (other than the Outstanding Principal Balance);

(vii) Seventh, payment to Borrower in an amount equal to the aggregate of (A) operating expenses due and payable by Borrower during the succeeding month with respect to all of the Properties as set forth in the Approved Annual Budget, and (B) Extraordinary Expenses, if any, approved by Lender, which approval shall not be withheld if the same is necessary to prevent personal injury, damage to a Property or a default under any Lease;

(viii) Eighth, if a Lease Trigger Period is then continuing, payment of all amounts then remaining after payment of items (i) through (vii) (all amounts then remaining after payment of items (i) through (vii) being hereinafter referred to as “*Excess Cash*”) to the Occupancy Reserve Account in accordance with the terms and conditions of Section 7.7 hereof, if the Occupancy Reserve Cap Condition is not satisfied;

(ix) Ninth, if a Cash Trap Period is then continuing but no Lease Trigger Period is then continuing (or the Occupancy Reserve Cap Condition is satisfied), then payment of all Excess Cash to the Excess Cash Reserve Account in accordance with the terms and conditions of Section 7.5 hereof; and

(x) Lastly, if no Lease Trigger Period (or the Occupancy Reserve Cap Condition is satisfied) or Cash Trap Period is then continuing, all Excess Cash to Borrower’s Account.

(c) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower of the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(d) Notwithstanding Section 2.7.2(b) above, following the occurrence of an Event of Default and during the continuance thereof, all funds on deposit in the Cash Management Account may be applied by Lender in such order and priority as Lender shall determine in its sole discretion until the Debt has been paid in full.

(e) Borrower hereby agrees to reasonably cooperate with Lender with respect to any requested modifications to the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents.

2.7.3 Payments Received Under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement and the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Funds shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

### ARTICLE III

#### EXCULPATION

Section 3.1 Exculpation. (a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Security Instruments or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Security Instruments and the other Loan Documents, or in the Properties or any Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; *provided, however*, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Properties, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Security Instruments and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under, or by reason of, or in connection with, the Note, this Agreement, the Security Instruments or the other Loan Documents. The provisions of this Section 3.1 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 Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under any Security Instrument; (iii) affect the validity or enforceability of any Guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (iv) impair the right of Lender to obtain the appointment of a receiver; (v) impair the enforcement of the Assignments of Leases; or (vi) constitute a prohibition against Lender seeking a deficiency judgment against Borrower in order to fully realize the security granted by each Security Instrument or commencing any other appropriate action or proceeding in order for Lender to exercise its remedies against the Properties or any Property.

(b) Nothing contained herein shall in any manner or way release, affect or impair the right of Lender to recover, and Borrower shall be fully and personally liable and subject to legal action, for any losses, damages (including, without limitation, punitive or exemplary damages), costs, expenses, liabilities (including, without limitation, strict liability), claims, obligations, settlement payments, penalties, fines, assessments, citations, litigation, demands, defenses, judgments, suits, proceedings or other expenses of any kind whatsoever incurred or suffered by Lender (including reasonable attorneys' fees and expenses and court costs) arising out of or in connection with the following:

- (i) fraud or intentional misrepresentation by or on behalf of Borrower, Guarantor, or any Affiliate of any of them in connection with the Loan or any Property;
- (ii) gross negligence or willful misconduct of Borrower, Guarantor or any Affiliate of any of them in connection with the Loan or any Property;
- (iii) breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity, the Loan Agreement or the Security Instruments concerning Environmental Statutes or Hazardous Substances;
- (iv) material physical waste of any Property resulting from intentional misconduct or gross negligence by or on behalf of Borrower, Guarantor or any Affiliate of any of them;
- (v) intentional removal or disposal of any portion of any Property (A) at any time after a monetary Event of Default occurs (without any notice from Lender of the occurrence of such Event of Default) or (B) at any time after Borrower receives notice from Lender that a non-monetary Event of Default has occurred;
- (vi) breach of any Legal Requirement (including RICO) mandating the forfeiture by Borrower of the Properties or any Property, or any portion thereof, because of the conduct or purported conduct of criminal activity by Borrower or any Restricted Party in connection therewith;
- (vii) any intentional misrepresentation, intentionally misleading or incorrect certification by Borrower or Guarantor or breach of any representation, warranty or certification contained in this Agreement or any other Loan Document or in any document executed in connection therewith by Borrower or Guarantor, pursuant to any of the Loan Documents or otherwise to induce Lender to make the Loan, or any advance thereof, or to release monies from any account held by Lender (including any reserve or escrow) or to take other action with respect to the Collateral;
- (viii) misapplication, misappropriation or conversion by or on behalf of Borrower of (A) any Insurance Proceeds, (B) any Awards, (C) any Rents, (D) any Rents paid more than one (1) month in advance, (E) any reserves held by Borrower pursuant to any Lease, or (F) any other monetary collateral for the Loan (including Borrower's failure to deliver to Lender any insurance proceeds received in connection with the 2020 Exeter Parcel, whether from fire or other casualty or otherwise, as required by Section 1.9(c)(v) of Schedule V attached hereto);
- (ix) failure to pay charges for Taxes or Other Charges (except to the extent that (a) sums sufficient to pay such amounts have been deposited in escrow with Lender pursuant to the terms of this Agreement and there exists no impediment to Lender's utilization thereof; or (b) the Property to which such Taxes or Other Charges relate fails to generate sufficient revenues to pay such items when payments are made in the order set forth in the waterfall at Section 2.7.2(b) hereof), or failure to pay labor or materials or judgments that can create Liens on any portion of any Property, unless (A) such charges are the subject of a bona fide dispute in which Borrower is contesting the amount or validity thereof in accordance with the terms of this Agreement, or (B) any Property fails to generate sufficient revenue to pay for such labor or materials or judgment, *provided that* this limitation (B) shall not apply if any such Lien(s) would be senior to the lien of the Security Instruments (or any of them) or otherwise impair the priority of the Security Instruments (or any of them);

(x) failure by Borrower, Manager or any Affiliate of either to deliver to Lender any security deposits, advance deposits or any other deposits or reserves collected with respect to any Property upon a foreclosure of any such Property or action in lieu thereof, except to the extent any such security deposits or reserves were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(xi) failure by Borrower to obtain and maintain, from time to time, the fully paid for insurance policies in accordance with the terms of this Agreement (except to the extent with respect to the payment of Insurance Premiums only: (a) (I) Lender is paying such Insurance Premiums subject to and in accordance with Section 7.2 of this Agreement, and (II) sums sufficient to pay such Insurance Premiums have been deposited into the Tax and Insurance Escrow Fund and there exists no impediment to Lender's utilization thereof or an Event of Default, or (b) the applicable Property fails to generate sufficient revenues to pay the Insurance Premiums when payments are made in the order set forth in the waterfall at Section 2.7.2(b) hereof and Borrower has provided written notice to Lender stating that the Properties are not able to generate sufficient revenues to pay the Insurance Premiums next becoming due and such notice is delivered to Lender not less than thirty (30) days prior to the earliest date upon which the payment of Insurance Premiums are next due and payable);

(xii) any act or omission of Borrower, Principal or Guarantor which hinders, delays or interferes with Lender's enforcement of its rights under any Loan Document or the realization of the collateral, including the assertion by any of Borrower, Principal or Guarantor of defenses or counterclaims, unless Borrower, Principal or Guarantor prevails in any legal proceeding with respect to such matters;

(xiii) breach or violation by Borrower of any Occupancy Reserve Lease (except to the extent that such breach or violation was directly caused by Borrower having inadequate funds to satisfy its obligations under such Occupancy Reserve Lease and the applicable Property fails to generate sufficient revenues to satisfy such obligations when payments are made in the order set forth in the waterfall at Section 2.7.2(b) hereof and Borrower has provided written notice to Lender stating that the applicable Property is not able to generate sufficient revenues to satisfy such obligations and such notice is delivered to Lender not less than ten (10) Business Days prior to the expiration of (A) the applicable notice and cure periods under the applicable Occupancy Reserve Lease or (B) if the applicable Occupancy Reserve Lease contains no notice and cure periods in favor of Borrower, the earliest date upon which such obligations are due and payable or are required to be performed pursuant to the applicable Occupancy Reserve Lease;

(xiv) Borrower's indemnifications of Lender set forth in Section 9.2 of this Agreement and Section 8.1 of the Security Instruments;

(xv) the creation of any security interest or lien pursuant to this Agreement or any of the other Loan Documents, or any other transfer of property described in the Loan Documents, being deemed fraudulent conveyances or preferences or otherwise being deemed void pursuant to any principles limiting the rights of creditors, whether such claims, demands or assertions are made under the Bankruptcy Code or under any applicable state fraudulent conveyance statutes or similar laws; or

(xvi) Borrower failing to comply with any representation, warranty or covenant set forth in Section 4.1.30 hereof specifically related to any of the following items set forth in the definition of “Special Purpose Entity” at Section 1.1 hereof: (j) - (l), (o) - (r), (u) - (w), (y), (z), (bb), (dd), (ee), (hh) or (ii) (unless such failure is de minimis and promptly cured) (each such item collectively, the “*Above the Line SPE Triggers*”).

(c) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (i) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by the Security Instruments or to require that all collateral shall continue to secure all of the Obligations in accordance with the Loan Documents, and (ii) Borrower shall be personally liable for the payment of the Debt in the event of: (A) Borrower, Principal or Guarantor filing a voluntary petition under the Bankruptcy Code or any other federal or state bankruptcy or insolvency law; (B) the filing of an involuntary petition against Borrower, Principal or Guarantor under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which Borrower, Principal, Guarantor or any Person owning an interest (directly or indirectly) in Borrower, Principal or Guarantor causes such event or condition to occur (by way of example, but not limitation, such Person seeks the appointment of a receiver or files a bankruptcy petition), consents to, aids, solicits, supports, or otherwise cooperates or colludes to cause such condition or event; (C) Borrower, Principal or Guarantor or any Person (other than a Passive Owner) owning an interest (directly or indirectly) in Borrower, Principal or Guarantor filing an answer consenting to or otherwise acquiescing or joining in any involuntary petition filed against Borrower, Principal or Guarantor, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (D) Borrower, Principal or Guarantor or any Person owning an interest (directly or indirectly) in Borrower, Principal or Guarantor consenting to or otherwise acquiescing or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of any Property; (E) Borrower, Principal or Guarantor making an assignment for the benefit of creditors, or admitting, in writing to any creditor of Borrower, Principal or Guarantor (other than Lender or Servicer) or in any legal proceeding, its insolvency or inability to pay its debts as they become due (*provided, however*, that Borrower’s failure to deny a truthful, factual allegation that it is insolvent or failing to pay its debts in the ordinary course shall not be deemed to be included in the events described in this clause (E)); (F) Borrower or Principal failing to obtain Lender’s prior written consent to any Indebtedness or voluntary Lien encumbering any Property as required by this Agreement or the Security Instrument; (G) Borrower or Principal failing to obtain Lender’s prior written consent to any Transfer, as required by this Agreement or the Security Instrument; (H) Borrower failing to comply with any representation, warranty or covenant set forth in Section 4.1.30 hereof specifically related to any of the following items set forth in the definition of “Special Purpose Entity” at Section 1.1 hereof: (a)-(i), (m), (n), (s), (t), (x), (aa), (cc), (ff) or (gg) (unless such failure is de minimis and promptly cured), as required by, and in accordance with, the terms and provisions of this Agreement or the Security Instrument; or (I) Borrower failing to comply with any representation, warranty or covenant set forth in Section 4.1.30 hereof specifically related to any of the Above the Line SPE Triggers, but only if Borrower’s assets are substantively consolidated with the assets of another Person; (I) the first Monthly Debt Service Payment Amount is not paid when due; or (J) any amendment, modification, termination or surrender of any Occupancy Reserve Lease in violation of Section 5.1.20 hereof.

(d) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, Borrower shall be personally liable for the payment of the TI/LC Reserve Funds.



## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. Borrower represents and warrants as of the date hereof that:

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the business in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Properties. The ownership interests of Borrower are as set forth on the organizational chart attached hereto as Schedule III. Borrower (a) has complied in all respects with its certificate of incorporation, bylaws, limited partnership agreement, articles of organization and limited liability company operating agreement, as applicable; (b) has maintained complete books and records and bank accounts separate from those of its Affiliates; (c) has obeyed all formalities required to maintain its status as, and at all times has held itself out to the public as, a legal entity separate and distinct from any other entity (including, but not limited to, any Affiliate thereof); and (d) has all requisite power and authority to conduct its business and to own its property, as now conducted or owned, and as contemplated by this Agreement, including, without limitation, the power and authority to do business in the state in which the Properties are located. The signatory hereto has all necessary power, authority and legal right to execute this Agreement, the Note and the other Loan Documents on Borrower's behalf to which Borrower is a party. Guarantor has the necessary power, authority and legal right to execute, deliver and perform its obligations under the Guaranty.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and the other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower and/or Guarantor, as applicable, 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, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Legal Requirements of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower and/or Guarantor, as applicable, of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending or threatened against or affecting Borrower, Guarantor, Principal or the Properties or any Property, which actions, suits or proceedings, if determined against Borrower, Guarantor, Principal or the Properties or any Property, could reasonably be expected to materially adversely affect the condition (financial or otherwise) or business of Borrower, Guarantor, Principal or the condition or ownership of the Properties or any Property.

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Properties or any Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Properties or any Property are bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Properties or any Property is otherwise bound, other than (a) any obligations incurred in the ordinary course of the operation of the Properties or any Property as permitted pursuant to clause (s) of the definition of "Special Purpose Entity" set forth in Section 1.1 hereof, and (b) the obligations under the Loan Documents.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the applicable Property and good title to the balance of the applicable Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Properties or any Property (as currently used) or Borrower's ability to repay the Loan. The Security Instrument and the Assignment of Leases, when properly recorded in the appropriate records, together with any UCC-1 financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting any Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into the transaction contemplated by this Agreement or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. After giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of the obligations of Borrower). No Bankruptcy Action exists against Borrower or any Principal, and neither Borrower nor Principal has ever been a party to a Bankruptcy Action. Neither Borrower nor Principal is contemplating either a Bankruptcy Action or the liquidation of all or a major portion of Borrower's assets or properties, and Borrower has no knowledge of any Person contemplating the filing of any petition against it or any Principal.

4.1.8 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can foresee, might adversely affect, any Property or the business, operations or condition (financial or otherwise) of Borrower or Guarantor.

4.1.9 No Plan Assets. Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. Compliance by Borrower and Guarantor with the provisions hereof will not involve any Prohibited Transaction. Neither Guarantor nor Borrower has any pension, profit sharing, stock option, insurance or other arrangement or plan for employees covered by Title IV of ERISA, and no “Reportable Event” as defined in ERISA has occurred and is now continuing with respect to any such plan. The performance by Borrower of its obligations under the Loan Documents and Borrower’s conducting of its operations do not violate any provisions of ERISA. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA, (b) transactions by or with Borrower are not subject to any state statute or regulation regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, and (c) none of Borrower, Guarantor or ERISA Affiliate is at the date hereof, or has been at any time within the two years preceding the date hereof, an employer required to contribute to any Multiemployer Plan or Multiple Employer Plan, or a “contributing sponsor” (as such term is defined in Section 4001 of ERISA) in any Multiemployer Plan or Multiple Employer Plan; and none of Borrower, Guarantor or any ERISA Affiliate has any contingent liability with respect to any post-retirement “welfare benefit plan” (as such term is defined in ERISA) except as disclosed to the Lender in writing.

4.1.10 Compliance. Borrower and each of the Properties (including the use thereof) comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower, or any other Person in occupancy of or involved with the operation or use of any Property, any act or omission affording any Governmental Authority the right of forfeiture as against any such Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents. Neither the Improvements as constructed, nor the use of any Property by Tenants under the Leases and the contemplated accessory uses, will violate (a) any Legal Requirements (including subdivision, zoning, building, environmental protection and wetland protection Legal Requirements), or (b) any building permits, restrictions or records, or agreements affecting any Property or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use any Property is to any extent dependent upon or related to any real estate other than such Property.

4.1.11 Financial Information. All financial data with respect to the Properties and Guarantor, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (a) are true, complete and correct in all material respects, (b) accurately represent the financial condition of each of the Properties and Guarantor as of the date of such reports, and (c) have been prepared in accordance with the Approved Accounting Method throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Properties or any Property or the operation thereof as a medical office building or medical center (or office building in the case of the Marina Towers Property), except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no Material Adverse Change in the financial condition, operation or business of Borrower or Guarantor from that set forth in said financial statements.

4.1.12 Condemnation. No Condemnation or other similar proceeding has been commenced or, to Borrower's actual knowledge, is threatened or contemplated with respect to all or any portion of any Property or for the relocation of any roadway providing access to any Property.

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Utilities and Public Access. Each Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service such Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of each Property are available at such Property and are located either in the public right-of-way abutting such Property (which are connected so as to serve such Property without passing over other property) or in recorded easements serving such Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of each Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities. There is no on-site sewage disposal system and each Property is served by a sewer system maintained by a Governmental Authority or property owners association.

4.1.15 Not a Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

4.1.16 Separate Lots. Each Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of such Property .

4.1.17 Assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting any Property, nor are there any contemplated improvements to any Property that may result in such special or other assessments.

4.1.18 Enforceability. The Loan Documents are enforceable by Lender (or any subsequent holder thereof) in accordance with their respective terms, subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and Borrower and Guarantor have not asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.19 No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

4.1.20 Insurance. Borrower has obtained and has delivered to Lender certified copies of all Policies, with all premiums paid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policies, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any such Policies.

4.1.21 Use of Property. Properties are used exclusively as medical office buildings or medical centers (or office buildings in the case of the Marina Towers Property) and other appurtenant and related uses.

4.1.22 Certificate of Occupancy; Licenses. To Borrower's actual knowledge, and except as may be disclosed in the zoning reports ordered and obtained by Lender in connection with the closing of the Loan, all certifications, permits, licenses and approvals, including without limitation, certificates of completion and occupancy permits and, if applicable, any liquor license and certificate of need required for the legal use, occupancy and operation of medical office buildings and medical centers (or office buildings in the case of the Marina Towers Property) (collectively, the "Licenses"), have been obtained and are in full force and effect. Borrower shall keep and maintain all Licenses necessary for the operation of medical office buildings and medical centers (or office buildings in the case of the Marina Towers Property). The use being made of each Property is in conformity with the certificate of occupancy issued for such Property.

4.1.23 Flood Zone. None of the Improvements on any Property are located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards or, if so located, the flood insurance required pursuant to Section 6.1(a)(i) hereof is in full force and effect with respect to the Property.

4.1.24 Physical Condition. To Borrower's actual knowledge and except as may be disclosed in the Physical Condition Report, each Property, including, without limitation, all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components are in good condition, order and repair in all material respects. There exists no structural or other material defects or damages in any Property, whether latent or otherwise, and Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in any Property, 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.

4.1.25 Boundaries. To Borrower's actual knowledge, and except as may be disclosed in the Survey, all of the Improvements which were included in determining the appraised value of each Property lie wholly within the boundaries and building restriction lines of such Property, and no improvements on adjoining properties encroach upon such Property, and no easements or other encumbrances upon such Property encroach upon any of the Improvements, so as to adversely affect the value or marketability of such Property except those easements or other encumbrances with respect to which the Title Insurance Policy insures against any losses resulting therefrom.

4.1.26 Leases. The Properties are not subject to any Leases other than the Leases described on the rent roll attached at Schedule I. Borrower is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in any Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and, to Borrower's knowledge, there are no defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. The copies of the Leases and any related guaranty (including all amendments thereto) delivered to Lender are accurate, true and complete, and there are no oral agreements with respect thereto. No Rent (other than security deposits, if any, listed on Schedule I) has been paid more than one (1) month in advance of its due date. All work to be performed by the landlord under each Lease has been performed as required in such Lease and has been accepted by the applicable Tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by the landlord under such Lease to any Tenant has already been received by such Tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein which is still in effect. Except as listed on Schedule I, to Borrower's knowledge, no Tenant has assigned its Lease or sublet all or any portion of the premises demised thereby, no such Tenant holds its leased premises under assignment or sublease, nor does anyone except such Tenant and its employees occupy such leased premises. Except as listed on Schedule I, no Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of any Property of which the leased premises are a part. Except as listed on Schedule I, no Tenant under any Lease has any right or option for additional space in the Improvements. To Borrower's knowledge, no action or inaction or event has occurred that would entitle any Occupancy Reserve Tenant to terminate its respective Occupancy Reserve Lease.

4.1.27 Survey. Each Survey for the Property delivered to Lender in connection with this Agreement has been prepared by a professional and properly licensed land surveyor and to Borrower's knowledge, in accordance with the 2011 Minimum Detail Requirements for ALTA/ACSM Land Title Surveys as jointly established and adopted by ALTA and National Society of Professional Surveyors. Each Survey reflects the same legal description contained in the Title Insurance Policy for the applicable Property. The surveyor's seal is affixed to the Survey and to Borrower's knowledge does not fail to reflect any material matter affecting any of the Properties or the title thereto.

4.1.28 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. Borrower 1 is organized under the laws of the State of Delaware and its organizational identification number is 5902707; Borrower 2 is organized under the laws of the State of Delaware and its organizational number is 5873641; Borrower 3 is organized under the laws of the State of Delaware and its organizational number is 5937783; and Borrower 4 is organized under the laws of the State of Delaware and its organizational number is 5965886.

4.1.29 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of each Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Security Instruments, have been paid or are being paid simultaneously herewith.

4.1.30 Special Purpose Entity/Separateness. (a) Until the Debt has been paid in full, Borrower hereby represents, warrants and covenants that Borrower is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in Section 4.1.30(a) shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) Any and all of the stated facts and assumptions made in any Insolvency Opinion, including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects, and Borrower and Principal will have complied and will comply with all of the stated facts and assumptions made with respect to it in any Insolvency Opinion. Each entity other than Borrower and Principal with respect to which an assumption is made or a fact stated in any Insolvency Opinion will have complied and will comply with all of the assumptions made and facts stated with respect to it in any such Insolvency Opinion. Borrower covenants that in connection with any Additional Insolvency Opinion delivered in connection with this Agreement it shall provide an updated certification regarding compliance with the facts and assumptions made therein.

(d) Borrower covenants and agrees that Borrower shall provide Lender with fifteen (15) days' prior written notice prior to the removal of an Independent Director of any Borrower and/or Principal.

(e) Borrower (i) is and has always been duly formed, validly existing and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business; (ii) has not had and does not have any judgments or liens of any nature against it (except for Liens for Taxes not yet due); (iii) has been and is in compliance with all Legal Requirements and has received and maintains all Licenses; (iv) is not the subject of, or currently involved in any capacity in, any pending or threatened litigation; (v) is not, and has not been, involved in any dispute with any taxing authority; (vi) has paid all Taxes and Other Charges; (vii) has never owned any property other the applicable Property; (viii) is not now and has not ever been a party to any lawsuit, arbitration, summons or legal proceeding; (ix) has not failed to provide Lender with complete financial statements that reflect a fair and accurate view of its financial condition; and (x) has no material contingent or actual obligations not related to the applicable Property.

(f) (i) Prior Lender is the current holder of the Prior Loan, (ii) the Prior Loan has been indefeasibly satisfied in full on or before the date hereof, (iii) none of Borrower, Principal, nor Guarantor have any remaining liabilities or obligations in connection with the Prior Loan (other than environmental and other limited and customary indemnity obligations), (iv) Prior Lender has released all collateral and security for the Prior Loan as of the date hereof, (v) the Swap, if any, relating to the Prior Loan, has been terminated on or before the date hereof, (vi) all obligations of Borrower and Guarantor under such Swap, if any, have been satisfied in full on or before the date hereof, (vii) none of Borrower, Principal, nor Guarantor have any remaining liabilities or obligations in connection with such Swap, if any, and (viii) either no collateral or security was provided in connection with such Swap, if any, or all such collateral or security given in connection therewith has been released as of the date hereof.

4.1.31 Management Agreement. The Management Agreement (if any) is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder.

4.1.32 Illegal Activity. No portion of any Property has been or will be purchased with proceeds of any illegal activity.

4.1.33 No Change in Facts or Circumstances; Disclosure. All information submitted by Borrower to Lender including, but not limited to, all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no Material Adverse Change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Properties or any Property or the business operations and/or the financial condition of Borrower or Guarantor. Borrower and Guarantor have disclosed to Lender all material facts and have not failed to disclose any material fact that could cause any Provided Information or representation or warranty made herein to be materially misleading.

4.1.34 Investment Company Act. Borrower is not (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 2005, as amended; or (c) subject to any other Federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.35 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Principal or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.1.36 Cash Management Account. (a) This Agreement, together with the other Loan Documents, creates a valid and continuing security interest (as defined in the UCC) in the Clearing Accounts and Cash Management Account in favor of Lender, as and when each such account may be established, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed its interest in the Clearing Accounts and Cash Management Account;

(b) Each of the Clearing Accounts and the Cash Management Account shall constitute a “deposit account” within the meaning of the UCC;

(c) Pursuant and subject to the terms hereof and of the other Loan Documents, Borrower agrees that the Clearing Bank shall comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of the Clearing Accounts and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities;

(d) The Clearing Accounts and Cash Management Account shall not be held in the name of any Person other than Borrower, as pledgor, for the benefit of Lender, as secured party; and

(e) The Properties are not subject to any cash management system (other than pursuant to the Loan Documents), and any and all existing tenant instruction letters issued in connection with any previous financing have been duly terminated prior to the date hereof.



4.1.37 Filing of Returns. Borrower, Principal and Guarantor have filed all Federal income tax returns and all other material tax returns, domestic and foreign, required to be filed by it and have paid all material taxes and assessments payable by it that have become due, other than those not yet delinquent and except for those being contested in good faith. Borrower and Guarantor have each established on its books such charges, accruals and reserves in respect of taxes, assessments, fees and other governmental charges for all fiscal periods as are required by sound accounting principles consistently applied. Neither Borrower, Principal nor Guarantor knows of any proposed assessment for additional Federal, foreign or state taxes for any period, or of any basis therefor, that, individually or in the aggregate, taking into account such charges, accruals and reserves in respect thereof as such Person has made, could reasonably be expected to cause a Material Adverse Change with respect to Borrower, Guarantor or the Properties or any Property.

4.1.38 REA. The REA is in full force and effect and neither Borrower nor any other party to the REA, is in default thereunder, and there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default thereunder. Except as set forth in the definition of "REA" in Section 1.1 of this Agreement, the REA has not been modified, amended or supplemented.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

## ARTICLE V

### BORROWER COVENANTS

Section 5.1 Affirmative Covenants. From the date hereof and until payment and performance in full of all Obligations, Borrower hereby covenants and agrees with Lender that:

5.1.1 Existence; Compliance with Legal Requirements. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to Borrower and each of the Properties. There shall never be committed by Borrower, and Borrower shall not permit any other Person in occupancy of or involved with the operation or use of any Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against any such Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower shall not commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names, preserve all the remainder of its property used or useful in the conduct of its business, and shall keep each of the Properties in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Security Instruments. Borrower shall keep each of the Properties insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or any Property or any alleged violation of any Legal Requirement, provided, that: (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither any Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall, upon final determination thereof, promptly comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (e) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower and the applicable Property or Properties; and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or any Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 Taxes and Other Charges. Borrower shall pay, or shall cause its Tenant(s) to pay (to the extent any Tenant is obligated to make such payments under its Lease) all Taxes and Other Charges now or hereafter levied or assessed or imposed against each of the Properties, or any part thereof, as the same become due and payable; *provided, however*, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower is required to deposit funds into the Tax and Insurance Escrow Account on a monthly basis and Borrower otherwise complies with the terms and provisions of Section 7.2 hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid; *provided, however*, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to Section 7.2 hereof. Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against any Property, and shall promptly pay for all utility services provided to the Property (or cause Tenant to pay). After prior notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (a) no Default or Event of Default has occurred and remains uncured; (b) such proceeding shall be permitted under, and be conducted in accordance with, the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (c) neither any Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (d) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (e) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the applicable Property or Properties (except that if such Taxes or Other Charges must be paid sooner in order to avoid being delinquent, then Borrower shall cause the same to be paid prior to delinquency, and upon making such payment prior to delinquency Borrower may continue such contest); and (f) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or any Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the applicable Security Instrument being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt notice to Lender of any litigation or proceedings by any Governmental Authority pending or threatened against Borrower, Principal and/or Guarantor which might materially adversely affect Borrower's, Principal's or Guarantor's condition (financial or otherwise) or business or the Properties or any Property.

5.1.4 Access to Properties. Subject to the provisions regarding access in the Leases with Tenants unaffiliated with Borrower, Borrower shall permit agents, representatives and employees of Lender to inspect the Properties or any Property or any part thereof at reasonable hours upon reasonable advance notice (which may be given verbally).

5.1.5 Notice of Default. Borrower shall promptly advise Lender (a) of any Material Adverse Change in Borrower's, Principal's or Guarantor's condition, financial or otherwise, or (b) of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.6 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower. Payment of the costs and expenses associated with any of the foregoing shall be in accordance with the terms and provisions of this Agreement, including, without limitation, the provisions of Section 10.13 hereof.

5.1.8 Award and Insurance Benefits. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with any Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting any Property or any part thereof) out of such Insurance Proceeds or Awards.

5.1.9 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Obligations under the Loan Documents, as Lender may reasonably require; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time. In furtherance hereof, Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of protecting, perfecting, preserving and realizing upon the interests granted pursuant to this Agreement and to effect the intent hereof, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that Lender shall lawfully do or cause to be done by virtue hereof. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other applicable Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

5.1.10 Mortgage Taxes. Borrower shall simultaneously herewith pay all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Security Instruments.

5.1.11 Financial Reporting. (a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis in accordance with the Approved Accounting Method, and the requirements of Regulation AB, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Properties. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice (which may be verbal) to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire. After the occurrence and during the continuance of an Event of Default, Borrower shall pay any reasonable costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Properties or any Property, as Lender shall reasonably determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's reasonable request, Borrower shall furnish to Lender such other information reasonably necessary and sufficient to fairly represent the financial condition of Borrower and the Properties or any Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's and Guarantor's annual financial statements certified as true and correct by the party providing such statements and prepared by an independent certified public accountant acceptable to Lender in accordance with the Approved Accounting Method and the requirements of Regulation AB covering the Properties for such Fiscal Year and containing statements of profit and loss for Borrower and Guarantor and each of the Properties and a balance sheet for Borrower and Guarantor. Such statements of Borrower shall set forth the financial condition and the results of operations for each of Properties for such Fiscal Year, and shall include, but not be limited to, amounts representing annual Net Cash Flow, Net Operating Income, Gross Income from Operations and Operating Expenses for each of the Properties and accompanied by an annual rent roll. To the extent that the Borrower consists of more than one entity, the annual financial statement shall include a combined balance sheet of all Borrowers (and no other entities), together with the related combined statement of operations, members' capital and cash flows, including a combined balance sheet and statement of income for the Properties on a combined basis. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (ii) intentionally deleted, (iii) a list of Tenants, if any, occupying more than twenty percent (20%) of the total floor area of the each Building, (iii) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the applicable Building and the percentage of base rent for each Property with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and cumulative basis, (iv) a schedule prepared by such independent certified public accountant reconciling Net Operating Income to Net Cash Flow for each of the Properties (the "**Net Cash Flow Schedule**"), which shall itemize all adjustments made to Net Operating Income to arrive at Net Cash Flow deemed material by such independent certified public accountant, and (v) an Officer's Certificate certifying that each annual financial statement fairly presents the financial condition and the results of operations of Borrower and the Property subject to such reporting, and that such financial statements have been prepared in accordance with the Approved Accounting Method and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same. Guarantor's annual financial statements shall be accompanied by an Officer's Certificate certifying that each annual financial statement presents fairly the financial condition and the results of operations of Guarantor being reported upon and that such financial statements have been prepared in accordance with the Approved Accounting Method and as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Guarantor, and if such Default or an Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before twenty (20) days after the end of each calendar month which occurs during the first year of the term of the Loan, and thereafter on or before twenty (20) days after the end of each calendar quarter, the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and each of the Properties (subject to normal year-end adjustments) as applicable: (i) a rent roll for the subject month or quarter (and each such rent roll shall specify whether or not each Occupancy Reserve Tenant is Continuously Operating); (ii) monthly, quarterly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar month or quarter, as applicable, noting Net Operating Income, Gross Income from Operations, and Operating Expenses for each of the Properties (not including any contributions to the Replacement Reserve Account, the Rollover Reserve Account, and the Occupancy Reserve Account), and, upon Lender's request, other information necessary and sufficient to fairly represent the financial position and results of operation of each of the Properties during such calendar month or quarter, as applicable, and containing a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, all in form satisfactory to Lender; (iii) a calculation reflecting the annual Debt Service Coverage Ratio as of the last day of such month or quarter, as applicable; and (iv) a Net Cash Flow Schedule. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in Section 4.1.30 are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than sixty (60) days.

**DEEMED APPROVAL**: In connection with Lender's approval of the Annual Budget pursuant to this Section 5.1.11(d), Borrower shall provide to Lender, along with the proposed budget, all required information and documentation relating thereto as reasonably required by Lender for approval, together with a notice that is marked in bold lettering with the following language: "**LENDER'S RESPONSE IS REQUIRED WITHIN FIFTEEN (15) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF THE LOAN AGREEMENT BETWEEN THE UNDERSIGNED AND THE LENDER**" and the envelope containing the request must be marked "**PRIORITY**". If Lender does not approve or reject the proposed budget within fifteen (15) Business Days of its receipt of the budget and additional information and documentation, Borrower shall send a second notice to Lender that is marked in bold lettering with the following language: "**LENDER'S RESPONSE IS REQUIRED WITHIN FIVE (5) BUSINESS DAYS OF RECEIPT OF THIS NOTICE PURSUANT TO THE TERMS OF THE LOAN AGREEMENT BETWEEN THE UNDERSIGNED AND THE LENDER**" and the envelope containing the request must be marked "**PRIORITY**". In the event Lender fails to respond to the second notice, the proposed budget shall be deemed the Approved Annual Budget; *provided, however*, if Lender reasonably requests additional information at any time after the first or second notice is given but prior to the time period in which Lender has to respond, the time for Lender's response shall be extended for either fifteen (15) or five (5) Business Days, as applicable, following its receipt of all reasonably requested information and documentation. The budgets submitted by Borrower for 2016 are hereby approved.

(d) For the partial year period commencing on the date hereof, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than sixty (60) days prior to the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's approval (each such Annual Budget, an "**Approved Annual Budget**"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower which requires the approval of Lender hereunder, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget which requires the approval of Lender hereunder, the most recently Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges.

(e) In the event that Borrower must incur an extraordinary Operating Expense or Capital Expenditure not set forth in the Approved Annual Budget (each an "**Extraordinary Expense**"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval.

(f) If, at the time a Disclosure Document is being prepared for a Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower collectively, or the Properties alone or the Properties and Related Properties collectively, will be a Significant Obligor, Borrower shall furnish to Lender upon request (i) the selected financial data or, if applicable, Net Operating Income for Borrower and the Properties for the most recent fiscal year and interim period (or such longer period as may be required by Regulation S-K if the Loan is not treated as a non-recourse loan under Instruction 3 for Item 1101(k) of Regulation AB) meeting the requirements and covering the time periods specified in Section 301 of Regulation S-K and Item 1112 of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization, or (ii) the financial statements required under Item 1112(b)(2) of Regulation AB, if Lender expects that the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization may, or if the principal amount of the Loan together with any Related Loans as of the cut-off date for such Securitization and at any time during which the Loan and any Related Loans are included in a Securitization does, equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included, as applicable, in the Securitization. Such financial data or financial statements shall be furnished to Lender (A) within ten (10) Business Days after notice from Lender in connection with the preparation of Disclosure Documents for the Securitization, (B) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (C) not later than seventy-five (75) days after the end of each fiscal year of Borrower; *provided, however*, that Borrower shall not be obligated to furnish financial data or financial statements pursuant to clauses (B) or (C) of this sentence with respect to any period for which a filing pursuant to the Exchange Act in connection with or relating to the Securitization (an “*Exchange Act Filing*”) is not required. If requested by Lender, Borrower shall use commercially reasonable efforts to furnish to Lender financial data and/or financial statements for any Tenant of any Property if, in connection with a Securitization, Lender expects there to be, with respect to such Tenant or group of Affiliated Tenants, a concentration within all of the mortgage loans included or expected to be included, as applicable, in the Securitization such that such Tenant or group of affiliated Tenants would constitute a Significant Obligor. All financial data and financial statements provided by Borrower hereunder pursuant to this Section 5.1.11(f) shall be prepared in accordance with the Approved Accounting Method, and shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB and other applicable legal requirements. All financial statements referred to in this Section 5.1.11(f) hereof shall be prepared by independent accountants of Borrower reasonably acceptable to Lender in accordance with Regulation AB, Regulation S-K or Regulation S-X, as applicable, and all other applicable legal requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB and all other applicable legal requirements, and shall be further accompanied by a manually executed written consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document and any Exchange Act Filing and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document and Exchange Act Filing, all of which shall be provided at the same time as the related financial statements are required to be provided. All financial data and financial statements (audited or unaudited) provided by Borrower under this Section 5.1.11(f) shall be accompanied by an Officer’s Certificate, which certification shall state that such financial statements meet the requirements set forth in this Section 5.1.11(f). If requested by Lender, Borrower shall provide Lender, promptly upon request, with any other or additional financial statements, or financial, statistical or operating information, as Lender shall reasonably determine to be required pursuant to Regulation S-K or Regulation S-X, as applicable, Regulation AB or any amendment, modification or replacement thereto or other legal requirements in connection with any Disclosure Document or any Exchange Act filing in connection with or relating to a Securitization or as shall otherwise be reasonably requested by the Lender. In the event Lender determines, in connection with a Securitization, that the financial data and financial statements required in order to comply with Regulation S-K or Regulation S-X, as applicable, Regulation AB or any amendment, modification or replacement thereto or other legal requirements are other than as provided herein, then notwithstanding the provisions of this Section 5.1.11(f), Lender may request, and Borrower shall promptly provide, such other financial data and financial statements as Lender determines to be necessary or appropriate for such compliance.

(g) If requested by Lender, Borrower shall provide Lender, promptly upon request, a list of Tenants (including all Affiliates of such Tenants) that in the aggregate (i) occupy 10% or more (but less than 20%) of the total floor area of the Building located at any Property or represent 10% or more (but less than 20%) of aggregate base rent for any Property, and (ii) occupy 20% or more of the total floor area of the Building located at any Property or represent 20% or more of aggregate base rent.

(h) Borrower shall furnish to Lender, within ten (10) Business Days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the operation of the Properties or any Property and the financial affairs of Borrower as may be reasonably requested by Lender. Notwithstanding anything herein to the contrary, in the event the securities of Sponsor are traded on a United States public exchange, Borrower shall not be required to furnish to Lender any financial information that the Securities Act or Exchange Act prohibits Sponsor from providing to Lender.

(i) Borrower shall furnish to Lender, within ten (10) Business Days after Lender's request (or as soon thereafter as may be reasonably possible), financial and sales information from any Tenant designated by Lender (to the extent such financial and sales information is required to be provided under the applicable Lease and same is received by Borrower after request therefor).



(j) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Properties or any Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with any Securitization to such parties requesting such information in connection with such Securitization.

(k) Breach. If Borrower fails to provide to Lender or its designee any of the financial statements, certificates, reports or information that have been delivered by Borrower on previous occasions and/or are customary in connection with the operation of property of the same type and nature as the Properties (the "Required Records") required by this Section 5.1.11 within the applicable time periods set forth in this Section 5.1.11, Borrower shall pay to Lender, at Lender's option and in its discretion, an amount equal to \$2,500 for each Required Record that is not delivered within twenty (20) days after written notice of such failure. In addition, if Borrower fails to deliver any Required Records to Lender within the applicable time periods set forth in this Section 5.1.11, Lender shall have the option, upon twenty (20) days' notice to Borrower that the same is past due, to gain access to Borrower's books and records and prepare or have prepared at Borrower's expense, any Required Records not delivered by Borrower. In addition, it shall be an Event of Default if any of the following shall occur: (i) any failure of Borrower to provide to Lender any of the Required Records within the applicable time periods set forth in this Section 5.1.11, if such failure continues for twenty (20) days after written notice that the same is past due, or (ii) in the event any Required Records shall be materially inaccurate or false, or (iii) in the event of the failure of Borrower to permit Lender or its representatives to inspect said books, records and accounts upon request of Lender as required by this Section 5.1.11.

5.1.12 Business and Operations. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Properties. Borrower will qualify to do business and will remain in good standing under the laws of each jurisdiction as and to the extent the same are required for the ownership, maintenance, management and operation of the Properties.

5.1.13 Title to the Properties. Borrower will warrant and defend (a) the title to the Properties and every part thereof, subject only to Permitted Encumbrances, and (b) the validity and priority of the Lien of the Security Instruments and the Assignments of Leases, subject only to Permitted Encumbrances, in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and expenses, and court costs) incurred by Lender if an interest in any Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that any Security Instrument is foreclosed in whole or in part or that any Security Instrument is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage prior to or subsequent to any Security Instrument in which proceeding Lender is made a party, or (c) of a Bankruptcy Action related to Borrower or any Principal or an assignment by Borrower or any Principal for the benefit of its creditors, Borrower, on behalf of itself and its successors and assigns, agrees that it/they shall be chargeable with and shall pay all costs of collection and defense, including attorneys' fees and expenses, and court costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required taxes.

5.1.15 Estoppel Statement. (a) After request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the Outstanding Principal Balance, (iii) the Interest Rate of the Loan, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the performance of the Obligations, if any, and (vi) that the Note, this Agreement, the Security Instruments and the other Loan Documents are valid, legal and binding obligations of Borrower and have not been modified or if modified, giving particulars of such modification.

(b) Upon request of Lender, Borrower shall use commercially reasonable efforts to deliver to Lender, tenant estoppel certificates from each commercial Tenant leasing space at the Property, in form and substance reasonably satisfactory to Lender, provided that Borrower shall not be required to request such certificates more frequently than one (1) time in any calendar year so long as no Event of Default has occurred and is continuing. The foregoing limitation shall exclude any tenant estoppel certificates that Borrower delivers to Lender in connection with any other provision of this Agreement.

(c) Upon request of Lender, Borrower shall use commercially reasonable efforts to deliver to Lender, estoppel certificates from each party under the REA in form and substance satisfactory to Lender; provided that such certificates may be in the form required under the REA.

5.1.16 Loan Proceeds. Borrower shall use the proceeds of the Loan received by it on the Closing Date only for the purposes set forth in Section 2.1.4.

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.18 Confirmation of Representations. Borrower shall deliver, in connection with any Securitization, (a) one or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower as of the date of the Securitization.

5.1.19 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property (a) with any other real property constituting a tax lot separate from the Property, and (b) which constitutes real property with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such real property portion of the Property.

5.1.20 Leasing Matters. Any Lease executed after the Closing Date and any amendment or modification of any Lease executed after the Closing Date shall require the prior written consent of Lender, which consent shall not be unreasonably withheld. Upon request, Borrower shall furnish Lender with true, correct and complete executed copies of all Leases, amendments thereof and any related agreements. All renewals of Leases (other than renewal options that are set forth in Leases executed before the Closing Date that specify the rental rates during the renewal term of such Lease) and all proposed Leases shall provide for rental rates comparable to existing local market rates and shall be written on the form of standard lease attached to the Borrower's Closing Certificate dated as of the Closing Date. All proposed Leases shall be on commercially reasonable market rate terms and shall not contain any terms which would materially impair Lender's rights under the Loan Documents. All Leases executed after the date hereof shall provide that they are subordinate to the applicable Security Instrument and the Lien created thereby and that the Tenant thereunder agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower (a) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (b) shall enforce the terms, covenants and conditions contained in the Leases upon the part of the Tenant thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved, except that Borrower shall not terminate or accept the surrender by a Tenant of, any Lease unless by reason of a Tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Lease will be permitted without the prior written consent of Lender or unless such termination or surrender is specifically provided for in the Lease; (c) shall not collect any of the Rents more than one (1) month in advance (other than security deposits required pursuant to such Lease); (d) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (e) shall not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents; and (f) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, Borrower shall not enter into a Lease of all or substantially all of any Property without Lender's prior written consent. Notwithstanding anything to the contrary contained herein, all new Leases and all amendments, modifications, extensions, and renewals of existing Leases with Tenants that are Affiliates of Borrower shall be subject to the prior written consent of Lender. Lender shall have the right to require each new Tenant to execute and deliver to Lender a subordination, non-disturbance of possession and attornment agreement in form, content and manner of execution reasonably acceptable to Lender. Furthermore, if any Occupancy Reserve Tenant is no longer Continuously Operating, Borrower shall notify Lender of such fact within ten (10) Business Days after obtaining knowledge thereof.

**DEEMED APPROVAL:** In the event Borrower is required to obtain Lender's written consent to a proposed Lease under this Section 5.1.20, Borrower may send to Lender two (2) written requests for approval of such proposed Lease as follows: (1) The first written request (the "**First Lease Request**") shall state in bold font and all capital letters on the top of the first page: "**PENULTIMATE NOTICE - YOU MUST OBJECT WITHIN THIRTY (30) DAYS OR YOU WILL BE DEEMED TO HAVE APPROVED THE REQUEST CONTAINED HEREIN**"; and (2) The second written request (the "**Second Lease Request**") shall state in bold font and all capital letters on the top of the first page: "**FINAL NOTICE - YOU MUST OBJECT WITHIN FIFTEEN (15) DAYS OR YOU WILL BE DEEMED TO HAVE APPROVED THE REQUEST CONTAINED HEREIN**." The Second Lease Request shall be sent by Borrower to Lender no earlier than fifteen (15) days after the First Lease Request is deemed given to Lender. If Lender fails to respond to Borrower (such response may be to approve or disapprove a proposed Lease or to request additional information) in a writing that is deemed given to Borrower within fifteen (15) days after the Second Lease Request is deemed given to Lender, then Lender shall be deemed to have approved of such proposed Lease. All written correspondence that is required under this Section 5.1.20 shall be sent in accordance with Section 10.6 hereof, and shall be "deemed given" to the recipient in accordance with Section 10.6.

5.1.21 Alterations. Borrower shall obtain Lender's prior written consent to any alterations to any Improvements, which consent shall not be unreasonably withheld except with respect to any alterations to any Improvements which may have a material adverse effect on Borrower's financial condition, the value of any Property or the Net Operating Income with respect to any Property. Notwithstanding the foregoing, Lender's consent shall not be required in connection with any alterations that will not have a material adverse effect on Borrower's financial condition, the value of any Property or the Net Operating Income with respect to any Property, provided that such alterations (a) are either work performed pursuant to the terms of any Lease approved or deemed approved in accordance with the terms hereof, or the costs for such alterations are adequately covered in the current Approved Annual Budget, (b) do not adversely affect any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any Building constituting a part of any Improvements and (c) the aggregate cost thereof for all of the Properties combined (not including the cost of any previous alterations which have been satisfactorily completed and indefeasibly paid for in full prior to the commencement of such new alterations), and for any individual Property, does not exceed the Threshold Amount for the applicable Property, or (d) are performed in connection with Restoration after the occurrence of a Casualty in accordance with the terms and provisions of this Agreement. If the total unpaid amounts due and payable with respect to alterations to the Improvements at any Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) shall at any time exceed the Threshold Amount, Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for the Obligations any of the following: (i) cash or U.S. Obligations or (ii) an irrevocable letter of credit (payable on sight draft only) issued by a financial institution (y) having a rating by S&P of not less than "A-1+" if the term of such bond or letter of credit is no longer than three (3) months or, if such term is in excess of three (3) months, issued by a financial institution having a rating that is acceptable to Lender, and (z) with respect to which each Approved Rating Agency has issued a Rating Agency Confirmation. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on such Property (other than such amounts to be paid or reimbursed by Tenants under the Leases) over the Threshold Amount and Lender may apply such security from time to time at the option of Lender to pay for such alterations.

5.1.22 Operation of Property.

(a) Borrower represents and warrants that it self-manages the Properties, and no agent, affiliated or unaffiliated with Borrower, receives a fee or other compensation for managing the Properties. Borrower shall not engage a property manager without Lender's prior written consent. In the event that Lender determines that the Properties are not being managed in accordance with generally accepted management practices for properties similar to the Properties, Lender shall deliver written notice thereof to Borrower, which notice shall specify with particularity the grounds for Lender's determination. If (i) Lender determines that the conditions specified in such notice are not remedied to Lender's satisfaction by Borrower within thirty (30) days from receipt of such notice, or (ii) an Event of Default occurs and is continuing, then (A) Borrower shall, at Lender's direction, engage a Qualified Manager and enter into a Management Agreement, (B) Borrower and such Qualified Manager shall execute an Assignment of Management Agreement conditionally assigning Borrower's interest in such Management Agreements to Lender and subordinating such Qualified Manager's right to receive fees and expenses under such Management Agreements while the Obligations remains outstanding, and (C) Borrower shall comply with Section 5.1.22(b), (c) and (d) below.

(b) Borrower shall: (i) promptly perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (iv) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner.

(c) If (i) an Event of Default occurs and is continuing, (ii) the Manager shall be the subject of a Bankruptcy Action or become insolvent, (iii) a material default occurs under the Management Agreement beyond any applicable grace and cure periods, or there is otherwise cause to terminate the Management Agreement (including but not limited to fraud, gross negligence, willful misconduct or misappropriation of funds) or (iv) fifty percent (50%) or more of the direct or indirect ownership interest in Manager has changed or Control of Manager has changed, in each event from what it was on the Closing Date, Borrower shall, at the request of Lender, terminate the Management Agreement and replace the Manager with a manager approved by Lender on terms and conditions satisfactory to Lender, it being understood and agreed that the management fee for such replacement manager shall not exceed then prevailing market rates (and in any event shall not exceed three percent (3%) of Gross Income from Operations per annum, for the applicable Property from time to time).

(d) All Material Agreements shall be subject to the prior review and approval, not to be unreasonably withheld, of Lender.

5.1.23 Changes in the Legal Requirements Regarding Taxation. If any Legal Requirement or other law, order, requirement or regulation of any Governmental Authority is enacted or adopted or amended after the date the Loan is funded which imposes a tax, either directly or indirectly, on the Obligations or Lender's interest in any Property, Borrower must pay such tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of such tax or interest and penalties by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then in any such event, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable (provided that, so long as no Event of Default has occurred and is continuing, no Yield Maintenance Premium shall be payable in connection with such prepayment).

5.1.24 No Credits on Account of the Obligations. Borrower will not claim or demand or be entitled to any credit or credits on account of the Obligations for any payment of Taxes assessed against any Property and no deduction shall otherwise be made or claimed from the assessed value of any Property for real estate tax purposes because of the Loan Documents or the Obligations. If Legal Requirements or other laws, orders, requirements or regulations require such claim, credit or deduction, Lender may, by written notice to Borrower of not less than ninety (90) days, declare the Obligations immediately due and payable (provided that, so long as no Event of Default has occurred and is continuing, no Yield Maintenance Premium shall be payable in connection with such prepayment).

5.1.25 Personal Property. Borrower shall cause all of its personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the operation of each Property to always be located at such Property and shall be kept free and clear of all Liens, encumbrances and security interests, except Permitted Encumbrances.

5.1.26 Appraisals. Lender shall have the right to obtain a new or updated appraisal of any Property from time to time, *provided, however*, that so long as no Event of Default has occurred Lender shall do so not more often than once in every twelve (12) month period. Borrower shall cooperate with Lender in this regard. If the appraisal is obtained to comply with this Agreement or any applicable law or regulatory requirement, or bank policy promulgated to comply therewith, or if an Event of Default exists, Borrower shall pay for any such appraisal upon Lender's request.

5.1.27 ACM O&M Plan. (a) Borrower covenants and agrees during the term of the Loan, including any extension or renewal thereof, to maintain and comply with the terms and conditions of those certain Operations and Maintenance Programs for Asbestos-Containing Materials dated as of February 23, 2016, CBRE Project No. PC60223001-208 for the Surgical Institute of Michigan Property and CBRE Project No. PC60223001-204 for the Gastro One Property (collectively, the “*ACM Maintenance Program*”) designed by CBRE Group, Inc., with respect to asbestos containing materials (“*ACM's*”), consistent with “Guidelines for Controlling Asbestos-Containing Materials in Buildings” (USEPA, 1985) and other relevant guidelines, and with applicable state and local laws, and such ACM Maintenance Program will hereafter continuously remain in effect until the Debt is repaid in full. In furtherance of the foregoing, Borrower shall inspect and maintain all ACM's on a regular basis and ensure that all ACM's shall be maintained in a condition that prevents exposure of occupants to ACM's at all times. Without limiting the generality of the preceding sentence, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify, (ii) an amendment to such ACM Maintenance Program to address changing circumstances, laws or other matters, (iii) at Borrower's sole expense, supplemental examination of the Property by consultants specified by Lender, and (iv) variation of the ACM Maintenance Program in response to the reports provided by any such consultants .

(b) Borrower hereby acknowledges and agrees that if Borrower fails to comply in all material respects with the terms and conditions of the ACM Maintenance Program, such failure will constitute an Event of Default.

(c) Lender's requirement that Borrower develop and comply with the ACM Maintenance Program shall not be deemed to constitute a waiver or a modification of any of the representations, covenants or agreements with respect to environmental matters set forth herein or in any other Loan Document.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of the Obligations, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Operation of Properties. (a) Borrower shall not, without Lender's prior consent (which consent shall not be unreasonably withheld): (i) subject to Section 5.1.22, surrender, terminate or cancel any Management Agreement; provided, that Borrower may, without Lender's consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of any Management Agreement; (iii) increase or consent to the increase of the amount of any charges or fees under any Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, any Management Agreement in any material respect.

(b) Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under any Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion, except as may be necessary to maintain or protect the Properties.

5.2.2 Liens. Subject to Borrower's right to contest the amount or validity thereof in accordance with the terms of this Agreement, Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except for Permitted Encumbrances and involuntary Liens that are paid or bonded over and discharged of record within forty-five (45) days of filing.

5.2.3 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction, or (e) cause Principal to (i) dissolve, wind up or liquidate or take any action, or omit to take any action, as a result of which Principal would be dissolved, wound up or liquidated in whole or in part, or (ii) amend, modify, waive or terminate the organizational documents of Principal, in each case, without obtaining the prior consent of Lender.

5.2.4 Change in Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.5 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.6 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of any Property or seek any variance under any existing zoning ordinance, or use or permit the use of any portion of any Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, in each case, without the prior written consent of Lender.

5.2.7 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of all or any portion of any Property with (a) any other real property constituting a tax lot separate from such Property, or (b) any portion of such Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to such Property.

5.2.8 Principal Place of Business and Organization. Borrower shall not change its principal place of business set forth in the introductory paragraph of this Agreement without first giving Lender at least thirty (30) days prior notice. Borrower shall not change the place of its organization as set forth in Section 4.1.28 without the consent of Lender, which consent shall not be unreasonably withheld. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Properties as a result of such change of principal place of business or place of organization.

5.2.9 ERISA. (a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one or more of the following circumstances is true:

- (A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);
- (B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2);
- (C) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or
- (D) The Loan meets the requirements of PTE 95-60, 90-1, 84-14 or similar exemption.

5.2.10 Transfers. (a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners, as applicable, in owning and operating properties such as the Properties in agreeing to make the Loan, and will continue to rely on Borrower’s ownership of the Properties as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Properties so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations contained in the Loan Documents, Lender can recover the Debt by a sale of the Properties.

(b) Without the prior written consent of Lender, Borrower shall not, and shall not permit any Restricted Party to, (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) any of the Properties or any part thereof or any legal or beneficial interest therein, or (ii) permit a Sale or Pledge of any interest in any Restricted Party (any of the actions in the foregoing clauses (i) or (ii), a “**Transfer**”), other than (A) Transfers pursuant to Leases of space in the Improvements to Tenants in accordance with the provisions of Section 5.1.20 hereof, and (B) Transfers that are Permitted Transfers in accordance with Section 5.2.10(g) hereof.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell any of the Property, or any part thereof, for a price to be paid in installments; (ii) an agreement by Borrower leasing all or substantially all of any of the Properties for other than actual occupancy by a space tenant thereunder, or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation’s stock or the creation or issuance of new stock; (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 Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited 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 Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.22 hereof.



(d) Notwithstanding the provisions of this Section 5.2.10, but subject to the terms and conditions set forth below in clause (g) of this Section 5.2.10, Lender's consent shall not be required in connection with one or a series of Transfers of: (i) direct or indirect interests in Borrower among the Sponsors and any Sponsor Controlled Parties; (ii) not more than forty-nine percent (49%) of the direct or indirect stock, general partnership interests, the limited partnership interests, the managing member interests or non-managing membership interests (as the case may be) in Borrower, Principal or any other Restricted Party; (iii) the sale, transfer or issuance of stock in any Restricted Party so long as such stock is listed on the New York Stock Exchange or another nationally or internationally recognized stock exchange; or (iv) direct or indirect interests in Borrower for estate planning purposes by any Sponsor to the spouse, child, parent, grandparent, grandchild, niece, nephew, aunt or uncle of such Sponsor, or to a trust for the benefit of such Sponsor or for the benefit of the spouse, child, parent, grandparent, grandchild, niece, nephew, aunt or uncle of such Sponsor. Furthermore, subject to the terms and conditions set forth in clause (g) of this Section 5.2.10, Lender's consent shall not be required in connection with a Sponsor Transfer.

(e) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon a Transfer without Lender's consent. This provision shall apply to every Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Transfer.

(f) There shall be no assumption of the Loan during the period that is thirty (30) days prior to and continuing until thirty (30) days following the Securitization of any portion of the Loan. Other than as set forth in the preceding sentence, Borrower shall have the right to unlimited Transfers of all of the Properties (and not a portion thereof) with Lender's consent, not to be unreasonably withheld, provided no Event of Default has occurred and is continuing, and Lender receives thirty (30) days' prior written notice of such Transfer and a non-refundable application fee of \$5,000 at the time Lender's consent is sought, and further provided that the following additional requirements are satisfied:

(i) Borrower shall pay Lender a transfer fee equal to one half of one percent (.5%) of the Outstanding Principal Balance at the time of such Transfer (for the avoidance of doubt, this transfer fee shall not apply in the case of a Sponsor Transfer);

(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes, servicer costs and fees and the fees and expenses of the Approved Rating Agencies pursuant to clause (x) below);

(iii) The proposed transferee (the "*Transferee*") or Transferee's Principals must have the creditworthiness, reputation and qualifications to Lender's reasonable satisfaction;

(iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate net worth and liquidity reasonably acceptable to Lender;

(v) Transferee, Transferee's Principals and all other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("*Related Entities*") must not have been party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(viii) Transferee, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in Sections 4.1.30, 5.1.23, 5.2.9 and 5.2.12 hereof, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements and covenants reasonably required by Lender;

(x) Each Approved Rating Agency shall have issued a Rating Agency Confirmation with respect to such Transfer;

(xi) Borrower or Transferee, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Lender and each Approved Rating Agency;

(xii) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty and the Environmental Indemnity or shall execute a replacement guaranty and environmental indemnity in form and substance reasonably satisfactory to Lender;

(xiii) Borrower shall deliver, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Properties and naming the Transferee as owner of the Properties, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Properties shall not be subject to any additional exceptions or liens other than those contained in the Title Insurance Policy issued on the date hereof and the Permitted Encumbrances;

(xiv) If required under the terms hereof, the Property shall be managed by a Qualified Manager pursuant to a Replacement Management Agreement; and

(xv) Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the applicable Security Instrument and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

(g) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, each Permitted Transfer shall be conditioned upon: (i) no such Transfer resulting in the change of Control in Borrower such that a Sponsor Controlled Party does not Control each of Borrower, any Affiliated Manager, and any Principal and the day-to-day operation of the Property, (ii) other than a Transfer pursuant to clause (d)(iii) above, Lender receiving not less than thirty (30) days' prior notice of such Transfer (or in the case of any Transfer pursuant to clause (a) or (b) set forth herein in the definition of "Permitted Transfer", Lender receiving notice within thirty (30) days of any such Transfer), (iii) if a Manager is required under Section 5.1.22, the Property continuing to be managed by Affiliated Manager or a Qualified Manager approved in accordance with the terms and conditions hereof, (iv) Sponsor continuing to directly or indirectly own at least a 20% equity interest in each of Borrower and any Principal both prior to and after such Transfer, (v) other than a Transfer pursuant to clause (d)(iii) above, each proposed transferee (A) remaking the representations contained herein applicable to such proposed transferee, including those relating to Special Purpose Entity requirements, ERISA matters, the USA Patriot Act, OFAC and matters concerning Embargoed Persons and (B) satisfying, to Lender's satisfaction, Lender's "know your customer" requirements relating to the creditworthiness, reputation, background and qualifications of such proposed transferee, provided, however, that Lender's "know your customer" requirements will not apply if such proposed transferee owns or will own less than a ten percent (10%) direct or indirect interests in Borrower, (vi) such Transfer being permitted under the terms of the REA, and (vii) other than in the case of any Transfer pursuant to clause (a) or (b) set forth herein in the definition of "Permitted Transfer" or a Transfer pursuant to clause (d)(iii) above, no Event of Default continuing on the date such Transfer occurs and on the day after such Transfer occurs. Upon request from Lender, Borrower shall promptly provide Lender a revised version of the organizational chart delivered to Lender in connection with the Loan reflecting any Permitted Transfer consummated in accordance with this Section 5.2.10. If after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in Borrower are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in Borrower as of the Closing Date, Borrower shall, no less than thirty (30) days prior to the effective date of any such Transfer (other than a Transfer pursuant to clause (d)(iii) above), deliver to Lender an Additional Insolvency Opinion acceptable to Lender and the Rating Agencies.

5.2.11 REA. Borrower shall not, without the prior written consent of Lender, modify or terminate the REA.

5.2.12 Special Purpose Entity/Separateness.

(a) Borrower is and shall continue to be a Special Purpose Entity.

(b) Any assumptions made in any non-consolidation opinion required to be delivered in connection with the Loan Documents subsequent to the Insolvency Opinion (an "***Additional Insolvency Opinion***"), including, but not limited to, any exhibits attached thereto, shall be true and correct in all respects. Borrower will comply with and Principal has complied and Borrower will cause Principal to comply with, all of the assumptions made with respect to Borrower in the Insolvency Opinion. Borrower will comply with all of the assumptions made with respect to Borrower and Principal in any Additional Insolvency Opinion. Each entity other than Borrower and Principal with respect to which an assumption shall be made in any Additional Insolvency Opinion will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

5.2.13 Embargoed Person; OFAC. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Principal or Guarantor, as applicable, have been derived from any unlawful activity with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law. Neither Borrower, Principal nor Guarantor is (or will be) a Person with whom Lender is restricted from doing business under OFAC regulations (including those persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001 #13224 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such Persons. In addition, to help the US Government fight the funding of terrorism and money laundering activities, The USA Patriot Act (and the regulations thereunder) requires the Lender to obtain, verify and record information that identifies its customers. Borrower shall provide the Lender with any additional information that the Lender deems necessary from time to time in order to ensure compliance with The USA Patriot Act and any other applicable Legal Requirements concerning money laundering and similar activities.

## ARTICLE VI

### INSURANCE; CASUALTY; CONDEMNATION

#### Section 6.1 Insurance.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) comprehensive "All Risk" or "Special Form" insurance on the Improvements and the Personal Property (A) in an amount equal to one hundred percent (100%) of the "**Full Replacement Cost**," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations) with no depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions, or confirmation that co-insurance does not apply; and (C) providing for no deductible in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for all such insurance coverage, with the exception of windstorm coverage which may have a deductible of up to 5% of the total insured value. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently, or at any time in the future, located in a Federally designated "special flood hazard area", flood hazard insurance in an amount equal to the Outstanding Principal Balance or such other amount as Lender shall require; (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity; and (z) windstorm insurance in amounts and in form and substance satisfactory to Lender in the event such windstorm coverage is excluded under the Special Form Coverage, provided that the insurance pursuant to clauses (x), (y) and (z) hereof shall be on terms consistent with the comprehensive "All Risk" or "Special Form" insurance policy required under this subsection (i);

(ii) commercial general liability insurance, including a broad form comprehensive general liability endorsement and coverage against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate and One Million and No/100 Dollars (\$1,000,000.00) per occurrence (and, if on a blanket policy, containing an "Aggregate Per Location" endorsement); (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all insured contracts; and (5) contractual liability covering the indemnities contained in Article VIII of the Security Instrument to the extent the same is available;

(iii) at any time any tenant lease allows for rent abatement or an early right to terminate the lease for damage to the Property, rental loss and/or business income interruption insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; and (C) for loss of Rents in an amount equal to one hundred percent (100%) of the projected Gross Income from Operations for a period of twelve (12) months from the date of such Casualty (assuming such Casualty had not occurred) and notwithstanding that the policy may expire prior to the end of such period. If the property is a hotel owned by the Borrower, business income coverage is required to reimburse for loss net profit, continuing expenses and necessary payroll, while the Property is under restoration. The amount of such loss of Rents or business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of income to be derived from the Property for the succeeding twelve (12) month period. Notwithstanding anything to the contrary in Section 2.7 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied at Lender's sole discretion to (I) the Debt, or (II) Operating Expenses approved by Lender in its sole discretion; *provided, however*, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Debt, except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the Property coverage forms do not otherwise apply, (A) owner's and contractor's protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in subsection (i) above written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to subsection (i) above, (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provision, or confirmation that co-insurance does not apply;

(v) at any time Borrower has any direct employees, worker's compensation insurance with respect to any employees of Borrower, as required by any Governmental Authority or Legal Requirement;

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above;

(vii) at any time Borrower has any direct employees or owns any motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of not less than One Million and No/100 Dollars (\$1,000,000.00);

(viii) umbrella or excess liability insurance in an amount not less than Ten Million and No/100 Dollars (\$10,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (ii) above so long as the general liability policy has a “per location” aggregate subject to a \$10,000,000 aggregate policy cap. Lender reserves the right to amend the umbrella or excess liability insurance requirement annually at renewal of the policy, should the number of properties insured on the program increase materially beyond the 10 locations insured on the policies on the Loan closing date. Should the Property ever be insured on a general liability policy with an uncapped “per location” aggregate or with a “designated location” endorsement specifically allocating at least \$2,000,000 of aggregate limits to the Property or on a policy by itself, the required umbrella or excess liability insurance limit will be Seven Million and No/100 Dollars (\$7,000,000);

(ix) if the Property is or becomes a legal “non-conforming” use or structure, ordinance or law coverage to compensate for the value of the undamaged portion of the Property, the cost of demolition and debris removal, and increased cost of construction in amounts as requested by Lender;

(x) the commercial property, business income, general liability and umbrella or excess liability insurance required under Sections 6.1(a)(i), (ii), (iii) and (viii) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain commercial property and business income insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(i), (ii), (iii) and (viii) above at all times during the term of the Loan so long as Lender determines that either (I) prudent owners of real estate comparable to the Property are maintaining same or (II) prudent institutional lenders (including, without limitation, investment banks) to such owners are requiring that such owners maintain such insurance; and

(xi) upon sixty (60) days’ notice, such other reasonable insurance and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Section 6.1(a) shall be obtained under valid and enforceable policies (collectively, the “**Policies**” or in the singular, the “**Policy**”), and shall be subject to the approval of Lender as to insurance companies, amounts, deductibles, loss payees and insureds. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of “A-” or better (and the equivalent thereof) by at least two (2) of the Approved Rating Agencies rating the Securities. For multi-layered policies, if four or fewer insurance companies issue the Policies, then at least 75% of the insurance coverage represented by the Policies must be provided by insurance companies with a claims paying ability rating of “A-” or better by S&P, with no carrier below “BBB” or if five (5) or more insurance companies issue the Policies, then at least sixty percent (60%) of the insurance coverage represented by the Policies must be provided by insurance companies with a claims paying ability rating of “A-” or better by S&P, with no carrier below “BBB.” Notwithstanding anything above to the contrary, all insurance companies shall be rated at least “A X” by AM Best, and Grange Mutual Casualty Company shall be an acceptable insurance company so long as it retains a rating of at least “A XII” by AM Best. Prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the renewal or successor Policies accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the “**Insurance Premiums**”), shall be delivered by Borrower to Lender. Borrower shall supply an original or certified copy of the original policy within ten (10) days of request by Lender, provided that the policy is available to Borrower.

(c) Any blanket insurance Policy shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 6.1(a).

(d) All Policies provided for or contemplated by Section 6.1(a), except for the Policy referenced in Section 6.1(a)(v), shall name Borrower as the insured and Lender (and its successors and assigns) as Mortgagee, Loss Payee and Additional Insured, as its interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender. Notwithstanding anything above to the contrary, any Policy maintained by a Tenant or Condominium Association shall not name Borrower as a named insured, and any Policy maintained by a Condominium Association may not list lender as a mortgagee.

(e) All Policies provided for in Section 6.1 shall contain clauses or endorsements to the effect that: (i) no act or negligence of Borrower, or anyone acting for Borrower, or of any Tenant or other occupant, or failure to comply with the provisions of any Policy, which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned; (ii) the Policies on which Lender has the protection of a mortgageholder clause shall not be canceled without at least thirty (30) days' notice to Lender; (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and (iv) shall contain a waiver of subrogation in favor of Lender.

(f) If at any time Lender is not in receipt of written evidence that all Policies are in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate. All premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and, until paid, shall be secured by the Security Instrument and shall bear interest at the Default Rate.

Section 6.2 Casualty. If any Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a “*Casualty*”), Borrower shall (a) give prompt notice of such damage to Lender, and (b) promptly commence and diligently prosecute the completion of Restoration so that such Property resembles, as nearly as possible, the condition such Property was in immediately prior to such Casualty, with such alterations as may be reasonably approved by Lender and otherwise in accordance with Section 6.4. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to make proof of loss if not made promptly by Borrower. In addition, Lender may participate in (and have approval rights over) any settlement discussions with any insurance companies with respect to any Casualty in which the Net Proceeds or the costs of completing Restoration are equal to or greater than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

Section 6.3 Condemnation. Borrower shall promptly give Lender notice of the actual or threatened commencement of any proceeding in respect of Condemnation, and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through Condemnation or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to perform the Obligations at the time and in the manner provided in this Agreement and the other Loan Documents and the Outstanding Principal Balance shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Obligations. Lender shall not be limited to the interest paid on the Award by the applicable Governmental Authority but shall be entitled to receive out of the Award interest at the rate or rates provided herein or in the Note. If any Property or any portion thereof is taken by a Governmental Authority, Borrower shall promptly commence and diligently prosecute Restoration and otherwise comply with the provisions of Section 6.4. If any Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Debt. Notwithstanding the foregoing provisions of this Section 6.3 and Section 6.4 hereof, if the Loan or any portion thereof is included in a REMIC and, immediately following a release of any portion of the Lien of the Security Instruments in connection with a Condemnation (but taking into account any proposed Restoration on the remaining portion of the applicable Property), the Loan to Value Ratio is greater than 125% (such value to be determined, in Lender's sole discretion, by any commercially reasonable method permitted to a REMIC) (excluding personal property and going concern value, if any), the principal balance of the Loan must be paid down by an amount equal to the least of the following amounts: (i) the net Condemnation Proceeds, (ii) the fair market value of the released property at the time of the release, or (iii) an amount such that the Loan to Value Ratio (as so determined by Lender) does not increase after the release, unless the Lender receives an opinion of counsel that if such amount is not paid, the Securitization will not fail to maintain its status as a REMIC as a result of the related release of such portion of the Lien of the Security Instruments.

Section 6.4 Restoration. The following provisions shall apply in connection with any Restoration:

(a) If the Net Proceeds shall be less than the Net Proceeds Threshold Amount and the costs of completing Restoration shall be less than the Net Proceeds Threshold Amount, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Section 6.4(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence Restoration in accordance with the terms of this Agreement.

(b) If the Net Proceeds are equal to or greater than the Net Proceeds Threshold Amount, but less than twenty percent (20%) of the original principal balance of the Allocated Loan Amount for the affected Property or the costs of completing Restoration is equal to or greater than the Net Proceeds Threshold Amount, but less than twenty percent (20%) of the original principal balance of the Allocated Loan Amount for the affected Property, the Net Proceeds will be held by Lender and Lender shall make the Net Proceeds available for Restoration in accordance with the provisions of this Section 6.4. The term "**Net Proceeds**" for purposes of this Section 6.4 shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to Section 6.1 (a)(i), (iv), (vi), (ix) and (x) as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of Lender's reasonable costs and expenses (including, but not limited to, reasonable counsel costs and fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be.



(i) The Net Proceeds shall be made available to Borrower for Restoration upon the approval of Lender in its sole discretion that the following conditions are met:

(A) no Default shall have occurred and be continuing;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than forty percent (40%) of the total floor area of the Improvements on the affected Property has been damaged, destroyed or rendered unusable as a result of such Casualty, or (2) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the affected Property is taken, and such land is located along the perimeter or periphery of such affected Property, and no portion of the Improvements is located on such land;

(C) (1) if any Occupancy Reserve Lease is in effect as of the date of the occurrence of such Casualty or Condemnation, then each such Occupancy Reserve Lease must remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of such Casualty or Condemnation, or (2) with respect to any individual Property, if no Occupancy Reserve Lease is in effect for such Property as of the date of the occurrence of such Casualty or Condemnation, Leases demising in the aggregate a percentage amount equal to or greater than ninety percent (90%) of the total rentable space in such Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and will make all necessary repairs and restorations thereto at their sole cost and expense;

(D) Borrower shall commence Restoration as soon as reasonably practicable (but in no event later than one hundred twenty (120) days after such Casualty or Condemnation, whichever the case may be, occurs) and shall diligently pursue the same to satisfactory completion;

(E) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the affected Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Section 6.1(a)(iii), if applicable, or (3) by other funds of Borrower;

(F) Lender shall be satisfied that Restoration will be completed on or before the earliest to occur of (1) six (6) months prior to the Maturity Date, (2) the earliest date required for such completion under the terms of any Leases, (3) such time as may be required under all applicable Legal Requirements in order to repair and restore the affected Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable, or (4) the expiration of the insurance coverage referred to in Section 6.1(a)(iii);

(G) the affected Property and the use thereof after Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(H) Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(I) such Casualty or Condemnation, as applicable, does not result in the loss of access to the affected Property or the related Improvements, other than a temporary, construction related loss of access to the affected Property;

(J) both the Individual Property Debt Service Coverage Ratio for the affected Property and the Debt Service Coverage Ratio (for the Properties as a whole), after giving effect to Restoration, shall be equal to or greater than 1.45 to 1.0;

(K) both the Individual Property Loan to Value Ratio for the affected Property and the Loan to Value Ratio (for the Properties as a whole), after giving effect to Restoration, shall be equal to or less than sixty percent (60%);

(L) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing Restoration, which budget shall be acceptable to Lender; and

(M) the Net Proceeds together with any cash or cash equivalent deposited by Borrower with Lender are sufficient in Lender's reasonable discretion to cover the cost of Restoration.

(ii) The Net Proceeds shall be paid directly to Lender for deposit in an interest-bearing account (the "**Net Proceeds Account**") and, until disbursed in accordance with the provisions of this Section 6.4(b), shall constitute additional security for the Debt and the Other Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the affected Property which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company.

(iii) All plans and specifications required in connection with Restoration shall be subject to prior review and acceptance in all respects by Lender and by an independent consulting engineer selected by Lender (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with Restoration. The identity of the contractors, subcontractors and materialmen engaged in Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of Restoration, as certified by the Casualty Consultant, minus the Retention Amount. The term “ **Retention Amount** ” shall mean, as to each contractor, subcontractor or materialman engaged in Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of Restoration, as certified by the Casualty Consultant, until Restoration has been completed. The Retention Amount shall in no event, and notwithstanding anything to the contrary set forth above in this Section 6.4(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in Restoration. The Retention Amount shall not be released until the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b) and that all approvals necessary for the re-occupancy and use of the affected Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs of Restoration have been paid in full or will be paid in full out of the Retention Amount; *provided, however* , that Lender will release the portion of the Retention Amount being held with respect to any contractor, subcontractor or materialman engaged in Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor’s, subcontractor’s or materialman’s contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the Title Company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the lien of the related Security Instrument and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Retention Amount shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of Restoration, Borrower shall deposit the deficiency (the “ **Net Proceeds Deficiency** ”) with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 6.4(b) shall constitute additional security for the Debt and the Other Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that Restoration has been completed in accordance with the provisions of this Section 6.4(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing.

(c) If Net Proceeds are (i) equal to or greater than twenty percent (20%) of the Allocated Loan Amount for the affected Property, (ii) not required to be made available for Restoration (due to Borrower's inability to satisfy the conditions set forth in Section 6.4(b)(i) or otherwise), or (iii) not to be returned to Borrower as excess Net Proceeds pursuant to Section 6.4(b)(vii), then in any such event all Net Proceeds may be retained and applied by Lender in accordance with Section 2.4.2 hereof toward reduction of the Outstanding Principal Balance whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, in the sole discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its sole discretion. No prepayment charge shall be payable by Borrower by reason of a Casualty or Condemnation.

(d) In the event of foreclosure of the Security Instruments, or other transfer of title to the Properties in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Properties and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

## ARTICLE VII

### RESERVE FUNDS

#### Section 7.1 Required Repair Funds.

7.1.1 Deposits. Borrower shall perform the repairs at the Property as more particularly set forth on Schedule II hereto (such repairs hereinafter collectively referred to as "**Required Repairs**"). Borrower shall complete the Required Repairs on or before the required deadline for each repair as set forth on Schedule II hereto, which period may be extended upon request of Borrower, provided Borrower is diligently pursuing such completion, such additional period not to exceed five (5) days. It shall be an Event of Default if (a) Borrower does not complete the Required Repairs by the required deadline for each repair as set forth on Schedule II (as may be extended as set forth above), provided, however, that if a deadline is not met solely as a result of Force Majeure, such deadline shall be further extended for so long as such Force Majeure continues, but in no event longer than sixty (60) days from the original required deadline, or (b) Borrower does not satisfy each condition contained in Section 7.1.2 hereof. Upon the occurrence of such an Event of Default, Lender, at its option, may withdraw all Required Repair Funds from the Required Repair Account and Lender may apply such funds either to completion of the Required Repairs or toward reduction of the Outstanding Principal Balance in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply Required Repair Funds shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents. On the Closing Date, Borrower shall deposit with Lender the Required Repairs Amount for payment of the cost of the Required Repairs. Amounts so deposited with Lender shall be held by Lender in accordance with Section 7.9 hereof. Amounts so deposited shall hereinafter be referred to as Borrower's "**Required Repair Funds**" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "**Required Repair Account**".

7.1.2 Release of Required Repair Funds. (a) Lender shall disburse to Borrower the Required Repair Funds from the Required Repair Account from time to time, but not more frequently than once in any thirty (30) day period, upon satisfaction by Borrower of each of the following conditions with respect to each disbursement: (i) Borrower shall submit a written request for payment to Lender (with a copy to the Title Company) at least ten (10) Business Days prior to the date on which Borrower requests such payment be made, which request specifies the Required Repairs to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured, (iii) Lender shall have received an Officer's Certificate (A) stating that all Required Repairs to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Federal, state and local laws, rules and regulations, such Officer's Certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete the Required Repairs, (B) identifying each Person that supplied materials or labor in connection with the Required Repairs to be funded by the requested disbursement, and (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, for work completed and/or materials furnished to date, such Officer's Certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (iv) Lender shall have received a title search indicating that the applicable Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall not be required to make disbursements from the Required Repair Account unless such requested disbursement is in an amount greater than \$5,000 (or a lesser amount if the total amount in the Required Repair Account is less than \$5,000, in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this Section 7.1.2.

(b) Nothing in this Section 7.1.2 shall (i) make Lender responsible for performing or completing any Required Repairs; (ii) require Lender to expend funds in addition to the Required Repairs Funds to complete any Required Repairs; (iii) obligate Lender to proceed with any Required Repairs; or (iv) obligate Lender to demand from Borrower additional sums to complete any Required Repairs.

(c) Borrower shall permit Lender and Lender's agents and representatives (including Lender's engineer, architect or inspector) or third parties to enter onto any of the Properties during normal business hours (subject to the rights of Tenant under their Leases) to inspect the progress of any Required Repairs and all materials being used in connection therewith and to examine all plans and shop drawings relating to such Required Repairs. Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other Persons described above in connection with inspections described in this Section 7.1.2(c).

(d) If a disbursement will exceed \$25,000.00, Lender may require an inspection of the applicable Property at Borrower's expense prior to making a disbursement of Required Repairs Funds in order to verify completion of the Required Repairs for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and may require a certificate of completion by an independent qualified professional architect acceptable to Lender prior to the disbursement of Required Repairs Funds. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional architect.

7.1.3 Balance in Required Repair Account. The insufficiency of any balance in the Required Repair Account shall not relieve Borrower from its obligation to perform the Required Repairs in a good and workmanlike manner and in accordance with all Legal Requirements.

Section 7.2 Tax and Insurance Escrow.

7.2.1 Tax and Insurance Escrow Funds. On the date hereof, Borrower shall deposit with Lender the Initial Tax Deposit on account of the Taxes next coming due and the Initial Insurance Premiums Deposit on account of the Insurance Premiums next coming due. Additionally, Borrower shall pay to Lender on each Payment Date (a) one-twelfth of the Taxes that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) one-twelfth of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (the foregoing amounts so deposited with Lender are hereinafter called the "***Tax and Insurance Escrow Funds***" and the account in which such amounts are held shall hereinafter be referred to as the "***Tax and Insurance Escrow Account***").

7.2.2 Disbursements from Tax and Insurance Escrow Funds. Provided no Default or Event of Default has occurred and is continuing, Lender will apply the Tax and Insurance Escrow Funds to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Section 5.1.2 hereof and under the Security Instruments. In making any payment relating to the Tax and Insurance Escrow Funds, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Funds shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Section 5.1.2 hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Funds. Any amount remaining in the Tax and Insurance Escrow Funds after the Debt has been paid in full shall be returned to Borrower. In allocating such excess, Lender may deal with the Person shown on the records of Lender to be the owner of the applicable Property. If at any time Lender reasonably determines that the Tax and Insurance Escrow Funds are not or will not be sufficient to pay Taxes and Insurance Premiums by the due dates thereof, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and/or thirty (30) days prior to expiration of the Policies, as the case may be.

7.2.3 Conditional Waiver of Tax Escrow. Notwithstanding anything contained in this Section 7.2.1 to the contrary, with respect to any individual Property, Borrower shall not be required to deposit with Lender any monies on account of Taxes for such Property, provided that Borrower is in compliance with the following conditions as determined by Lender: (i) the Occupancy Reserve Lease for such Property (A) remains in full force and effect, (B) has not been amended or modified except in accordance with the terms of this Agreement, and (C) encumbers all of such Property, (ii) no Cash Management Period has occurred and is continuing; (iii) no default beyond any applicable notice and grace periods exists under such Occupancy Reserve Lease; (iv) such Occupancy Reserve Lease obligates the applicable Occupancy Reserve Tenant to pay all Taxes directly to either Borrower or the applicable Governmental Authority; and (v) Lender has received proof of payment, at least thirty (30) days prior to the date upon which they are due, in form and substance acceptable to Lender, that all Taxes for such Property have been paid on or prior to the date upon which they are due. In the event that Lender determines that Borrower has failed to satisfy any of the foregoing conditions, Borrower shall at Lender's direction, deposit the amounts required for Taxes for such Property into the Tax and Insurance Escrow Account, as required pursuant to Section 7.2.1, commencing on the Payment Date first occurring after Lender provided such written direction to Borrower. Furthermore, and notwithstanding anything contained in Section 7.2.2 hereof to the contrary, for so long as Borrower has satisfied the conditions set forth in this Section 7.2.3, Lender shall not be obligated to (A) return any excess funds or offer credits against any excess funds pursuant to Section 7.2.2 for such Property, or (B) disburse any Tax and Insurance Escrow Funds from the Tax and Insurance Escrow Account pursuant to Section 7.2.2 to pay for Taxes for such Property.

7.2.4 Conditional Waiver of Insurance Escrow. Notwithstanding anything contained in this Section 7.2.1 to the contrary, with respect to any individual Property, Borrower shall not be required to deposit with Lender any monies on account of Insurance Premiums for such Property, provided that Borrower is in compliance with the following conditions as determined by Lender: (i) the applicable Occupancy Reserve Lease for such Property (A) remains in full force and effect, (B) has not been amended or modified except in accordance with the terms of this Agreement, and (C) encumbers all of such Property, (ii) no Cash Management Period has occurred and is continuing; (iii) no default beyond any applicable notice and grace periods exists under such Occupancy Reserve Lease; (iv) such Occupancy Reserve Lease obligates the applicable Occupancy Reserve Tenant to pay all Insurance Premiums directly to either Borrower or the applicable insurance companies which issued the Policies; and (v) Lender has received proof of payment, at least thirty (30) days prior to the date upon which they are due, in form and substance acceptable to Lender, that all Insurance Premiums have been paid on or prior to the date upon which they are due. In the event that Lender determines that Borrower has failed to satisfy any of the foregoing conditions, Borrower shall at Lender's direction, deposit the amounts required for Insurance Premiums for such Property into the Tax and Insurance Escrow Account, as required pursuant to Section 7.2.1, commencing on the Payment Date first occurring after Lender provided such written direction to Borrower. Furthermore, and notwithstanding anything contained in Section 7.2.2 hereof to the contrary, for so long as Borrower has satisfied the conditions set forth in this Section 7.2.4, Lender shall not be obligated to (A) return any excess funds or offer credits against any excess funds pursuant to Section 7.2.2 for such Property, or (B) disburse any Tax and Insurance Escrow Funds from the Tax and Insurance Escrow Account pursuant to Section 7.2.2 to pay for Insurance Premiums for such Property.

Section 7.3 Replacements and Replacement Reserve.

7.3.1 Replacement Reserve Funds. Borrower shall pay to Lender on each Payment Date the Replacement Reserve Monthly Deposit, which is the amount reasonably estimated by Lender in its sole discretion to be due for replacements and repairs required to be made to the Properties during the calendar year (collectively, the "**Replacements**"). Amounts so deposited shall hereinafter be referred to as Borrower's "**Replacement Reserve Funds**" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "**Replacement Reserve Account**". Lender may reassess its estimate of the amount necessary for the Replacement Reserve Funds from time to time, and may increase the monthly amounts required to be deposited into the Replacement Reserve Account upon thirty (30) days' notice to Borrower if Lender determines in its reasonable discretion (based upon a third party report by a Lender approved engineer employed to inspect one or more of the Properties) that an increase is necessary to properly maintain and operate the Properties. Notwithstanding the foregoing, if, at any time, and from time to time, the available Replacement Reserve Funds in the Replacement Reserve Account exceed \$169,284.00 (the "**Replacement Reserve Cap Condition**"), Borrower's obligation to pay to Lender the Replacement Reserve Monthly Deposit shall be suspended; provided, however, that if at any time, and from time to time, the Replacement Reserve Cap Condition is not satisfied, Borrower shall recommence and continue paying to Lender on each Payment Date the Replacement Reserve Monthly Deposit until such time as all of the Replacement Reserve Cap Condition is satisfied.

7.3.2 Disbursements from Replacement Reserve Account. Lender shall make disbursements to Borrower (or, at the direction of Borrower in writing, and without limiting the provisions of this Section 7.3, to the Person that supplied materials or labor in connection with the Replacements to be funded by the requested disbursement) from the Replacement Reserve Funds for the cost of Replacements incurred by Borrower upon satisfaction by Borrower of each of the following conditions with respect to each such disbursement: (a) Borrower shall submit Lender's standard form of draw request for payment to Lender at least ten (10) Business Days prior to the date on which Borrower requests such payment be made, which request shall specify the Replacements to be paid and shall be accompanied by copies of paid invoices for the amounts requested; (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured; and (c) Lender shall have received (i) an Officer's Certificate from Borrower (A) stating that the items to be funded by the requested disbursement are Replacements, and a description thereof, (B) stating that all Replacements to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, (C) identifying each Person that supplied materials or labor in connection with the Replacements to be funded by the requested disbursement, (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, (E) stating that the Replacements to be funded have not been the subject of a previous disbursement, (F) stating that all previous disbursements of Replacement Reserve Funds have been used to pay the previously identified Replacements, and (G) stating that all outstanding trade payables relating to the Replacements (other than those to be paid from the requested disbursement) have been paid in full, (ii) a copy of any license, permit or other approval by any Governmental Authority required in connection with the Replacements and not previously delivered to Lender, (iii) if required by Lender for requests in excess of \$10,000 for a single item, lien waivers or other evidence of payment satisfactory to Lender and releases from all parties furnishing materials and/or services in connection with the requested payment, (iv) at Lender's option, a title search for the applicable Property indicating that such Property is free from all Liens, claims and other encumbrances not previously approved by Lender, and (v) such other evidence as Lender shall reasonably request to demonstrate that the Replacements to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall make disbursements as requested by Borrower on a monthly basis in increments of no less than \$5,000 per disbursement, except for the final draw for any Replacement. Lender may require an inspection of the Properties or any Property at Borrower's expense prior to making a monthly disbursement in order to verify completion of improvements in excess of \$50,000 for which reimbursement is sought.



7.3.3 Balance in the Replacement Reserve Account. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

Section 7.4 Rollover Reserve.

7.4.1 Deposits to Rollover Reserve Funds. (a) On the Closing Date, Borrower shall deposit with Lender the Initial Rollover Reserve Deposit. Additionally, commencing on and including the Payment Date in November 2017 Borrower shall pay to Lender on each Payment Date the Rollover Reserve Monthly Deposit, which amounts shall be deposited with and held by Lender for Approved Leasing Expenses incurred following the date hereof. In addition, Borrower shall pay to Lender for deposit with Lender those additional funds described in Section 7.4.1(b) hereof. All such amounts so deposited pursuant to this subsection (a) shall hereinafter be referred to as the “**Rollover Reserve Funds**” and the account in which such amounts are held shall hereinafter be referred to as the “**Rollover Reserve Account**”. Notwithstanding the foregoing, if, at any time, and from time to time, (a) the available Rollover Reserve Funds in the Rollover Reserve Account exceed \$1,269,630.00, (b) no Event of Default has occurred and is continuing, and (c) at least eighty five percent (85%) of the total floor area of the Improvements (for the Properties as a whole) is occupied by Tenants that are open for business, paying full contractual rent under their respective Leases, are not the subject of any Bankruptcy Action and are not in default beyond any applicable notice and/or cure periods under the terms of their respective Leases (collectively, the “**Rollover Reserve Cap Conditions**”), Borrower’s obligation to pay to Lender the Rollover Reserve Monthly Deposit shall be suspended; provided, however, that if at any time, and from time to time, any one of more of the Rollover Reserve Cap Conditions are not satisfied, Borrower shall recommence and continue paying to Lender on each Payment Date the Rollover Reserve Monthly Deposit until such time as all of the Rollover Reserve Cap Conditions are satisfied. Notwithstanding the foregoing, in the event the Rollover Reserve Cap Conditions are not satisfied solely because of a vacancy at just one Property, Borrower shall be obligated to pay a Rollover Reserve Monthly Deposit equal to the amount shown for the applicable Property on Schedule IV attached hereto in lieu of the aggregate amount shown for all Properties.

(b) In addition to the required deposits set forth in subsection (a) above, the following items shall be deposited into the Rollover Reserve Account and held as Rollover Reserve Funds, which Rollover Reserve Funds shall be held by Lender and disbursed only in accordance with Section 7.4.2 below. Borrower shall advise Lender at the time of receipt thereof of the nature of such receipt:

(i) All sums paid with respect to (A) a modification of any Lease or otherwise paid in connection with Borrower taking any action under any Lease (e.g., granting a consent) or waiving any provision thereof, except for amounts paid to reimburse Borrower for administrative expenses, reasonable legal fees and other reasonable out-of-pocket costs (“*Costs*”) associated with such modification, (B) any settlement of claims of Borrower against third parties in connection with any Lease (other than Costs and other than funds received to reimburse actual out of pocket losses actually incurred by Borrower); (C) any rejection, termination, surrender or cancellation of any Lease (including in any bankruptcy case) or any lease buy-out or surrender payment from any tenant (including any payment relating to unamortized tenant improvements and/or leasing commissions), and (D) any sum other than Costs received from any tenant to obtain a consent to an assignment or sublet or otherwise, or any holdover rents or use and occupancy fees from any tenant or former tenant (to the extent not being paid for use and occupancy or holdover rent); and

(ii) Any other extraordinary event pursuant to which Borrower receives payments or income (in whatever form) derived from or generated by the use, ownership or operation of any of Properties not otherwise covered by this Agreement or the Cash Management Agreement, provided, however, that funds received to reimburse actual out of pocket expenses actually incurred by Borrower shall not be included.

7.4.2 Withdrawal of Rollover Reserve Funds. Lender shall make disbursements from the Rollover Reserve Funds for Approved Leasing Expenses incurred by Borrower in connection with Leases entered into in accordance with the terms hereof upon satisfaction by Borrower of each of the following conditions with respect to each such disbursement: (a) Borrower shall submit Lender’s standard form of draw request for payment to Lender at least ten (10) Business Days prior to the date on which Borrower requests such payment be made, which request shall specify the Approved Leasing Expense to be paid and shall be accompanied by copies of invoices for the amounts requested; (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured; (c) Lender shall have reviewed and approved the Lease giving rise to the Approved Leasing Expense to be paid; and (d) Lender shall have received (i) an Officer’s Certificate from Borrower (A) stating that the items to be funded by the requested disbursement are Approved Leasing Expenses, and a description thereof, (B) stating that all tenant improvements at the applicable Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, (C) identifying each Person that supplied materials or labor in connection with the tenant improvements to be funded by the requested disbursement or the broker entitled to the leasing commissions, (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, (E) stating that the Approved Leasing Expenses to be funded have not been the subject of a previous disbursement, (F) stating that all previous disbursements of Rollover Reserve Funds have been used to pay the previously identified Approved Leasing Expenses, and (G) stating that all outstanding trade payables relating to the Approved Leasing Expenses (other than those to be paid from the requested disbursement) have been paid in full, (ii) a copy of any license, permit or other approval by any Governmental Authority required in connection with the tenant improvements and not previously delivered to Lender, (iii) if required by Lender for requests in excess of \$10,000 for a single item, lien waivers or other evidence of payment satisfactory to Lender and releases from all parties furnishing materials and/or services in connection with the requested payment, (iv) at Lender’s option, a title search for applicable Property indicating that such Property is free from all Liens, claims and other encumbrances not previously approved by Lender, and (v) such other evidence as Lender shall reasonably request to demonstrate that the Approved Leasing Expenses to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall make disbursements as requested by Borrower on a monthly basis in increments of no less than \$5,000 per disbursement, except for the final draw for any Lease. Lender may require an inspection of the applicable Property at Borrower’s expense prior to making a monthly disbursement in order to verify completion of improvements in excess of \$50,000 for which reimbursement is sought.

Section 7.5 Excess Cash Reserve Funds.

(a) Upon the occurrence and during the continuance of a Cash Trap Period, provided that a Lease Trigger Period does not then exist, all Excess Cash shall be collected by Lender and all such amounts shall be held as additional security for the Loan (amounts so held shall be hereinafter referred to as the “**Excess Cash Reserve Funds**” and the account to which such amounts are held shall hereinafter be referred to as the “**Excess Cash Reserve Account**”).

(b) At such time as any Cash Trap Period shall end, any funds held in the Excess Cash Reserve Account shall be returned to Borrower if no other Cash Trap Period then exists.

Section 7.6 Payment Reserve. Contemporaneously with the execution hereof, Borrower has established with Lender a reserve in the aggregate amount of (i) the Monthly Debt Service Payment Amount due on the First Payment Date and (ii) amounts payable to Reserve Accounts on the First Payment Date (the “**Payment Reserve**”). Borrower understands and agrees that, notwithstanding the establishment of the Payment Reserve, all of the proceeds of the Loan have been, and shall be considered, fully disbursed and shall bear interest and be payable on the terms provided therein. For so long as no Event of Default has occurred hereunder or under any of the other Loan Documents, Lender shall on the First Payment Date advance from the Payment Reserve to itself the amount of the Monthly Debt Service Payment Amount and amounts payable to Reserve Accounts under the Loan Documents on the First Payment Date. Amounts deposited in the Payment Reserve shall be referred to herein as Borrower’s “**Payment Reserve Funds**” and the account in which such amounts are held shall be referred to as Borrower’s “**Payment Reserve Account**.” At the sole discretion of Lender, Lender may waive Borrower’s obligation to deposit into the Payment Reserve the aggregate amount of the Monthly Debt Service Payment Amount plus the amounts payable to the Reserve Accounts payable on the First Payment Date. In the event Lender so waives Borrower’s obligation to establish the Payment Reserve, then on the First Payment Date Borrower shall pay the Monthly Debt Service Payment Amount and the amounts otherwise payable to the Reserve Accounts on the First Payment Date. The provisions of this Section 7.6 shall not affect Borrower’s obligation to make any other payments required pursuant to the terms of this Agreement.

Section 7.7 Occupancy Reserve.

7.7.1 Deposits to Occupancy Reserve Funds. On every Payment Date during a Lease Trigger Period, Borrower shall pay to Lender the Excess Cash, which amount shall be deposited with and held by Lender for Approved Leasing Expenses incurred following the date hereof and in connection with one or more Acceptable Replacement Leases or Acceptable Lease Extensions, as applicable, in connection therewith. All such amounts so deposited shall hereinafter be referred to as the “**Occupancy Reserve Funds**” and the account in which such amounts are held shall hereinafter be referred to as the “**Occupancy Reserve Account**.” Notwithstanding the foregoing, if at any time, and from time to time, the Occupancy Reserve Funds deposited and available in the Occupancy Reserve Account pursuant to this Section 7.7.1 exceed the Occupancy Reserve Cap (the “**Occupancy Reserve Cap Condition**”), Borrower’s obligation to continue to pay to Lender the Excess Cash into the Occupancy Reserve shall be suspended, provided, however, that if at any time, and from time to time, the Occupancy Reserve Cap Condition is not satisfied and a Lease Trigger Period exists, Borrower shall recommence and continue paying to Lender the Excess Cash into the Occupancy Reserve Account until the Occupancy Reserve Cap Condition is satisfied.

7.7.2 Withdrawal of Occupancy Reserve Funds. Lender shall make disbursements from the Occupancy Reserve Funds for Approved Leasing Expenses incurred by Borrower in connection with one or more Acceptable Replacement Leases or Acceptable Lease Extensions, as applicable, in accordance with the terms hereof upon satisfaction by Borrower of each of the following conditions with respect to each such disbursement: (a) Borrower shall submit Lender's standard form of draw request for payment to Lender at least ten (10) Business Days prior to the date on which Borrower requests such payment be made, which request shall specify the Approved Leasing Expense to be paid and shall be accompanied by copies of paid invoices for the amounts requested; (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall have occurred and be continuing; (c) Lender shall have reviewed and approved each applicable Acceptable Replacement Lease and/or Acceptable Lease Extension giving rise to the Approved Leasing Expense to be paid; and (d) Lender shall have received (i) an Officer's Certificate from Borrower (A) stating that the items to be funded by the requested disbursement are Approved Leasing Expenses, and a description thereof, (B) stating that, to the best of Borrower's knowledge, all tenant improvements at the applicable Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, (C) identifying each Person that supplied materials or labor in connection with the tenant improvements to be funded by the requested disbursement, and/or the broker entitled to the leasing commissions, (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, (E) stating that the Approved Leasing Expenses to be funded have not been the subject of a previous disbursement, (F) stating that all previous disbursements of Occupancy Reserve Funds have been used to pay the previously identified Approved Leasing Expenses, and (G) stating that all outstanding trade payables relating to the Approved Leasing Expenses (other than those to be paid from the requested disbursement) have been paid in full, (ii) a copy of any license, permit or other approval by any Governmental Authority required in connection with the tenant improvements and not previously delivered to Lender, (iii) if required by Lender, for requests in excess of \$10,000 for a single item, lien waivers or other evidence of payment satisfactory to Lender and releases from all parties furnishing materials and/or services in connection with the requested payment, (iv) at Lender's option, a title search for the applicable Property indicating that the applicable Property is free from all Liens, claims and other encumbrances not previously approved by Lender, (v) prior to the final disbursement of Occupancy Reserve Funds for tenant improvements under a particular Lease, at Lender's option, a tenant estoppel certificate for the applicable Tenant in form and substance acceptable to Lender, and (vi) such other evidence as Lender shall reasonably request to demonstrate that the Approved Leasing Expenses to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender shall make disbursements as requested by Borrower on a monthly basis in increments of no less than \$5,000 per disbursement, except for the final draw for any Lease. Lender may require an inspection of the applicable Property at Borrower's expense prior to making a monthly disbursement in order to verify completion of improvements in excess of \$50,000 for which reimbursement is sought. At such time as no Lease Trigger Period is then existing, and so long as all Approved Leasing Expenses incurred or reasonably anticipated by Lender to be incurred have been paid in full, then all remaining Occupancy Reserve Funds shall be deposited into the Clearing Accounts.

Section 7.8 TI/LC Reserve.

7.8.1 Deposits to TI/LC Reserve. In the event Star Medical Center requests Borrower's approval of an architect/space planner to prepare Construction Drawings (as defined in the Star Medical Lease) to expand the Star Medical Center Property by 6,400 square feet as provided in the Star Medical Center Lease (the "**Expansion Work**"), Borrower shall promptly notify Lender of such request and Borrower shall, within twenty (20) Business Days after such request (without regard to whether or not Borrower approves such request), deposit with Lender the TI/LC Reserve Funds. The account in which the TI/LC Reserve Funds are held shall hereinafter be referred to as the "**TI/LC Reserve Account**".

7.8.2 Withdrawal of TI/LC Reserve Funds. Lender shall make one (1) disbursement on account of the TI/LC Lease from the TI/LC Reserve Account, to the extent of available funds, in accordance with the terms hereof upon satisfaction by Borrower of each of the following conditions with respect to such disbursement as determined by Lender: (a) Borrower shall submit Lender's standard form of draw request for payment to Lender at least ten (10) Business Days prior to the Business Day on which Borrower requests such disbursement to be made; (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall have occurred and be continuing; (c) Borrower shall deliver to Lender an Acceptable Estoppel duly executed and delivered by the Tenant under the TI/LC Lease confirming, among other things, that either (i) the Expansion Work is complete and that there is no outstanding tenant improvement work to be completed by or paid for by Borrower or (ii) the Tenant has elected not to proceed with the Expansion Work and has waived the right to do so in the future and that there is no outstanding tenant improvement work to be completed by or paid for by Borrower (such election, waiver and confirmation in this subsection (ii), an "**Expansion Right Waiver**"); and (d/) Lender shall have also received: (i) an Officer's Certificate (A) stating that all tenant improvements with respect to the TI/LC Reserve Lease (including the Expansion Work unless Tenant has elected not to proceed with the Expansion Work and waives the right to do so in the future) have been paid for in full and completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, and that all leasing commission due with respect to the TI/LC Reserve Lease have been paid in full, and (B) identifying each Person that supplied materials or labor in connection with such tenant improvements (if any) and each broker entitled to a leasing commission, (ii) a copy of any license, permit or other approval by any Governmental Authority required in connection with such tenant improvements (if any), (iii) if required by Lender, paid invoices and lien waivers or other evidence of payment satisfactory to Lender and releases from all parties furnishing materials and/or services in connection with such tenant improvements (if any) or leasing activities, (iv) at Lender's option, a title search for the Property indicating that the Property is free from all Liens, claims and other encumbrances not previously approved by Lender, and (v) such other evidence as Lender shall reasonably request. Lender may require an inspection of the Property at Borrower's expense prior to making such disbursement from the TI/LC Reserve Account. Such disbursement, when made by Lender, shall be deposited to the Clearing Account and only one (1) disbursement from the TI/LC Reserve Account may occur. Notwithstanding the foregoing, if Borrower, after exercising commercially reasonable efforts, is unable to obtain an Acceptable Estoppel from Tenant, then for purposes only of determining the existence of an Expansion Right Waiver (and not the completion of the Expansion Work), Borrower may deliver other evidence acceptable to Lender in Lender's sole discretion, in lieu of such Acceptable Estoppel, provided that all other conditions for a disbursement of the funds in the TI/LC Reserve Account are satisfied.

Section 7.9 Reserve Funds, Generally.

(a) Borrower (i) hereby grants to Lender a first priority security interest in all of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Account as additional security for payment and performance of the Obligations and (ii) will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Reserve Funds, including, without limitation, filing or authorizing Lender to file UCC-1 financing statements and continuations thereof. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Obligations.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the reduction of the Outstanding Principal Balance in any order in its sole discretion.

(c) Borrower shall not, without obtaining the prior consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(d) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds (other than the Tax and Insurance Escrow Funds and the Excess Cash Reserve Funds) shall be held in an Eligible Account and credited with interest at a rate selected by Lender, which interest rate may not be the highest interest rate then available, provided that selection of the rate shall be consistent with the general standards at the time being utilized by Lender or any Servicer, in establishing similar accounts for loans of comparable type. All such interest shall be added to and become a part of such Reserve Funds and shall be disbursed in the same manner as other monies comprising such Reserve Funds. Lender or any Servicer shall not be responsible and shall have no liability for any losses incurred on the investment of any Reserve Funds held in an Eligible Account. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds.

(e) Except for matters arising out of Lender's gross negligence, willful misconduct or breach of the Loan Documents, Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys' fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; *provided, however*, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

Section 7.10 Letter of Credit Option.

(a) Borrower shall have the option to replace the cash on deposit, or provide in lieu of any cash deposits required to be made, in the TI/LC Reserve Account, by depositing with Lender, an original letter of credit that satisfies all of the requirements of this Section 7.10 (each such letter of credit, together with all amendments, modifications and replacements thereof, a "**Letter of Credit**"). Borrower shall notify Lender in writing at least thirty (30) days prior to the date that Borrower intends to deliver a Letter of Credit in accordance with this Section 7.10. Borrower shall provide Lender and its counsel with a reasonable period of time prior to each such delivery date of a Letter of Credit to review and approve the terms of each proposed Letter of Credit and Borrower shall pay to Lender all of Lender's reasonable out-of-pocket costs and expenses associated therewith. Each Letter of Credit must be a Qualified Letter of Credit and shall be in an amount equal to the aggregate cash deposits required in connection with the applicable Reserve Account and for which such Letter of Credit is intended to replace. Each Letter of Credit deposited with Lender hereunder shall serve to provide Lender with additional security for the Loan.

(b) Lender shall have the right to draw on each Letter of Credit in full or in part and hold the proceeds thereof in accordance with the provisions of this Agreement if any of the following occurs: (i) an Event of Default; (ii) the institution issuing such Letter of Credit shall cease to be an Approved Bank (as determined by Lender or based on a notice from the applicable issuing institution) and Borrower shall have failed to deliver to Lender a replacement letter of credit satisfying all of the requirements of this Section 7.10.2(b) (each such letter of credit, a “**Replacement Letter of Credit**”) on or prior to the date that is fifteen (15) days after Lender delivers written notice to Borrower that the institution issuing such Letter of Credit has ceased to be an Approved Bank; (iii) if Lender has received a notice from the issuing institution that such Letter of Credit will not be renewed and a Replacement Letter of Credit is not provided at least forty-five (45) days prior to the date on which the outstanding Letter of Credit is scheduled to expire or Borrower shall have otherwise failed to deliver to Lender a Replacement Letter of Credit on or prior to the date that is forty-five (45) days prior to the expiration date of any such Letter of Credit; and/or (iv) if the institution issuing any Letter of Credit shall fail to issue a Replacement Letter of Credit in the event the original Letter of Credit has been lost, mutilated, stolen and/or destroyed. So long as no Event of Default is then continuing, Lender shall deposit the proceeds of any draw on a Letter of Credit into the applicable Reserve Account associated therewith (and such proceeds shall be deemed to constitute Reserve Funds) and apply such funds in accordance with the relevant provisions of this Article VII of this Agreement.

(c) Upon the occurrence and during the continuance of an Event of Default, Lender may in its sole discretion, in addition to any and all other rights and remedies available to Lender, without notice to Borrower or any other Person other than the relevant issuing institution, draw on each Letter of Credit and apply all or any part of the proceeds of each such draw to the reduction of the Obligations in any order, proportion or priority as Lender shall determine in Lender’s sole discretion, or hold such proceeds as additional security for the Obligations.

(d) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrower shall not have any rights to deliver any letter of credit pursuant to any provision of this Agreement or any other Loan Document if the aggregate amount of any letters of credit delivered to Lender in accordance with this Agreement or any other Loan Document shall exceed ten percent (10%) of the Outstanding Principal Balance. In no event shall the aggregate amount of any letters of credit delivered in accordance with this Agreement or any other Loan Document exceed ten percent (10%) of the Outstanding Principal Balance. Furthermore, notwithstanding anything in this Agreement or any other Loan Document to the contrary, Borrower’s right to deliver any letter of credit to Lender shall be conditioned upon Borrower simultaneously delivering to Lender an additional non-consolidation opinion with respect to such letter of credit in form and substance satisfactory to Lender.

## ARTICLE VIII

### DEFAULTS

#### Section 8.1 Event of Default.

(a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if any portion of the Debt is not paid when due (including, without limitation, the failure of Borrower to repay the entire outstanding principal balance of the Note in full on the Maturity Date) or any other amount under Section 2.7.2(b)(i) through (vii) is not paid in full on each Payment Date (unless during any Cash Management Period, sufficient funds are available in the relevant Subaccount on the applicable date);

(ii) if any of the Taxes or Other Charges are not paid when the same are due and payable (unless Lender is paying such Taxes pursuant to Section 7.2 and Borrower's obligation to make deposits into the Tax and Insurance Escrow Account are not suspended pursuant to Section 7.2.3), subject to the provisions of Section 2.7.3 and Section 5.1.2 hereof;

(iii) if the Policies are not kept in full force and effect, or if copies of the certificates evidencing the Policies (or certified copies of the Policies if requested by Lender) are not delivered to Lender within thirty (30) days after written request therefor, which period may be extended upon request of Borrower, provided Borrower is diligently pursuing such certificates (or certified copies of the Policies, as the case may be), such additional period not to exceed ninety (90) days;

(iv) if Borrower Transfers or otherwise encumbers any portion of any Property or the Collateral in violation of the provisions of this Agreement, or Article 6 of the Security Instruments or any Transfer is made in violation of the provisions of Section 5.2.10 hereof;

(v) if any representation or warranty made by Borrower herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made or deemed remade;

(vi) if Borrower, Principal or Guarantor shall (i) make an assignment for the benefit of creditors or (ii) generally not be paying its debts as they become due;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower or Principal, or if Borrower or Principal shall be adjudicated bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or Principal, or if any proceeding for the dissolution or liquidation of Borrower or Principal shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or Principal, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Guarantor or any guarantor or indemnitor under any guaranty or indemnity issued in connection with the Loan shall make an assignment for the benefit of creditors or if a receiver, liquidator or trustee shall be appointed for Guarantor or any guarantor or indemnitor under any guarantee or indemnity issued in connection with the Loan or if Guarantor or such other guarantor or indemnitor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to Federal bankruptcy law, or any similar Federal or state law, shall be filed by or against, consented to, or acquiesced in by, Guarantor or such other guarantor or indemnitor, or if any proceeding for the dissolution or liquidation of Guarantor or such other guarantor or indemnitor shall be instituted; *provided, however*, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Guarantor or such other guarantor or indemnitor, upon the same not being discharged, stayed or dismissed within ninety (90) days; provided, further, however, it shall be at Lender's option to determine whether any of the foregoing shall be an Event of Default;



(ix) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(x) if Borrower breaches any representation, warranty or covenant contained in Section 4.1.30 or any of its respective negative covenants contained in Section 5.2 or any covenant contained in Section 5.1.11 hereof;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect unless such matter is cured in a timely manner;

(xiii) if Borrower shall be in default under the REA and such default continues beyond any applicable notice or cure periods set forth therein;

(xiv) (a) Borrower fails to engage a Qualified Manager and enter into a Management Agreement subject to and in accordance with Section 5.1.22 hereof, or (b) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement) and Borrower fails to comply with Section 5.1.22 hereof;

(xv) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of Section 9.2 hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of Section 9.2 hereof, for three (3) days after written notice to Borrower from Lender;

(xvi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xv) above or any subsection below, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; *provided, however*, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed ninety (90) days;

(xvii) if there shall be default under any of the other Loan Documents beyond any applicable cure periods contained in such documents or if any other such event shall occur or condition shall exist, if the effect of such default, event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt in accordance with the Loan Documents;

(xviii) if any default occurs under any guaranty or indemnity executed from time to time in connection with the Loan, including the Guaranty and the Environmental Indemnity, and such default continues after the expiration of applicable grace periods, if any;

(xix) any amendment, modification, or termination of Occupancy Reserve Lease in violation of Section 5.1.20 hereof; or

(xx) if Borrower fails to comply in all material respects with the terms and conditions of the ACM Maintenance Program.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Properties, including, without limitation, declaring the Obligations to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any of Properties, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and all Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 Remedies. (a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Properties and the Security Instruments have been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Obligations have been paid in full.

(b) With respect to Borrower and the Properties, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Properties or any Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Properties or any Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose any one or more Security Instruments in any manner and for any amounts secured by such Security Instruments then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose any one or more Security Instruments to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose any one or more Security Instruments to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by such Security Instruments as Lender may elect. Notwithstanding one or more partial foreclosures, the Properties shall remain subject to the applicable Security Instruments to secure payment of sums secured by such Security Instruments and not previously recovered.

(c) Upon the occurrence of an Event of Default, Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; *provided, however*, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) Lender shall have the right from time to time to partially foreclose any one or more Security Instruments in any manner and for any amounts secured by such Security Instruments then due and payable as determined by Lender in its sole discretion, including the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose any one or more Security Instruments to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose any one or more Security Instruments to recover so much of the Debt as Lender may accelerate and such other sums secured by such Security Instruments as Lender may elect. Notwithstanding one or more partial foreclosures, the Properties shall remain subject to the applicable Security Instruments to secure payment of sums secured by such Security Instruments and not previously recovered.

(e) Any amounts recovered from the Properties or any Property or any other collateral for the Loan after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(f) If an Event of Default exists, Lender may (directly or by its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives), but without any obligation to do so and without notice to Borrower and without releasing Borrower from any obligation hereunder, cure the Event of Default in such manner and to such extent as Lender may deem necessary to protect the security hereof. Subject to Tenants’ rights under the Leases, Lender (and its agents, employees, contractors, engineers, architects, nominees, attorneys or other representatives) are authorized to enter upon the Properties or any Property to cure such Event of Default, and Lender is authorized to appear in, defend, or bring any action or proceeding reasonably necessary to maintain, secure or otherwise protect the Properties or any Property or the priority of the Lien granted by each Security Instrument.

(g) Lender may appear in and defend any action or proceeding brought with respect to the Properties or any Property and may bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Properties or any Property. Lender shall, at its option, be subrogated to the Lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

(h) As used in this Section 8.2, a “foreclosure” shall include, without limitation, a power of sale.

Section 8.3 Remedies Cumulative; Waivers. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

## ARTICLE IX

### SPECIAL PROVISIONS

Section 9.1 Transfer of Loan. Lender may, at any time, sell, transfer or assign this Agreement, the Note, the Security Instruments and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage pass-through certificates or other securities (the “*Securities*”) evidencing a beneficial interest in a rated or unrated public offering or private placement (such sales, participation, offering and/or placement, collectively, a “*Securitization*”). Lender may forward to each prospective purchaser, transferee, assignee, servicer, participant or investor in such participations or Securities (collectively, the “*Investor*”) or any Rating Agency rating such Securities, and any organization maintaining databases on the underwriting and performance of commercial mortgage loans, all documents and information which Lender now has or may hereafter acquire relating to the Loan or to Borrower, any Guarantor or the Properties or any Property, whether furnished by Borrower, any Guarantor or otherwise, as Lender determines necessary or desirable, including, without limitation, financial statements relating to Borrower, Guarantor, the Property and any Tenant at the Property. Borrower irrevocably waives any and all rights it may have under law or in equity to prohibit such disclosure, including but not limited to any right of privacy.

Section 9.2 Cooperation. Borrower and Guarantor agree to cooperate with Lender (and agree to cause their respective officers and representatives to cooperate) in connection with any transfer made or any Securities created pursuant to this Article IX, including, without limitation, the taking, or refraining from taking, of such action as may be necessary to satisfy all of the conditions of any Investor, the delivery of an estoppel certificate required in accordance with Section 5.1.15 hereof and such other documents as may be reasonably requested by Lender, and the execution of amendments to this Agreement, the Note, the Security Instruments and other Loan Documents and Borrower's organizational documents as reasonably requested by Lender; provided that the reasonable costs incurred for such cooperation shall be paid by Lender and no changes to the Loan Documents shall be required which will have a material adverse economic impact on Borrower or Guarantor. Borrower shall also furnish and Borrower and Guarantor consent to Lender furnishing to such Investors or prospective Investors or any Rating Agency any and all information concerning the Properties or any Property, the Leases, the financial condition of Borrower and Guarantor as may be requested by Lender, any Investor, any prospective Investor or any Rating Agency in connection with any sale, transfer or Participations or Securities and shall indemnify the Indemnified Parties against, and hold the Indemnified Parties harmless from, any losses, claims, damages or liabilities (collectively, the "**Liabilities**") to which any such Indemnified Parties may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in a Disclosure Document or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in the Disclosure Document or necessary in order to make the statements in the Disclosure Document, in light of the circumstances under which they were made, not misleading and agreeing to reimburse the Indemnified Parties for any legal or other expenses reasonably incurred by each of them in connection with investigating or defending the Liabilities; *provided, however*, that Borrower will be liable in any such case under this Section 9.2 only to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or omission made therein in reliance upon and in conformity with information furnished to Lender by or on behalf of Borrower in connection with the preparation of the Disclosure Document or in connection with the underwriting or closing of the Loan, including, without limitation, financial statements of Borrower, operating statements and rent rolls with respect to the Properties or any Property. This indemnity agreement will be in addition to any liability which Borrower may otherwise have and shall survive the termination of any Security Instrument and the satisfaction and discharge of the Debt.

Section 9.3 Servicer. At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer, and trustee, together with its agents, nominees or designees, are collectively referred to as "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement or other agreement providing for the servicing of one or more mortgage loans (collectively, the "**Servicing Agreement**") between Lender and Servicer. Borrower shall be responsible for any reasonable set up fees or any other initial costs relating to or arising under the Servicing Agreement, but Borrower shall not be responsible for payment of the regular monthly master servicing fee or trustee fee due to Servicer under the Servicing Agreement or any fees or expenses required to be borne by, and not reimbursable to, Servicer. Notwithstanding the foregoing, Borrower shall promptly reimburse Lender on demand for (a) interest payable on advances made by Servicer with respect to delinquent debt service payments (to the extent interest at the Default Rate actually paid by Borrower in respect of such payments are insufficient to pay the same) or expenses paid by Servicer or trustee in respect of the protection and preservation of the Properties (including, without limitation, on account of Basic Carrying Costs), (b) all costs and expenses, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees payable by Lender to Servicer which may be due and payable under the Servicing Agreement (whether on a periodic or a continuing basis) as a result of an Event of Default under the Loan, the Loan becoming specially serviced, the commencement or continuance of any enforcement action of any kind with respect to the Loan or any of the Loan Documents, a refinancing or a restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" of the Loan Documents, or any Bankruptcy Action involving Borrower, Principal, Guarantor or any of their respective principals or Affiliates, (c) all costs and expenses of any Property inspections and/or appraisals (or any updates to any existing inspection or appraisal) that Servicer or the trustee may be required to obtain (other than the cost of regular annual inspections required to be borne by Servicer under the Servicing Agreement), and (d) all costs and expenses relating to or arising from any special requests made by Borrower or Guarantor during the term of the Loan including, without limitation, in connection with a prepayment, defeasance, assumption or modification of the Loan. Borrower shall not be obligated to pay any Servicer fee specifically in connection with Servicer's review of Leases for approval purposes or processing any requests for disbursement from any of the Reserve Funds.

Section 9.4      Restructuring of Loan.

(a) Lender, without in any way limiting Lender's other rights hereunder, in its sole and absolute discretion, shall have the right at any time to require Borrower to restructure the Loan into additional multiple notes (which may include component notes and/or senior and junior notes), to re-allocate principal among component notes and/or senior and junior notes and/or to create participation interests in the Loan, which restructuring may include the restructuring of a portion of the Loan to one or more of the foregoing or to one or more mezzanine loans (the "**New Mezzanine Loan**") to the direct or indirect owners of the equity interests in Borrower, secured by a pledge of such interests, the establishment of different interest rates and debt service payments for the Loan, and the New Mezzanine Loan and the payment of the Loan, and the New Mezzanine Loan in such order of priority as may be designated by Lender; provided that (i) the total principal amounts of the Loan (including any component notes), and the New Mezzanine Loan shall equal the total principal amount of the Loan immediately prior to the restructuring, (ii) except in the case of the occurrence of an Event of Default or a default beyond all notice and cure periods under the New Mezzanine Loan, or of a Casualty or Condemnation that results in the payment of principal under the Loan and/or the New Mezzanine Loan, the initial weighted average interest rate of the Loan and the New Mezzanine Loan, if any, shall, in the aggregate, equal the Interest Rate, and (iii) except in the case of the occurrence of an Event of Default and/or a default beyond all notice and cure periods under the New Mezzanine Loan, or of a Casualty or Condemnation that results in the payment of principal under the Loan and/or the New Mezzanine Loan, the aggregate debt service payments on the Loan and the New Mezzanine Loan shall equal the aggregate debt service payments which would have been payable under the Loan had the restructuring not occurred.

(b) Borrower shall cooperate with all reasonable requests of Lender in order to restructure the Note, the Loan and/or to create a New Mezzanine Loan, if applicable, and shall, upon ten (10) Business Days written notice from Lender, which notice shall include the forms of documents for which Lender is requesting execution and delivery, (i) execute and deliver such documents, including, without limitation, in the case of any New Mezzanine Loan, a mezzanine note, a mezzanine loan agreement, a pledge and security agreement and a mezzanine deposit account agreement, (ii) cause Borrower's counsel to deliver such legal opinions, and (iii) create such a bankruptcy remote borrower under the New Mezzanine Loan as, in each of the cases of clauses (i), (ii) and (iii) above, shall be reasonably required by Lender and required by any Rating Agency in connection therewith, all in form and substance reasonably satisfactory to Lender, including, without limitation, the severance of this Agreement, the Security Instruments and the other Loan Documents if requested; *provided, however*, but subject to the last proviso of Section 9.4(a) hereof, any such amendments required by Lender shall not result in any economic or other material adverse change in the transaction contemplated by this Agreement or the other Loan Documents.

(c) Borrower shall not be obligated to pay any costs or expenses incurred in connection with any such restructuring as set forth in this Section 9.4 except for Borrower's own legal costs and expenses and Borrower's own accounting costs and expenses.

(d) In the event Borrower fails to execute and deliver such documents described in this Section 9.4 to Lender within ten (10) Business Days following such written notice by Lender, and Lender sends a second notice to Borrower with respect to the delivery of such documents containing a legend clearly marked in not less than fourteen (14) point bold face type, underlined, in all capital letters “POWER OF ATTORNEY IN FAVOR OF LENDER DEEMED EFFECTIVE FOR EXECUTION AND DELIVERY OF DOCUMENTS IF NO RESPONSE WITHIN 10 BUSINESS DAYS”, Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect such transactions, Borrower ratifying all that such attorney shall do by virtue thereof, if Borrower fails to execute and deliver such documents within ten (10) Business Days of receipt of such second notice. It shall be an Event of Default if Borrower fails to comply with any of the terms, covenants or conditions of this Section 9.4 after the expiration of ten (10) Business Days after the second notice thereof.

## ARTICLE X

### MISCELLANEOUS

Section 10.1 Survival. This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Obligations are outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 Lender’s Discretion. Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 Governing Law.

(a) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Neil J. O'Halloran  
O'Halloran Ryan LLP  
711 Third Avenue, 20th Floor,  
New York, New York 10017

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

(c) EXCEPTIONS. NOTWITHSTANDING THE FOREGOING CHOICE OF LAW:

(i) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND OTHER REMEDIES AGAINST BORROWER UNDER THE SECURITY INSTRUMENT AND UNDER THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY OR OTHER ASSETS OF BORROWER, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT IN LIMITATION, ACTIONS FOR FORECLOSURE, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH PROPERTY OR OTHER ASSETS ARE LOCATED;



(ii) LENDER SHALL COMPLY WITH APPLICABLE LAW IN THE STATE WHERE THE PROPERTY OR OTHER ASSETS ARE LOCATED TO THE EXTENT REQUIRED BY THE LAW OF SUCH JURISDICTION IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED UNDER THE SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY OR OTHER ASSETS;

(iii) PROVISIONS OF FEDERAL LAW AND THE LAW OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY IN DEFINING THE TERMS HAZARDOUS SUBSTANCES, ENVIRONMENTAL STATUTES, AND LEGAL REQUIREMENTS AS SUCH TERMS ARE USED IN THIS LOAN AGREEMENT, AND THE OTHER LOAN DOCUMENTS, WITH RESPECT TO THE PROPERTY AND BORROWER; AND

(iv) MATTERS OF REAL ESTATE, LANDLORD-TENANT AND PROPERTY LAW SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS SITUATED.

Section 10.4 Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 Delay Not a Waiver. Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section 10.6):

If to Lender: Cantor Commercial Real Estate Lending, L.P.  
110 East 59th Street, 6th Floor  
New York, New York 10022  
Attention: Legal Department  
Facsimile No. (212) 610-3623  
E-Mail: legal@ccre.com

with a copy to: Seyfarth Shaw LLP  
Two Seaport Lane, Suite 300  
Boston, MA 02210  
Attention: Sean M. O'Brien, Esq.  
Facsimile No. (617) 946-4801  
E-Mail: sobrien@seyfarth.com

with a copy to: Wells Fargo Bank, National Association  
Commercial Mortgage Servicing  
550 Tryon Street, 12th Floor  
Charlotte, NC 28202  
Attention: Scott Rossbach  
Facsimile No. (704) 715-0473  
E-Mail: scott.rossbach@wellsfargo.com

If to Borrower: GMR Memphis, LLC, GMR Plano, LLC, GMR Melbourne, LLC and GMR Westland, LLC  
c/o Global Medical REIT Inc.  
4800 Montgomery Lane, Suite 450  
Bethesda, Maryland 20814  
Attention: David Young  
E-Mail: davidy@globalmedicalreit.com

with a copy to: Ann Peldo Cargile, Esq.  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, Tennessee 37203  
E-Mail: acargile@babco.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming. Any failure to deliver a notice by reason of a change of address not given in accordance with this [Section 10.6](#), or any refusal to accept a notice, shall be deemed to have been given when delivery was attempted. Any notice required or permitted to be given by any party hereunder or under any other Loan Document may be given by its respective counsel. Additionally, any notice required or permitted to be given by Lender hereunder or under any other Loan Document may also be given by the Servicer.

Section 10.7 Trial by Jury. BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 Headings. The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 Preferences. Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the Debt. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or Federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 Waiver of Notice. Borrower hereby expressly waives, and shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice.

Section 10.12 Remedies of Borrower. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment. Further, it is agreed Lender shall not be in default under this Agreement, or under any other Loan Document, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within thirty (30) days after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Failure to give such notice shall constitute a waiver of such claim.

Section 10.13 Expenses; Indemnity. (a) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of notice from Lender for all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to any Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, either in response to third party claims or in prosecuting or defending any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, any Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to any Property (including any fees and expenses reasonably incurred by or payable to Servicer or a trustee in connection with the transfer of the Loan to a special servicer upon Servicer's anticipation of a Default or Event of Default, liquidation fees, workout fees, special servicing fees, operating advisor fees or any other similar fees and interest payable on advances made by the Servicer with respect to delinquent debt service payments or expenses of curing Borrower's defaults under the Loan Documents), or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings or any other amounts required under Section 9.3; *provided, however*, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Accounts or the Cash Management Account, as applicable.

(b) Borrower shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Indemnified Party in any manner relating to or arising out of (i) any breach by Borrower of its Obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (the liabilities, losses, costs, expenses and other matters described in this subparagraph (b)), collectively, the "**Indemnified Liabilities**"); *provided, however*, that Borrower shall not have any obligation to an Indemnified Party hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of such Indemnified Party. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnified Parties.

(c) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any Rating Agency review of the Loan, the Loan Documents or any transaction contemplated thereby or any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

(d) Borrower shall indemnify, defend and hold harmless each Indemnified Party against any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel) to which each such Indemnified Party may become subject (i) in connection with any indemnification to the Rating Agencies in connection with issuing, monitoring or maintaining the Securities and (ii) insofar as the liabilities, losses, damages, actions costs and expenses so incurred arise out of or are based upon any untrue statement of any material fact in any information provided by or on behalf of the Borrower or Guarantor to the Rating Agencies (the “ **Covered Rating Agency Information** ”) or arise out of or are based upon the omission to state a material fact in the Covered Rating Agency Information required to be stated therein or necessary in order to make the statements in the Covered Rating Agency Information, in light of the circumstances under which they were made, not misleading.

Section 10.14 Schedules Incorporated. The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 Intentionally Omitted.

Section 10.16 No Joint Venture or Partnership; No Third Party Beneficiaries.

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Properties other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the Obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender’s sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender or any of its Affiliates shall be subject to the prior approval of Lender.

Section 10.18 Waiver of Marshalling of Assets. To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Properties or any Property, or to a sale in inverse order of alienation in the event of foreclosure of the Security Instruments, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Properties or any Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Properties or any Property in preference to every other claimant whatsoever.

Section 10.19 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 Brokers and Financial Advisors. Borrower hereby represents that neither Borrower nor any Affiliate of Borrower has dealt with any financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement other than Realty Cap Advisors. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower, Lender or any other Person in connection with the transactions contemplated herein. The provisions of this Section 10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 Prior Agreements. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Loan Application and Term Sheet dated December 29, 2015 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 Cumulative Rights. All of the rights of Lender under this Agreement and under each of the other Loan Documents and any other agreement now or hereafter executed in connection herewith or therewith, shall be cumulative and may be exercised singly, together, or in such combination as Lender may determine in its sole judgment.

Section 10.24 Counterparts. This Agreement may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart which is executed by the party against whom enforcement of this Agreement is sought.

Section 10.25 Time is of the Essence. Time is of the essence of each provision of this Agreement and the other Loan Documents.

Section 10.26 Consent of Holder. Wherever this Agreement refers to Lender's consent or discretion or other rights, such references to Lender shall be deemed to refer to any holder of the Loan. The holder of the Loan may from time to time appoint a trustee or Servicer, and Borrower shall be entitled to rely upon written instructions executed by a purported officer of the holder of the Loan as to the extent of authority delegated to any such trustee or Servicer from time to time and determinations made by such trustee or Servicer to the extent identified a within the delegated authority of such trustee or Servicer, unless and until such instructions are superseded by further written instructions from the holder of the Loan.

Section 10.27 Successor Laws. Any reference in this Agreement to any statute or regulation shall be deemed to include any successor statute or regulation.

Section 10.28 Reliance on Third Parties. Lender may perform any of its responsibilities hereunder through one or more agents, attorneys or independent contractors. In addition, Lender may conclusively rely upon the advice or determinations of any such agents, attorneys or independent contractors in performing any discretionary function under the terms of this Agreement.

Section 10.29 Joint and Several Liability. All of the representations, warranties, covenants, agreements, liabilities and obligations of Borrower hereunder, if there shall be more than one, are joint and several. Furthermore, all representations, warranties, covenants, agreements, grants and pledges made by Borrower hereunder, if there shall be more than one, shall be deemed made by each Borrower individually and all Borrowers collectively, unless the context requires otherwise. All representations, warranties, covenants and agreements set forth in this Agreement relative to the Properties shall apply to each Property individually and to all of the Properties collectively, unless the context requires otherwise.

Section 10.30 Condominium Provisions. The Condominium Provisions attached hereto as Schedule V are hereby incorporated herein as a part of this Agreement with the same force and effect as if set forth in the body hereof.

Section 10.31 Global Medical REIT L.P. as Principal. Notwithstanding anything herein to the contrary, for so long as the Borrower is the Borrower hereunder and Global Medical REIT L.P. is the sole member of the Borrower, the references to "Principal" in the following Sections of this Agreement shall not apply to or include Global Medical REIT L.P.: definition of "Special Purpose Entity" in Section 1.1; Section 3.1(c)(ii)(A); and Section 3.1(c)(ii)(E). Nothing in this Section 10.31 shall limit Borrower's obligations pursuant to this Agreement or any of the other Loan Documents.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER:

**[ SIGNATURE PAGES TO BE CIRCULATED FOR REVIEW  
SEPARATELY AND ATTACHED AT CLOSING ]**

LENDER:

**[ SIGNATURE PAGES TO BE CIRCULATED FOR REVIEW  
SEPARATELY AND ATTACHED AT CLOSING ]**

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**SCHEDULE I**

[ RENT ROLL ]

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**SCHEDULE II**

[REQUIRED REPAIRS/DEADLINES FOR COMPLETION]

<u>ITEM</u>	<u>Estimated Cost</u>	<u>Reserve Amount</u>	<u>Deadline for Completion</u>
Surgical Institute of Michigan Property - stripe and properly designate two additional parking spaces at the Surgical Institute of Michigan Property and deliver to Lender an updated survey, reasonably acceptable to Lender, reflecting the addition of such two additional parking spaces at the Surgical Institute of Michigan Property (i.e., showing two more spaces than are shown on the applicable final survey delivered in connection with the closing of the Loan)		\$ 0.00	10 days from the Closing Date
TOTAL		\$ 0.00	

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**SCHEDULE III**

[BORROWER ORGANIZATIONAL CHART]

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**SCHEDULE IV**

[DEPOSIT AMOUNTS]

Required Repairs Amount:	\$	0.00
Initial Tax Deposit:	\$	434,000.00
Initial Insurance Premiums Deposit:	\$	14,630.00
Initial Rollover Reserve Deposit	\$	380,889.00
Replacement Reserve Monthly Deposit:	\$	2,821.40
Rollover Reserve Monthly Deposit*:	\$	21,160.00
TI/LC Reserve Funds**:	\$	2,750,000.00

\* Rollover Reserve Monthly Deposit Per Property

Star Medical Center Property	\$	3,000.00
Marina Towers Property	\$	9,750.00
Surgical Institute of Michigan Property	\$	1,877.25
Gastro One Property	\$	6,533.25

\*\*Springing reserve, deposit to be made if Star Medical Center elects to expand the premises as more particularly described in Section 7.8.1 hereof.

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## SCHEDULE V

### [CONDOMINIUM PROVISIONS]

Section 1.1 Inconsistencies. In the event of any inconsistencies between the terms and conditions of this Schedule V and the other terms and conditions of this Agreement, the terms and conditions of this Schedule V shall govern, control and be binding upon the parties.

Section 1.2 Condominium Definitions. For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“ *Affiliate Units* ” shall have the meaning set forth in Section 1.8(m) of Schedule V to this Agreement.

“ *Assessments* ” shall mean all fees, dues, charges, expenses and assessments, whether annual, monthly, regular, special or otherwise, payable by Borrower with respect to Units.

“ *Condominium* ” shall mean that certain condominium regime created by the Condominium Documents.

“ *Condominium Act* ” shall mean the Tennessee Code Annotated Section 64-27-101, Horizontal Property Act and Tennessee Code Annotated Section 64-27-102, et seq., Tennessee Condominium Act, as applicable.

“ *Condominium Board* ” shall mean the board of directors, managers or trustees of the Owner’s Association.

“ *Condominium Documents* ” shall mean, collectively: (a) the Master Deed of The Office Centre recorded with the Shelby County Register of Deeds (the “ *ROD* ”) as Instrument No. U75567, as amended by that certain First Amendment to Master Deed of The Office Centre recorded with the ROD as Instrument No. V4476, and the Bylaws of The Office Centre Condominium Association; (b) any other document which creates or governs the Owner’s Association; (c) any rules and regulations of the Condominium; and (d) other equivalent documents, as any or all of the same may be amended, restated, supplemented or otherwise modified from time to time.

“ *Improvement Rights* ” shall have the meaning set forth in Section 1.8(i) of Schedule V to this Agreement.

“ *Owner’s Association* ” shall mean the organization of unit owners for the Condominium created pursuant to The Office Centre Condominium Association.

“ *Units* ” shall have the meaning set forth in the Security Instrument executed by Borrower 1 and encumbering that portion of the Gastro One Property located in Tennessee.

Section 1.3 Certain Modified Definitions. The definitions contained in Section 1.1 of this Agreement are hereby deleted and replaced with the following new definitions:

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“ **Legal Requirements** ” shall mean all Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting any Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, including, any Environmental Statutes, the Americans with Disabilities Act of 1990, as amended, the Condominium Act, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting Borrower, any Property or any part thereof, including the Condominium Documents and any instruments which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

“ **Other Charges** ” shall mean all ground rents, maintenance charges, impositions other than Taxes, Assessments, any “common expenses” or other expenses allocated to and required to be paid by Borrower under the REA, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining any Property, now or hereafter levied or assessed or imposed against any Property or any part thereof.

“ **Owner’s Association’s Policy** ” shall have the meaning set forth in Section 1.9(b) of Schedule V to this Agreement.

“ **Gastro One Property** ” shall mean each parcel of real property described on Exhibit A-1, the Improvements thereon and all Personal Property owned by Borrower 1 and encumbered by the applicable Security Instruments, including the Units, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clause of such Security Instruments.

Section 1.4      Modification of Exculpation Provision.

(a)            The following clauses are hereby added to Section 3.1(b) of this Agreement: “or (xvii) any breach or violation of Section 1.8 of Schedule V of this Agreement.; or (xviii) any Lien filed by the Owner’s Association against any Property or any portion thereof for failure to pay any Assessments to the extent such Lien has priority over the lien of the Security Instrument or to the extent Lender, its designee, or purchaser at foreclosure becomes responsible for paying such past due Assessments following a foreclosure or deed in lieu thereof.”

(b)            The following clauses are hereby added to Section 3.1(c) of this Agreement: “or (K) Borrower, Guarantor or any Affiliate of any of them failing to obtain Lender’s prior written consent to any amendment, modification supplement, cancellation or termination of the Condominium Documents; (L) any action for partition of the Property or any portion thereof or interest therein, or any similar actions, in each case that are instituted, prosecuted or consented to or suffered by Borrower, Guarantor or any Affiliate of any of them, or caused due to a default under the Condominium Documents by Borrower, Guarantor or any Affiliate of either of them; or (M) the Property is withdrawn from the condominium regime established by the Condominium Act or the Condominium is otherwise terminated, cancelled or otherwise ceases to exist, in each case without the prior written consent of Lender.”

Section 1.5      Delivery of Owner’s Association Estoppel. Upon Lender’s written request, Borrower shall use commercially reasonable efforts to obtain estoppel certificates from the Owner’s Association, in form and substance reasonably satisfactory to Lender.

Section 1.6      Additional Restrictions on Permitted Transfers. Section 5.2.10(g)(vi) of this Agreement is hereby deleted and replaced with the following new clause (vi): “such Transfer being permitted under the terms of the REA and the Condominium Documents,”

Section 1.7 Condominium Representations and Warranties. Borrower hereby represents and warrants as follows:

(a) The Condominium has been legally and validly created pursuant to the Condominium Act and all applicable Legal Requirements. The Condominium Documents are valid, binding and enforceable and are in full force and effect. The Condominium has 40 total condominium units and Borrower owns 1 Unit. Borrower's undivided interest in the common elements of the Condominium is 17.42270%. As of the Closing Date, the Condominium Board is comprised of five members.

(b) As of the Closing Date, (i) no default or event of default by Borrower or any Affiliate of Borrower or, to Borrower's knowledge, by any other Person, has occurred and is continuing under the Condominium Documents, (ii) all Assessments have been fully paid, and (iii) there are no special or extraordinary Assessments pending or contemplated by the Owner's Association or the Condominium Board. The amount of Assessments that were required to be paid in the most recent calendar month was \$1,953.36.

(c) As of the Closing Date, to Borrower's knowledge, neither the Condominium Board nor the Owner's Association has incurred any Indebtedness that remains outstanding.

Section 1.8 Condominium Covenants.

(a) Borrower shall pay all Assessments as and when due and payable. Borrower shall deliver to Lender, within five (5) after Lender's written request therefor, evidence satisfactory to Lender that the Assessments have been timely paid. Borrower shall immediately notify Lender if the Assessments are increased, or if special or extraordinary Assessments are imposed.

(b) Borrower shall observe and perform, and shall cause the members of the Condominium Board appointed by Borrower to observe and perform, the provisions of the Condominium Documents. Borrower (i) shall not take, or vote to take, and shall restrict any member of the Condominium Board appointed by Borrower from taking, or voting to take, any action with respect to the Condominium and/or the Units that would contravene, breach or violate the provisions of any of the Loan Documents, and (ii) shall, and shall cause each member of the Condominium Board that was appointed by Borrower to, (A) vote in a manner consistent with the provisions of the Loan Documents, (B) intentionally omitted, (C) obtain Lender's prior written consent prior to voting to permit the Condominium Board or the Owner's Association to establish any significant working capital or similar reserves or undertaking any significant capital expenditures, (D) vote to maintain the Condominium in good condition and repair, to promptly comply with all Legal Requirements applicable to the Condominium, to promptly repair, replace or rebuild any part of the Condominium which may be damaged or destroyed by fire or other casualty or which may be affected by any eminent domain or condemnation proceeding and to promptly complete and pay for any structure at any time in the process of construction or repair at the Condominium. If any part of the Condominium is damaged or destroyed by fire or other casualty or is affected by any eminent domain or condemnation proceeding, unless otherwise approved by Lender, Borrower shall, and shall cause each member of the Condominium Board appointed by Borrower to, vote in favor of repairing, restoring or rebuilding the Condominium.

(c) Borrower shall not object to allowing (and shall vote to allow) and shall cause each member of the Condominium Board appointed by Borrower to vote to allow, Lender to examine the books, records and receipts of the Condominium upon five (5) days prior written notice of such examination.

(d) Within five (5) days after Borrower's receipt thereof, Borrower shall deliver to Lender: (i) a copy of the most recent annual budget for the Condominium received by Borrower, and (ii) a copy of the most recent annual budget for the Condominium, and (iii) a copy of each and every notice of default by Borrower received from the Owner's Association or any member of the Condominium Board. Furthermore, Borrower shall provide prior written notice to Lender of all material matters requiring the vote or consent of the unit owners of the Condominium within five (5) days after obtaining knowledge thereof. Each such delivery shall be accompanied by an Officer's Certificate which certifies that the information delivered is true, correct and complete.

(e) To the extent that any approval rights, consent rights or other rights or privileges are granted to a mortgagee of record in the Condominium Documents, or any other mortgagee protection provisions are contained in the Condominium Documents, then such approval rights, consent rights or other rights, protections or privileges shall be deemed to be required by this Agreement and are incorporated herein by this reference. Furthermore, Borrower shall not, and shall not permit any member of the Condominium Board appointed by Borrower to, exercise any material approval, consent or voting rights to which it is entitled under the Condominium Documents without obtaining Lender's prior written consent.

(f) Unless otherwise approved by Lender, Borrower shall not, and shall not permit any member of the Condominium Board appointed by Borrower to, vote in favor of the Condominium or the Owner's Association incurring any Indebtedness.

(g) Borrower shall attend each duly called meeting or special meeting of the Owner's Association.

(h) Lender's prior written consent shall be required for any alterations to the Improvements if Borrower is required to obtain the consent or approval of the Owner's Association or the Condominium Board for any such alterations pursuant to the Condominium Documents. The foregoing is in addition to, and not in limitation of, the provisions set forth in Section 5.1.21 of this Agreement.

(i) In the event that material improvements to the common areas and facilities of the Condominium (as opposed to ordinary repairs and replacements of existing improvements in the ordinary course) are proposed: (i) Borrower shall notify Lender of such proposed material improvements within five (5) days after obtaining knowledge thereof; (ii) Lender may, at its option, exercise all rights, options and voting rights accruing to Borrower under the Condominium Documents and applicable Legal Requirements relating to such proposed improvements to the common areas and facilities (the "**Improvement Rights**") in the place and stead of Borrower; (iii) in order to effectuate the foregoing, Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact to so act with respect to said rights, which appointment as attorney-in-fact is hereby coupled with an interest; (iv) written notice from Lender of its election to exercise the Improvement Rights in each event to the Owner's Association and to Borrower is to be deemed conclusive evidence as to Lender's right to exercise the Improvement Rights; and (v) Borrower shall pay all amounts required by the Condominium Documents with respect to such proposed improvements as and when due. Lender may, without any obligation or liability, pay such amounts to Borrower or directly to the Owner's Association for such proposed improvements, and the same shall be secured by this Security Instrument and the other Loan Documents. Any such advances shall bear interest at the Default Rate until repaid to Lender and Borrower shall execute, acknowledge, deliver and record, at Borrower's expense, any documents as Lender may require evidencing such advances and securing repayment thereof to Lender by Borrower.



(j) With respect to any matters concerning the: (i) election of members of the Condominium Board, (ii) approval of any budget or amended or supplementary budget for the Condominium, or (iii) the selection of a manager or execution of a management contract, Lender may elect to vote in place and stead of Borrower with respect to all such matters. In order to effectuate the foregoing, Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact to so act with respect to said right to vote, which appointment as attorney-in-fact is hereby coupled with an interest. Notwithstanding anything contained herein to the contrary, nothing contained herein or otherwise shall render Lender liable for voting, and in no circumstance shall Lender be liable or responsible for the payment of any Assessments.

(k) Intentionally Omitted.

(l) Without the prior written consent of Lender, Borrower shall not, and shall not permit any member of the Condominium Board appointed by Borrower to, (i) partition or subdivide the Condominium or the applicable Property, or any portion thereof, (ii) abandon, terminate or cancel the Condominium or the Condominium Documents, (iii) intentionally omitted, or (iv) take any action that would have the effect of rendering the insurance coverage maintained by the Owner's Association inconsistent with the requirements of this Agreement. Furthermore, neither Borrower nor any member of the Condominium Board appointed by Borrower shall vote in favor of, consent to, or suffer any of the foregoing actions or events.

(m) In the event that an Affiliate of Borrower acquires any condominium unit(s) within the Condominium (such units together with the undivided ownership interest therein, the "*Affiliate Units*"), Borrower shall cause its Affiliate to assign to Lender all voting rights associated with such Affiliate Units. In no event shall Borrower be permitted to purchase any of the Affiliate Units.

(n) Borrower shall promptly notify Lender of any lapse in required insurance coverage which is maintained by the Owner's Association.

Section 1.9 Insurance and Restoration.

(a) In addition to the insurance requirements contained in this Agreement, Borrower shall obtain and maintain any other insurance policies as may be required by the Condominium Documents.

(b) If and so long as the Owner's Association maintains a "master" or "blanket" policy on the Condominium which is acceptable to Lender and is issued by an insurance carrier acceptable to Lender (the "*Owner's Association's Policy*"), then Borrower's obligation under this Agreement to maintain insurance coverage will be satisfied to the extent of the insurance coverage provided by such Owner's Association's Policy. To the extent permitted pursuant to applicable Legal Requirements, any insurance proceeds from the Owner's Association's Policy shall be held and applied by Lender in accordance with the terms and conditions of this Agreement. To the extent permitted by the Condominium Documents or Legal Requirements, Borrower shall use commercially reasonable efforts to ensure that the Owner's Association maintains a public liability insurance policy acceptable to Lender in form, amount, and extent of coverage.

(c) In the event of a material fire or other casualty to the general common elements of the Condominium or any fire or other casualty to the Units or any limited common elements appurtenant to the Units: (i) Borrower shall immediately notify Lender in writing of such event; (ii) Lender may elect to vote in place and stead of Borrower with respect to: (A) all matters of repair and restoration, (B) the disposition of insurance, (C) the settlement of insurance claims, and (D) the application of insurance proceeds; (iii) in order to effectuate the foregoing, Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact to so act with respect to said right to vote, which appointment as attorney-in-fact is hereby coupled with an interest; (iv) Borrower shall pay all amounts as required by the Owner's Association for such repair and restoration due to inadequacy of insurance proceeds; and (v) in the event Borrower receives any funds, including insurance proceeds, whether from fire or other casualty or otherwise, Borrower shall assign and immediately deliver any such funds to Lender. Lender may, without obligation or liability, make the payments set forth in clause (iv) to Borrower or directly to the Owner's Association for such repair and restoration and the same shall be secured by the applicable Security Instrument, this Loan Agreement and the other Loan Documents. If Lender makes such payments, then Borrower shall execute, acknowledge, deliver and record at Borrower's expense such documents as Lender may reasonably require evidencing such advances and securing repayment thereof to Lender by Borrower, and Borrower shall pay interest on such amounts at the Default Rate until repaid to Lender.

Section 1.10 Condemnation. The proceeds of any Award or any claim for damages, direct or consequential, payable to Borrower in connection with any Condemnation of all or any portion of the Property, whether of the Units or of the common areas and facilities of the Condominium, or for any conveyance in lieu of Condemnation, are hereby assigned and shall be paid to Lender.

Section 1.11 Additional Events of Default. The following additional Events of Default is hereby added as Section 8.1(a)(xxi) and (xxii) of this Agreement: “if Borrower shall fail to comply with the terms and conditions of Section 1.8 of Schedule V to this Agreement;” and “at Lender’s option, if any provision of the any of the Condominium Documents is held invalid and such invalidity shall have a Material Adverse Change on Borrower, Principal, Guarantor or the Property.”

Section 1.12 Lender’s Rights to Pay Assessments. If Borrower does not pay as and when due all Assessments, then Lender shall have the right, but not the obligation, to pay such amounts. Any amounts paid by Lender shall become additional Debt of Borrower secured by the applicable Security Instrument, and evidenced and/or secured by the Loan Agreement and the other Loan Documents. Such amounts shall bear interest at the Default Rate until repaid to Lender.

**SCHEDULE VI**

[REA DESCRIPTION]

(1) Declaration of Covenants, Conditions and Restrictions for Forest Hill Irene Commercial Subdivision, dated September 16, 2005 and recorded October 20, 2005 as Instrument 05154791, and re-recorded as Instrument 05173500, in the Register's Office of Shelby County, Tennessee. (2999 Centre Oak Drive Property)

(2) Master Deed of the Office Centre dated September 1, 1983, and recorded on November 9, 1983 as Instrument U7 5567, as amended by First Amendment to Master Deed of the Office Centre dated June 7, 1984 and recorded June 19, 1984 as Instrument V4 4765, in the Register's Office of Shelby County, Tennessee. (2020 Exeter Road Property)

(3) Declaration of Covenants, Conditions and Restrictions of Wolf River Professional Center Owners' Association (the "Declaration") dated July 8, 1999, and recorded July 13, 1999 as Instrument JM 9424; as amended by Amendment to Declaration dated November 16, 1999 and recorded November 23, 1999 as Instrument JW 2582; as further amended by Second Amendment to Declaration dated February 17, 2000 and recorded on February 23, 2000 as Instrument KA 5910; as further amended by Amended and Restated Second Amendment to Declaration dated April 3, 2000, recorded on April 6, 2000 as Instrument KA 5910; as further amended by Third Amendment to Declaration dated June 15, 2000 and recorded June 19, 2000 as Instrument KG 7181; and as further amended by Fourth Amendment to Declaration dated September 23, 2002 and recorded on October 4, 2002 as Instrument 02167779, all in the Register's Office of Shelby County, Tennessee (1310 and 1324 Wolf Park Drive Properties)

(4) Declaration of Covenants, Conditions and Restrictions of Bartlett Medical Complex Owners' Association, L.L.C. dated October 29, 2008 and recorded on October 29, 2008 as Instrument 08141104, and recorded again on November 17, 2008 as Instrument 08148192, Register's Office of Shelby County, Tennessee. (3350 N. Germantown Road Property)

(5) Declaration of Covenants, Conditions and Restrictions for Airways Gardens Commercial Subdivision ("Declaration") dated October 7, 1999 and recorded on October 13, 1999 in Book 361, Page 123; as affected by Clarification of Commercial Use Under Declaration dated October 27, 1999 and recorded on October 28, 1999 in Book 361, Page 781; as amended by Amended and Restated Declaration dated and recorded on July 18, 2001; and as further affected by Clarification of Commercial Use Under Declaration dated March 30, 2006 and recorded April 5, 2006 in Book 525, Page 79, all recorded with the Chancery Court Clerk, DeSoto County, Mississippi. (Airways Boulevard, Southaven, MS Property)

**EXHIBIT A-1**

**Gastro One Property Description**

[ 2999 CENTRE OAK WAY LEGAL DESCRIPTION ]

**2999 Centre Oak Way, Germantown, Tennessee**

Tract I:

Lot 9, Forest Hill-Irene Commercial Subdivision, as shown on plat of record in Plat Book 221, Page 48, in the Register's Office of Shelby County, Tennessee, to which plat reference is hereby made for a more particular description of said property.

Being the same property conveyed to GMR Memphis, LLC, a Delaware limited liability company, by Special Warranty Deed of record in Instrument 16000531, in the Register's Office of Shelby County, Tennessee.

Tract II:

Easements benefitting Tract I of the Land contained in the Declaration of Covenants, Conditions and Restrictions for Forest Hill Irene Commercial Subdivision of record in Instrument 05154791 re-recorded in Instrument 05173500, in the Register's Office of Shelby County, Tennessee.

Tract III:

Easement benefitting Tract I of the Land contained in the Private Drive Easement Agreement of record in Instrument 15032324, in the Register's Office of Shelby County, Tennessee.

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[3350 N. GERMANTOWN ROAD LEGAL DESCRIPTION ]

**3350 North Germantown Road, Bartlett, Tennessee**

Tract I:

Lot 1, G I Center Medical Park, as shown on plat of record in Plat Book 241, Page 1, in the Register's Office of Shelby County, Tennessee, to which plat reference is hereby made for a more particular description of said property.

Being part of the property conveyed to GMR Memphis, LLC, a Delaware limited liability company by Special Warranty Deed of record in Instrument 16000535, in the Register's Office of Shelby County, Tennessee.

Tract II:

Easements benefitting Tract I of the Land contained in the 25 foot and 30 foot private ingress/egress easements contained in the plat of record in Plat Book 241, page 1.

Tract III:

Easements benefitting Tract/Parcel 1 of the Land contained in the Declaration of Covenants, Conditions and Restrictions of Bartlett Medical Complex Owners' Association, L.L.C. of record in Instrument No. 08141104 and Instrument No. 08148192.

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[1310 WOLF PACK DRIVE LEGAL DESCRIPTION ]

**1310 Wolf Park Drive, Germantown, Tennessee**

Tract I:

Lot 10, Wolf River Professional Center Commercial Subdivision, as shown on plat of record in Plat Book 196, Page 20, in the Register's Office of Shelby County, Tennessee, to which plat reference is hereby made for a more particular description of said property.

Being the same property conveyed to GMR Memphis, LLC, a Delaware limited liability company, by Special Warranty Deed of record in Instrument 16000539, in the Register's Office of Shelby County, Tennessee.

Tract II:

Easements benefitting Tract I of the Land contained in the 22 foot permanent ingress/egress easement contained in the plat of record in Plat Book 196, page 20.

Tract III:

Easements benefitting Tract/Parcel 1 of the Land contained in the Declaration of Covenants, Conditions and Restrictions of Wolf River Professional Center Owners' Association of record in Instrument No. JM 9424, as amended in Instrument Nos. JW 2582, KA 5910, KC 8862, KG 7181 and 02167779.

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[1324 WOLF PACK DRIVE LEGAL DESCRIPTION ]

**1324 Wolf Park Drive, Germantown, Tennessee**

Tract I:

LOT 12, WOLF RIVER PROFESSIONAL CENTER COMMERCIAL SUBDIVISION, AS SHOWN ON PLAT OF RECORD IN PLAT BOOK 196, PAGE 20, IN THE REGISTER'S OFFICE OF SHELBY COUNTY, TENNESSEE, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A CHISEL MARK SET IN THE EAST LINE OF WOLF PARK DRIVE (31' RIGHT OF WAY) SAID POINT BEING IN THE SOUTH LINE OF LOT 10 OF SAID SUBDIVISION; THENCE SOUTH 84 DEGREES 34 MINUTES 26 SECONDS EAST WITH THE SOUTH LINE OF SAID LOT 10, A DISTANCE OF 195.85 FEET TO A PK NAIL SET IN THE WEST LINE OF LOT 8 OF SAID SUBDIVISION; THENCE SOUTH 05 DEGREES 25 MINUTES 34 SECONDS WEST WITH THE WEST LINE OF SAID LOT 8, A DISTANCE OF 258.54 FEET TO A CHISEL MARK FOUND IN THE NORTH LINE OF WOLF RIVER CIRCLE (31' RIGHT OF WAY); THENCE NORTH 84 DEGREES 34 MINUTES 26 SECONDS WEST WITH THE NORTH LINE OF WOLF RIVER CIRCLE, A DISTANCE OF 61.35 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTWARDLY WITH THE NORTHEASTERLY LINE OF WOLF RIVER CIRCLE AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 134.50 FEET, ARC LENGTH 211.27 FEET, DELTA 90 DEGREES 00 MINUTES 00 SECONDS, TANGENT 134.50 FEET, CHORD NORTH 39 DEGREES 34 MINUTES 26 SECONDS WEST 190.21 FEET TO A POINT OF TANGENCY IN THE EAST LINE OF WOLF PARK DRIVE; THENCE NORTH 05 DEGREES 25 MINUTES 34 SECONDS EAST WITH THE EAST LINE OF WOLF PARK DRIVE, A DISTANCE OF 124.04 FEET TO THE POINT OF BEGINNING.

BEING THE SAME PROPERTY CONVEYED TO GMR MEMPHIS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, BY SPECIAL WARRANTY DEED OF RECORD IN INSTRUMENT 16000547, IN THE REGISTER'S OFFICE OF SHELBY COUNTY, TENNESSEE.

Tract II:

Easements benefitting Tract I of the Land contained in the 22 foot permanent ingress/egress easement contained in the plat of record in Plat Book 196, page 20.

Tract III:

Easements benefitting Tract/Parcel 1 of the Land contained in the Declaration of Covenants, Conditions and Restrictions of Wolf River Professional Center Owners' Association of record in Instrument No. JM 9424, as amended in Instrument Nos. JW 2582, KA 5910, KC 8862, KG 7181 and 02167779.

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[2020 EXETER ROAD LEGAL DESCRIPTION ]

**2020 Exeter Road, Germantown, Tennessee**

UNIT G, IN THE OFFICE CENTRE, A CONDOMINIUM BEING PART OF THE PREMISES DESCRIBED IN THE MASTER DEED OF RECORD IN INSTRUMENT U7 5567 AS AMENDED BY FIRST AMENDMENT TO MASTER DEED OF THE OFFICE CENTRE OF RECORD IN INSTRUMENT V4 4765, IN THE REGISTER'S OFFICE OF SHELBY COUNTY, TENNESSEE, TO WHICH MASTER DEED REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF SAID PROPERTY TOGETHER WITH THE BENEFITS, RIGHTS AND PRIVILEGES STATED IN THE CONDOMINIUM DOCUMENTS AND SUBJECT TO ALL THE DUTIES, OBLIGATIONS, RESOLUTIONS AND DECISIONS THEREWITH AS SET FORTH IN THE CONDOMINIUM DOCUMENTS.

BEING THE SAME PROPERTY CONVEYED TO GMR MEMPHIS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, BY SPECIAL WARRANTY DEED OF RECORD IN INSTRUMENT 16000545, IN THE REGISTER'S OFFICE OF SHELBY COUNTY, TENNESSEE.

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[7668 AIRWAYS BLVD LEGAL DESCRIPTION]

**7668 Airways Blvd., Southaven, MS**

Real property in the City of Southaven, County of Desoto, State of Mississippi, described as follows:

**Tract I:**

Lot 11-C, Second Division of Lot 11-A, Second Revision, Airways Gardens Commercial Subdivision as recorded in Plat Book 102, Page 19 as recorded in the Desoto County Chancery Court Clerk's Office and located in Section 30, Township 1 South, Range 7 West, Southaven, DeSoto County, Mississippi.

**Tract II:**

Easements benefiting Tract I of the Land contained in the plats in Book 97, page 17 and Book 102, page 19.

**Tract III:**

Easement benefiting Tract I of the Land contained in the Easement of record in Book 525, page 56.

**EXHIBIT A-2**

**Star Medical Center Property Description**

**4100 Mapleshade Lane, Plano, Texas**

Tract I:

Lot 2R, in Block 1, of 190 Mapleshade Addition, an addition to the City of Plano, Collin County, Texas, according to the Re-Plat thereof recorded in/under Volume 2015, Page 718, Map/Plat Records, Collin County, Texas.

Tract II:

Access Easement for ingress and egress as reflected on the plat recorded on December 15, 2015 in Volume 2015, Page 718, Map/Plat Records, Collin County, Texas.

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**EXHIBIT A-3**

**Marina Towers Property Description**

**Marina Towers  
709 S. Harbor City Blvd., Melbourne, FL**

**PARCEL 1: (FEE SIMPLE ESTATE)**

**That part of Lots 36, 37, 38, 39 and 40, together with the Southerly 39.6 feet of Lot 41, of Section "A" RIVERSIDE DRIVE SUBDIVISION, as recorded in Plat 3, Page 9, said Public Records of Brevard County, Florida, lying East of the Easterly right-of-way line of U.S. Highway No. 1, together with the adjacent submerged bottom lands purchased from the State of Florida, described in Official Records Book 774, page 599, said Public Records of Brevard County, Florida, and being more particularly described as follows:**

**Commencing at the Northwest corner of U.S. Government Lot No. 1 of Section 34, Township 27 South, Range 37 East, Brevard County, Florida; go East along the North line of said Government Lot No. 1, and said line extended into the waters of the Indian River, a distance of 599.92 feet to a point on the established bulkhead line; thence run South 22 degrees 27 minutes 00 seconds East along said bulkhead line a distance of 576.97 feet to a point; said point being the POINT OF BEGINNING of the parcel herein described; thence South 68 degrees 00 minutes 48 seconds West along the Easterly extension of the North line of the South 39.6 feet of Lot 41 of said Plat Book 3, Page 9, a distance of 249.00 feet more or less to a point on the North line of said South 39.60 feet of Lot 41 as said line is extended or contracted to the ancient mean high water line of the Indian River; then continue South 68 degrees 00 minutes 48 seconds West, along the said North line to a point at the intersection with the said Easterly right-of-way of U.S. Highway No. 1, said point being South 68 degrees 00 minutes 48 seconds West of the POINT OF BEGINNING a distance of 299.35 feet; thence South 21 degrees 59 minutes 12 seconds East along the said Easterly right-of-way line a distance of 289.66 feet; thence North 68 degrees 02 minutes 38 seconds East along the South line of said Lot 36 and said line extended to and beyond the said ancient mean high water line to the said bulkhead line, a distance of 301.59 feet; thence North 22 degrees 27 minutes 00 seconds West, along the said bulkhead line, a distance of 289.83 feet to the POINT OF BEGINNING, LESS AND EXCEPT that portion of the above described property described in Warranty Deed recorded in Official Records Book 3321, Page 4864, Public Records of Brevard County, Florida.**

**PARCEL 1 ABOVE BEING ALSO DESCRIBED: (AS SURVEYED AND MEASURED):**

**THAT PART OF LOTS 36, 37, 38, 39 AND 40, TOGETHER WITH THE SOUTHERLY 39.6 FEET OF LOT 41, OF SECTION "A" RIVERSIDE DRIVE SUBDIVISION, AS RECORDED IN PLAT 3, PAGE 9, SAID PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, LYING EAST OF THE EASTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 1, TOGETHER WITH THE ADJACENT SUBMERGED BOTTOM LANDS PURCHASED FROM THE STATE OF FLORIDA, DESCRIBED IN OFFICIAL RECORDS BOOK 774, PAGE 599, SAID PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

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COMMENCING AT THE NORTHWEST CORNER OF U.S. GOVERNMENT LOT NO. 1 OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA; GO EAST ALONG THE NORTH LINE OF SAID GOVERNMENT LOT NO. 1, AND SAID LINE EXTENDED INTO THE WATERS OF THE INDIAN RIVER, A DISTANCE OF 599.92 FEET TO A POINT ON THE ESTABLISHED BULKHEAD LINE; THENCE RUN SOUTH 22 DEGREES 27 MINUTES 00 SECONDS EAST ALONG SAID BULKHEAD LINE A DISTANCE OF 576.97 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHERLY 39.6 FEET OF LOT 41; THENCE SOUTH 68 DEGREES 00 MINUTES 48 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 7.00 FEET FOR A POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE CONTINUE SOUTH 68 DEGREES 00 MINUTES 48 SECONDS WEST ALONG SAID NORTH LINE OF THE SOUTH 39.6 FEET OF LOT 41, A DISTANCE OF 292.25 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SOUTH HARBOR CITY BOULEVARD (U.S. HIGHWAY NO. 1), (STATE ROAD NO. 5); THENCE SOUTH 21 DEGREES 59 MINUTES 12 SECONDS EAST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 289.66 FEET TO THE SOUTH LINE OF AFORESAID LOT 36; THENCE NORTH 68 DEGREES 02 MINUTES 38 SECONDS EAST ALONG SAID SOUTH LINE OF SAID LOT 36, A DISTANCE OF 294.59 FEET; THENCE NORTH 22 DEGREES 27 MINUTES 00 SECONDS WEST, A DISTANCE OF 289.83 FEET TO THE POINT OF BEGINNING.

**PARCEL 2: (NON-EXCLUSIVE EASEMENT ESTATE)**

**Together with those certain Non-Exclusive Easement rights for the benefit of Parcel 1, for access to and for automobile parking and access to and use of public utilities, a distance of created by that certain Cross Parking License/Easement Agreement recorded April 10, 1991, in Official Records Book 3119, Page 1345, Public Records of Brevard County, Florida, over and across the lands described and contained therein.**

**PARCEL 3: (NON-EXCLUSIVE EASEMENT ESTATE)**

**Together with those certain non-exclusive easements for the benefit of Parcel 1, for use of a lift station and sanitary sewer system, stormwater drainage and runoff, ingress and egress and other utility easements over and across the lands described and contained in that certain Easement Agreement recorded in Official Records Book 3428, Page 2001, Public Records of Brevard County, Florida.**

**EXHIBIT A-4**

**Surgical Institute of Michigan Property Description**

**33545 Cherry Hill Road, Westland, Michigan**

The Land referred to in this Commitment is described as follows:

The land referred to in this Commitment, situated in the County of Wayne, City of Westland, State of Michigan, is described as follows:

Lots 29, 30, 31, 32, 33, 34, 35, 36, the West ½ of Lot 537 and the West 10 feet of the East 20 feet of Lot 537, and all of Lots 538, 539 and 540, including that vacated 20 foot alley lying between said lots, of NORTHVIEW MANOR SUBDIVISION, according to the plat thereof as recorded in Liber 53 of Plats, page 67, Wayne County Records.

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**EXHIBIT B**

[ FORM OF TENANT DIRECTION LETTER - BORROWER LETTERHEAD ]

[ \_\_\_\_\_, 20\_\_ ]

*[SPECIFY METHOD OF DELIVERY REQUIRED BY NOTICE PROVISION OF LEASE]*

[ TENANT NAME AND NOTICE ADDRESS PER LEASE ]

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

Re: Payment Direction Letter for [ \_\_\_\_\_ ]

Dear [TENANT NAME] :

[ \_\_\_\_\_ ] (“ **Owner** ”), the owner of the above captioned property (the “ **Property** ”), has mortgaged the Property to CANTOR COMMERCIAL REAL ESTATE LENDING, L.P. (together with its successors and assigns, the “ **Lender** ”) and has agreed that all rents and other income due for the Property will be paid directly to a bank selected by Lender. Therefore, from and after the date hereof (until you are otherwise notified as provided below), all rent to be paid by you under the [IDENTIFY AGREEMENT/LEASE dated \_\_\_\_\_] between you and [NAME OF LL ON LEASE] (the “ **Lease** ”) should be sent by wire or ACH directly to the Clearing Account described on Exhibit A attached hereto and made a part hereof.

Payment by check or money order should be made directly to Lockbox Account described on Exhibit B attached hereto and made a part hereof.

These payment instructions cannot be withdrawn or modified without the prior written consent of Lender or its agent (“ **Servicer** ”), or pursuant to a joint written instruction from Borrower and Lender or Servicer. Until you receive written instructions from Lender or Servicer, continue to send all payments due under the Lease as directed above. All such payments must be delivered no later than the day on which such amounts are due under the Lease.

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If you have any questions concerning this letter, please contact the persons identified for notice purposes in the Lease. We appreciate your cooperation in this matter.

OWNER:

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EXHIBIT A (to Tenant Direction Letter)  
CLEARING ACCOUNT FOR WIRE OR ACH PAYMENTS



EXHIBIT B (to Tenant Direction Letter)

LOCKBOX ACCOUNT FOR PAYMENT BY CHECK OR MONEY ORDER

ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement"), dated as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (the "Effective Date"), is made and entered into by and between GLOBAL MEDICAL REIT, INC., a Maryland corporation ("Purchaser"), and CHERRY HILLS REAL ESTATE, LLC, a limited liability company [THIS ENTITY IS NOT REGISTERED IN MICHIGAN – NEED TO CONFIRM NAME] ("Seller").

RECITALS:

A. WHEREAS, Seller owns and operates licensed medical facility located at 33545 Cherry Hill Rd, Westland, Michigan containing 15,018 square feet of improvements, on 1.3 acres land, as set forth on Exhibit A, together with the real property, the improvements and all appurtenances thereto (the "Facility"), which defined term shall include all of the Assets (as defined in Recital B below) applicable to the Facility). The Facility is located at the address and has the total number of the number of licensed beds as forth on Exhibit A.

B. WHEREAS, the parties desire to enter into this Agreement pursuant to which Purchaser will purchase, accept and assume from Seller, and Seller will sell, convey, transfer and assign to Purchaser, the following, hereinafter collectively referred to as the "Assets":

(i) Seller's good and marketable, valid and insurable fee simple title and all other rights, title and interest of Seller in and to the parcel(s) of real property on which the Facility is located, such real property being more particularly described on Exhibit B, attached hereto (the "Real Property");

(ii) Seller's fee simple title in and to all buildings, structures, facilities, amenities, driveways, walkways, parking lots and other improvements located on the Real Property (collectively, the "Improvements");

(iii) all right, title and interest of Seller in and to any alleys, strips or gores adjoining the Real Property, any easements, rights of way or other interests in, on, under or to, any land, highway, street, road or right of way, open or proposed, in, under, across, abutting or benefiting the Real Property, and any pending or future action for condemnation, eminent domain or similar proceeding, or for any damage to the Real Property by reason of a change of grade thereof, and all other accessions, appurtenant rights, and privileges of Seller in and to the Real Property and the Improvements;

(iv) all personal property owned by Seller located at the Facility and used in connection with the Facility (the "Personal Property"); and

(v) all licenses, permits and warranties benefiting the Facility.

C. WHEREAS, simultaneously therewith, Purchaser and Seller intend that Purchaser will Lease the Facility to The Surgical Institute of Michigan, LLC, a Delaware limited liability company ("Tenant") pursuant to a lease in accordance with the terms set forth herein (the "Facility Lease"), it being understood that the Facility Lease will be guaranteed by Surgical Management Professionals, LLC, a South Dakota limited liability company (the "Guarantor") pursuant to a written Guaranty (the "Guaranty").

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NOW, THEREFORE, in consideration of the recitals, and of the mutual agreements, representations, warranties, conditions and covenants herein contained, the parties hereto agree as follows:

**ARTICLE I.  
PURCHASE AND SALE**

1.1 Transfer of Assets. For and in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, and subject to the terms and conditions herein provided, Seller shall convey, transfer and assign the Assets to Purchaser.

1.2 Closing.

(a) Unless this Agreement shall have been terminated pursuant to an express right to terminate as herein provided, the closing hereunder (the "Closing") shall occur on or before 2:00 p.m. CT on the date fifteen (15) days after the expiration of the Due Diligence Period (as defined in Section 1.8(b) below) (the "Closing Date"); provided, however, that if all of the Required Consents (as defined in Section 5.5(b) below) are not received by Purchaser on or before the Closing Date, the Closing Date will be automatically extended on a month-to-month basis to permit Seller and Purchaser to continue pursuing the Required Consents for which each is responsible, and the Closing will occur on the latter of (i) the date at least fifteen (15) days after the date on which the last of the Required Consents is obtained; or (ii) the last day of the calendar month in which the last of the Required Consents is obtained. If all Required Consents have not been received within thirty (30) days [ **Please provide information on timing**] after the end of the Due Diligence Period, either party may terminate this Agreement upon written notice to the other party given prior to 6:00 p.m. CT on that date, in which case the refundable portion of the Deposit (as defined in Section 1.4 below) will be promptly returned to Seller and neither party will have any further obligation or liability to the other party. The Closing will be effective for accounting purposes as of 12:01:01 a.m. on the Closing Date such that the Closing Date will be a day of income and expense to Purchaser.

(b) On the Closing Date, all documents and other materials required from Seller under Section 9.1(b) (collectively, the "Seller Documents") and from Purchaser under Section 9.1(c) (collectively, the "Purchaser Documents") in order to effectuate the consummation of the Closing shall be delivered to the offices of the Purchaser, or at such other date, time and place as Purchaser may reasonably require taking into account the relative location of any lenders. Notwithstanding the foregoing, (i) Seller may deliver all of the Seller Documents required hereunder to the Title Company (as defined in Section 4.10(b) below), as escrow agent ("Escrow Agent") or Purchaser's counsel on or before the Closing Date (to hold in escrow in accordance with customary conveyancing practices subject to the consummation of the Closing) by overnight courier, and (ii) Purchaser may deliver all of the Purchaser Documents required hereunder to Escrow Agent on or before the Closing Date (to hold in escrow in accordance with customary conveyancing practices subject to the consummation of the Closing) by overnight courier.

1.3 Purchase Price. The aggregate purchase price (the "Purchase Price") for the Assets shall be Four Million Seven Hundred Fifty Thousand and No/100 Dollars (\$4,750,000.00), subject to the prorations and further adjustments as provided for in this Agreement. At the Closing, the Purchase Price shall be paid as in cash, subject to the prorations and further adjustments as provided for in this Agreement, by wire transfer of immediately available federal funds to Escrow Agent ("Cash Proceeds").

1.4 Deposit. Within three (3) business days following the Effective Date Seller will deposit the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00) (the "Deposit") with the Title Company as provided herein to cover Purchaser's out of pocket expenses. It is understood that if Purchaser terminates this Agreement for any reason other than a default by Seller, the Deposit will be refunded to Seller, less out of pocket expenses incurred by Purchaser (the "Deposit Balance"). At Closing, the Deposit Balance, if any, shall be applied to the Purchase Price.

1.5 Payment of Purchase Price. At Closing, Purchaser shall pay the Purchase Price, adjusted for any prorations, credits and additions for the benefit of Purchaser or Seller as specified in this Agreement, as set forth in Section 1.3 hereof.

1.6 No Assumed Liabilities. At Closing, Purchaser shall NOT assume any liabilities or obligations of Seller whatsoever, fixed or contingent, and prior to, on and after the Closing Date, Seller shall retain and discharge in the ordinary course all liabilities and obligations of Seller. Purchaser shall not assume any contracts, equipment leases or leases, and Seller shall remain fully liable for all obligations thereon. There shall be no adjustment between Purchaser and Seller of taxes, assessments, water charges, utilities, receivables or rents, if any, premiums on existing insurance policies, if any, or any other items relating to the Assets, it being understood by the parties that Tenant, as Tenant under the Facility Lease, shall be obligated to pay the same under the terms thereof from and after the Closing Date.

1.7 Due Diligence Period.

(a) Seller and Purchaser hereby acknowledge that, as of the Effective Date, Purchaser has not yet had an opportunity to conduct due diligence and fully review and evaluate all aspects of this transaction and the condition and suitability of the Assets. In order to enable Purchaser to commence its due diligence review in a timely and efficient manner, Seller agrees to deliver to Purchaser all items identified on Purchaser's preliminary due diligence checklist attached hereto as Exhibit C (the "Preliminary Due Diligence Checklist") on or before the date five (5) days after the Effective Date (the "Diligence Delivery Date"). Purchaser may supplement the Preliminary Due Diligence Checklist as Purchaser deems appropriate and Seller shall provide the supplemental items to Purchaser within five (5) days after written request by Purchaser. To the extent Seller has any of the items on the Preliminary Due Diligence Checklist in electronic format, Seller shall send true, correct and complete copies of those items to Purchaser via the internet. To the extent Seller has items on the Preliminary Due Diligence Checklist in hardcopy, but not in electronic format, Seller shall make true, complete and correct copies of those items and deliver them to Purchaser via overnight courier. Seller shall organize all materials in accordance with the Preliminary Due Diligence Checklist and shall identify each item with reference to the number assigned to it on the Preliminary Due Diligence Checklist.

(b) For the period (as such period may be extended pursuant to Section 4.10(b) or (c) below, the "Due Diligence Period") commencing on the Effective Date and continuing until 6:00 p.m. CT on the forty-fifth (45<sup>th</sup>) days following the Effective Date, Purchaser shall have the right to terminate this Agreement by written notice to Seller in the event Purchaser, in Purchaser's sole discretion, is not satisfied with the Assets for any reason, which reason need not be specified in such notice, provided that such notice is delivered (in accordance with the provisions of this Agreement) to Seller on or before 6:00 p.m. CT on the last day of the Due Diligence Period. If such notice of termination is so delivered on or before 6:00 p.m. CT on the last day of the Due Diligence Period, then this Agreement shall terminate and the parties shall thereafter be released from all further duties and obligations under this Agreement. If this Agreement is not terminated as set forth in this Section 1.7 or as otherwise provided herein, then this Agreement shall remain in full force and effect.

## **ARTICLE II. REPRESENTATIONS AND WARRANTIES OF SELLER**

As an inducement to Purchaser to enter into this Agreement and to consummate the transactions contemplated herein, Seller represents and warrants the following, each of which warranties and representations is material to and is relied upon by Purchaser:

2.1 Organization and Qualification. Seller is a limited liability company duly organized and validly existing under the laws of the State of \_\_\_\_\_ with full power and authority to own assets and to carry on its business as it is now being conducted and to own or lease and operate the Assets it owns or leases as and in the place now owned, leased or operated, and as will be leased pursuant to the Facility Lease, respectively.

2.2 Authority; Binding Effect.

(a) Seller, Tenant and Guarantor have, and at Closing will have, the full and unrestricted right, corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions and perform all obligations contemplated hereby and in all agreements, instruments and documents being or to be executed and delivered by Seller in connection with such transactions, including, without limitation, the Seller Documents, the Facility Lease and all agreements, instruments and documents being or to be executed and delivered by Seller, Tenant and Guarantor in connection with the Facility Lease, including, without limitation, the Guaranty (collectively, "Related Documents").

(b) This Agreement and each Related Document, upon due execution and delivery by Seller, Tenant and Guarantor, will constitute the legal, valid, and binding obligation of Seller, Tenant and Guarantor enforceable in accordance with its respective terms.

(c) Seller, Tenant and Guarantor have obtained all required corporate approval required for the execution and consummation of this Agreement, the Related Documents and all transactions contemplated hereby and thereby.

2.3 Licenses. The Facility is currently licensed to operate as a [DESCRIBE] (the “ Permitted Use ”). Exhibit E sets forth all permits, licenses, Government Program (as defined below) provider agreements and other authorizations issued and required by Governmental Authorities in connection with the ownership, maintenance and operation of the Facility, including, without limitation, such licenses required for the Permitted Use (collectively, the “ Licenses ”). The Licenses are in good standing and Seller has not received written notice that Seller is in violation of any restriction or other rules, regulations, statutes, ordinances or requirements or any judgments, decrees, writs, injunctions or orders of any Governmental Authority in effect as of the date hereof, or as enacted or amended from time to time after the Effective Date (collectively, “ Applicable Laws ”) in connection with the Licenses or the Facility or otherwise affecting possession, operation and use thereof. Seller is the holder of all the Licenses and there is no other person or entity that operates, manages or leases the Facility (other than pursuant to Tenant Leases (as defined herein).

2.4 Governmental Authorities. Except as set forth on Exhibit F attached hereto, Seller is not required to submit any notice, report or other filing with any federal, state, municipal, foreign or other governmental or regulatory authority (individually, a “ Governmental Authority ” and collectively, “ Governmental Authorities ”) in connection with Seller’s execution or delivery of this Agreement or any of the Related Documents or the consummation of the transactions contemplated hereby and no consent, approval or authorization of any Governmental Authority is required to be obtained by Seller in connection with the execution, delivery and performance of this Agreement.

2.5 Taxes. All real property taxes and assessments, and all personal property taxes and assessments, in connection with the Assets allocable to the period prior to Closing have been paid or, by the time of Closing, will be paid by Seller. In addition: (i) all income, sales and franchise taxes due and payable by Seller during the period of Seller’s (or any affiliate of Seller’s) ownership of the Assets, if any, and all interest and penalties thereon, if any, have been paid in full; (ii) all tax returns required to be filed by Seller, if any (including, without limitation, all sales, franchise and payroll tax returns and reports), have been properly and timely filed, and correctly reflect the tax position of Seller, and all taxes respectively due under such tax returns have been paid thereby or will be paid in the ordinary course of Seller’s business and in any event on or before the Closing; (iii) Seller is not subject to a claim for deficiency or other action in connection with any taxes and is not paying any taxes for any prior period under any installment agreement, compromise or settlement agreement or any other arrangement with any Governmental Authority; (iv) no tax returns of Seller have been or are being examined by the Internal Revenue Service or any state or local Governmental Authority; and (v) all tax returns filed by Seller after the Effective Date, covering periods prior to and including the Closing Date, will be properly and timely filed (giving consideration for allowable extensions) and all taxes respectively due under such tax returns will be timely paid.

2.6 No Defaults. The execution, delivery and performance of this Agreement and any of the Related Documents by Seller do not and will not:

(a) Conflict with or result in any breach of the provisions of, or constitute a default under the articles of incorporation, bylaws, articles of organization, operating agreement or other governing organizational documents, as the case may be, of Seller;

(b) Violate any restriction to which Seller is subject or, with or without the giving of notice, the passage of time, or both, violate (or give rise to any right of termination, cancellation or acceleration under) any mortgage, deed of trust, license, lease, indenture or other material agreement or instrument, whether oral or written, to which Seller is a party, or by which it or the Assets are bound, which will not be fully satisfied, assigned or terminated on or prior to Closing as a result of the transactions contemplated in this Agreement, or result in the termination of any such instrument or termination of any provisions in such instruments, or result in the creation or imposition of any lien, charge or encumbrance upon the Assets;

(c) Create any liens or other encumbrances on the Assets in favor of third parties;

(d) Constitute a violation of any Applicable Law of any Governmental Authority; or

(e) Result in the breach or violation of any of the warranties and representations herein set forth by Seller.

2.7 Title to Property and Related Matters.

(a) There are no violations of any covenants or restrictions encumbering the Assets, and there are no violations of any Applicable Laws relating to the Licenses or the operation of the Facility for the Permitted Use or any other Applicable Laws of any Governmental Authorities applicable to the Assets or the operations thereof. Seller has no knowledge of any agreements, documents or instruments which are not recorded among the land records but which affect the title to the Facility.

(b) Seller is the holder of good and marketable, insurable and valid fee simple title to the Facility free and clear of all Monetary Encumbrances (as defined in Section 4.10(b)) other than such Monetary Encumbrances as Seller shall pay and discharge in full prior to or on or at Closing. Seller has continuously operated the Facility for a period of not less than five (5) years and using no names other than (i) the name of Seller and (ii) the name of the Facility set forth on Exhibit A.

(c) The Facility is supplied with such utilities as are necessary for the operation of the Facility as currently operated and for its intended purpose, and Seller has no knowledge of any future plans by any utility provider to curtail or eliminate any utilities currently serving the Assets. All utility bills and deposits required by any utility provider have been paid by Seller.

(d) The Facility abuts on and has direct vehicular access to a public road, or has access to a public road via a permanent irrevocable and insurable easement benefiting the Real Property upon which the Facility is located, and Seller has no knowledge of, and has received no notice that alleges any breach or default under any instrument creating any such easement or attempting to terminate or revoke such easement.

(e) There are no pending rezoning or other pending land use actions affecting the Assets or any properties in the immediate vicinity of the Assets. Seller has not received written notice of and has no knowledge of any threatened or contemplated rezoning or other land use actions affecting or which will affect the Assets, including, without limitation, on properties in the immediate vicinity of the Assets. The current use of the Facility is lawfully permitted either as a currently conforming use or as a fully legally "grandfathered use", and there is no known violation of any Applicable Laws relating to the zoning, land use, building codes or other similar requirements of Governmental Authorities.

(f) At the Closing, Seller shall not be indebted to any contractor, laborer, mechanic, materialman, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Assets for which any such person could lawfully claim a lien against the Assets.

(g) There are no condemnation or eminent domain proceedings pending, or, to the knowledge of Seller, threatened or contemplated against the Assets or any part thereof, or access thereto, and Seller has not received notice, oral or written, of the desire of any public authority or other entity to take or use the Assets or any part thereof. Between the Effective Date and the Closing, Seller will give Purchaser prompt written notice of any actual or any threatened or contemplated condemnation of any part of the Assets of which Seller receives written notice or obtains knowledge.

(h) There are no parties other than Seller in possession of the Assets, or any portion thereof, other than tenants under the Tenant Leases who are in possession of space to which they are entitled.

(i) There are no outstanding options or rights of first refusal to purchase the Assets or any portion thereof or interest therein.

(j) The Assets constitute all of the assets necessary and sufficient to conduct the operation of the Facility in the manner that such operation has been conducted by Seller and as required by Applicable Laws.

## 2.8 Hazardous Substances.

(a) For purposes of this Agreement, "Environmental Laws" means the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Toxic Substances Control Act (15 U.S.C. §2601 et. seq.), the Clean Air Act (42 U.S.C. §7401 et. seq.), the Safe Water Drinking Act (42 U.S.C. §300(f) et. seq.), the Occupational Safety and Health Act, and all other applicable state, county, municipal, administrative or other environmental, hazardous waste or substance, health and safety laws, ordinances, rules, regulations, judgments, orders and requirements of any Governmental Authority relating or pertaining to (A) any aspect of the environment, (B) the preservation or reclamation of natural resources, (C) the management, release and threatened release of Hazardous Substances (as hereinafter defined), (D) response actions and corrective actions regarding Hazardous Substances, (E) the ownership, operation or maintenance of personal and real property that manages or releases Hazardous Substances or at which Hazardous Substances are managed, (F) common law torts, including so-called "toxic torts", and (G) environmental or ecological conditions on, under or about the Assets, all as in effect as of the Effective Date and on the Closing Date. For purposes of this Agreement, "Hazardous Substance" shall mean any and all substances, wastes, materials, pollutants, contaminants, compounds, chemicals or elements which are defined or classified as a "hazardous substance", "hazardous material", "toxic substance", "hazardous waste", "pollutant", "contaminant" or words of similar import under any Environmental Law, including, without limitation, all dibenzodioxins and dibenzofurans, polychlorinated biphenyls (PCBs), petroleum hydrocarbon, including crude oil or any derivative thereof, any radioactive material, raw materials used or stored in the Facility and building components including, asbestos-containing materials in any form, radon gas and mold of a type or in amounts that may present a health hazard.



(b) The Assets do not contain any Hazardous Substance, except for Hazardous Substances typically used in, and in quantities necessary for the day-to-day operation of, the Facility and which are commonly used in other similar facilities, such as cleaning fluids, insecticides and medicines (the "Common Products"), which Common Products have been used, transported, stored and disposed of by Seller in compliance with all applicable Environmental Laws;

(c) There is no pending or threatened litigation or proceeding before any Governmental Authority in which any person or entity alleges the presence, release or threat of release of any Hazardous Substance or violation of Environmental Laws at the Facility;

(d) Seller has not received any notice of, and has no knowledge that, any Governmental Authority or employee or agent thereof has determined, or threatens to determine, or is investigating, that there is a presence, release or threat of release or placement on, in or from the Assets, or the generation, transportation, storage, treatment, or disposal at the Assets, of any Hazardous Substance. Seller shall notify Purchaser promptly of its receipt of any such notice or knowledge after the Effective Date;

(e) (i) Seller has owned and operated the Assets in compliance with all applicable Environmental Laws, has obtained all necessary permits under the Environmental Laws for Seller's operation of the Assets, and has not used any of the Assets for the generation, storage, manufacture, use, transportation, disposal or treatment of Hazardous Substances, and (ii) the Assets are currently in compliance with all applicable Environmental Laws;

(f) There has been no discharge of any Hazardous Substance on or from any of the Assets during the time of Seller's ownership or occupancy thereof; and

(g) Seller has, or will, deliver to Purchaser copies of all reports or tests in Seller's possession with respect to (i) the compliance of the Assets with Environmental Laws and (ii) the presence of Hazardous Substances on, in or from the Facility or the Real Property.

2.9 Leases. Exhibit D. attached hereto contains a true and correct list of all leases of space in the Facility by Seller to third party service providers, such as physical therapists, banks, clinics or beauty shop operators (collectively, the "Tenant Leases"). Seller has provided or will provide to Purchaser true and complete copies of all Tenant Leases prior to the Diligence Delivery Date. Except as disclosed on Exhibit D, each Tenant Lease is in full force and effect; all rents due on or before the Effective Date under each Tenant Lease have been timely paid and there has not been and there is no ongoing issue or dispute as to past rental payments; in each case, neither Seller, nor, to the knowledge of Seller, any other party to any such Tenant Lease is in default in any respect thereunder; and no waiver, indulgence or postponement of Seller's obligations as the lessor under the Tenant Leases, and Seller has no knowledge of and has not received written notice that there exists any occurrence, event, condition or act which, upon the giving of notice or the lapse of time or both, would become a default by Seller (or, to the knowledge of Seller, any other party to such lease) under any such Tenant Lease.]

2.10 Patriot Act. Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order"), and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation or orders are collectively called the "Orders"). Neither Seller nor any of its affiliates (A) is listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists"), (B) is a Person (as defined in the Order) who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (C) is owned or controlled by (including, without limitation, by virtue of such Person being a director or owning voting shares or interests), or acts for or on behalf of, any person on the Lists or any other Person who had been determined by competent authority to be subject to the prohibitions contained in the Orders.

2.11 Survey Reports, Etc.; Compliance with Law. Seller has delivered or, pursuant to Section 1.8, will deliver to Purchaser true and complete copies of all survey reports, waivers of deficiencies, plans of correction, and any other investigation notices, warnings, correspondence or reports issued with respect to the Facility (collectively, "Licensing Surveys"), and Seller shall also promptly deliver to Purchaser any Licensing Surveys received, filed, arising or involving the Facility between the Effective Date and the Closing Date. There are no material deficiencies or violations noted in any Licensing Surveys and Seller has remedied, discharged and complied with all applicable plans of correction, such that there are no current violations or deficiencies with respect to any of the Licenses. Seller is currently conducting, and has at all times conducted, its operation of the Facility in compliance with all Applicable Laws.

2.12 Capital Expenditures. Except for routine expenditures for repairs and replacements in connection with the ongoing maintenance and upkeep of the Facility, which Seller covenants and agrees to undertake and complete in the ordinary course consistent with past practices pursuant to Section 4.1 below, Seller does not have any outstanding contracts for capital expenditures relating to the Facility, nor does Seller have any agreement, obligations or commitments for capital expenditures relating to the Facility, including, without limitation, additions to property, plant, equipment or intangible capital assets. Seller has not deferred or delayed implementing any capital expenditures at the Facility and the Facility has been constructed to an institutional (as opposed to residential) grade, including, without limitation, fire suppression systems and construction standards related to fire suppression.

2.13 Absence of Notices. Seller has not received any written notice, and has no knowledge, that (a) any customer or supplier of Seller intends to discontinue, substantially alter prices or terms to, or significantly diminish its relationship with the Facility, either as a result of the transaction contemplated hereby or otherwise or (b) any federal, state, county, municipal or other Governmental Authority is alleging any fire, health, safety, building, pollution, environmental, zoning or other violation of Applicable Law, including, without limitation, applicable health care licensure laws or violations under the Licenses, with respect to the Facility or any part thereof.

2.14 Third Party Payor Reimbursement. All billing practices of Seller with respect to the Facility to all third party payors, including Medicare, Medicaid, CHAMPUS, TRICARE and other federal, state or local governmental reimbursement programs, or successor programs to any of the foregoing (collectively referred to herein as the "Government Programs") and private insurance companies, have been in compliance with all Applicable Laws and policies of such third party payors and Government Programs in all respects. Seller has received no written notice that Seller has billed or received any payment or reimbursement in excess of amounts permitted by Applicable Law.

2.15 Financial Statements. Seller has delivered to Purchaser copies of the financial statements listed in the Preliminary Due Diligence Checklist certified by the chief financial officer of Seller (collectively, the "Financial Statements") as follows: (a) audited income statements of Seller for the fiscal years ended 2012, 2013 and 2014; (b) income statements, balance sheets, changes in stockholders equity and cash flow of Seller (the "Most Recent Financial Statements") as of and for the six (6) month period ended , 2015; and (c) a schedule of capital improvements to the Facility that were completed in the fiscal years ended 2012, 2013, and 2014. The Financial Statements (including the notes thereto) have been prepared in accordance with generally accepted accounting principles ("GAAP") on a consistent basis throughout the periods covered thereby and present fairly the financial condition of the Facility as of such dates and the results of operation of the Facility for such periods.

2.16 No Litigation. Except as set forth on Exhibit G attached hereto, there are no actions, suits, claims, governmental investigations or other legal or administrative proceedings, or any orders, decrees or judgments in progress, pending or in effect, or, to the knowledge of Seller, threatened against or relating to Seller, the Facility, Seller's operation of the Facility, any of the Assets or against or relating to the transactions contemplated by this Agreement, and there are none pending in state courts, or in any federal courts, or, to the knowledge of Seller, pending in other jurisdictions or threatened in writing, at law or in equity, by or before any federal, state or municipal court or other Governmental Authority. If the matters set forth on Exhibit G if any, are decided adversely, it will not materially or adversely affect the Assets, Seller or Seller's operation of the Facility.

2.17 Absence of Certain Changes or Events. From [DATE OF LAST INSPECTION BY PURCHASER] through the Effective Date, neither the Facility nor Seller has:

- (a) Suffered any Material Adverse Change;

(b) Sold, transferred or otherwise disposed of, or agreed to sell, transfer or otherwise dispose of, any assets related to or connected with the Facility having a fair market value at the time of sale, transfer or disposition of \$50,000.00 or more in the aggregate, other than with respect to sales of Inventory in the ordinary course of business, or cancelled, or agreed to cancel, any debts or claims relating primarily to the Facility in the amount of \$50,000.00 or more in the aggregate; or

(c) Made any change in any method of accounting or accounting practice relating to the Facility.

2.18 Condition of Assets. All of the Assets are in Seller's possession or control and are located at or on the Facility and all of the Assets are in good repair and working order.

2.19 Employee and Labor Relations. Seller is in compliance with all federal, state or other Applicable Laws respecting employment and employment practices at the Facility (collectively, "Employment Laws"). Seller shall remain responsible for maintaining all employee benefit plans in compliance with Applicable Laws and Purchaser shall have no obligation with respect to any of Seller's employee benefit plans at any time. Seller has no unfunded or trailing obligation to fund any employee benefit plans.

2.20 Insurance. Attached as Exhibit H is a list of insurance policies carried and insurance coverages maintained by Seller with respect to the Facility, and upon request by Purchaser, Seller shall provide copies of any policies to Purchaser. Seller's insurance policies and coverages are in full force and effect and include coverages, policy limits, deductibles and other terms that are customary for the Permitted Use at similar facilities.

2.21 Truth of Warranties, Representations, and Statements. All of the statements, representations, and warranties made by Seller in this Agreement and the statements and information set forth in the attached Exhibits are true and accurate in every material respect.

2.22 Materials Provided. All materials provided to Purchaser by Seller either prior to the Effective Date or during the term hereof, including, without limitation, all items on the Preliminary Due Diligence Checklist, are true, accurate and complete in all material respects.

Notwithstanding anything else to the contrary herein, any reference in this Agreement to "knowledge" of Seller shall be deemed to mean the actual knowledge of \_\_\_\_\_ and \_\_\_\_\_ after due inquiry. **[Provide appropriate names and titles for corporate and on-site officers/personnel at the Facility.]**

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated herein, Purchaser represents and warrants the following, each of which warranties and representations is material to and is relied upon by Seller:

3.1 Corporate Organization; Etc. Purchaser is a corporation duly organized and validly existing under the laws of the State of Maryland with full power and authority to own assets and to carry on its business as it is now being conducted.

3.2 Authorization, Binding Effect. Purchaser has, and at Closing will have, the full and unrestricted right, power and authority to execute, deliver and perform this Agreement and to consummate the transactions and perform all obligations contemplated hereby and in all agreements, instruments and documents being or to be executed and delivered by Purchaser in connection with such transactions. The consummation of the transactions contemplated herein have been duly authorized and approved by all necessary corporate action of Purchaser. This Agreement and each such other agreement, instrument and document, upon due execution and delivery by Purchaser, will constitute the legal, valid, and binding obligation of Purchaser, enforceable in accordance with its terms.

3.3 No Violation. Purchaser is not subject to or obligated under any certificate of incorporation, bylaw, law, or rule or regulation of any Governmental Authority, or any agreement or instrument, or any license, franchise or permit, or subject to any order, writ, injunction or decree which would be in any material respect breached or violated by the execution, delivery or performance of this Agreement.

3.4 Truth of Warranties, Representations, and Statements. All of the statements, representations, and warranties made by Purchaser in this Agreement are true and accurate in every material respect.

#### **ARTICLE IV. COVENANTS OF SELLER**

Seller covenants and agrees during the period after the Effective Date and through and including the Closing Date as follows:

4.1 Regular Course of Business. Seller shall: (a) operate the Facility in a manner consistent with all Applicable Laws, Seller's past practices and industry standards for operation of a [DESCRIBE USE]; (b) maintain the Assets in good order and repair and otherwise in sufficient repair, order and condition to satisfy the representations and warranties as to the condition and quantity of the Assets set forth in Article II; (c) comply with all Applicable Laws with respect to the Assets and the operation thereof, including, without limitation, all required regulatory standards of any Governmental Authorities with regulatory jurisdiction over the Facility and compliance with all Governmental Programs; (d) maintain and comply with, all Tenant Leases, each without change except as expressly provided herein; (e) not make any changes or modifications in any Tenant Leases unless such changes or modifications are in accordance with sound business judgment and do not adversely affect the operation of the Facility; (f) not enter into any agreements or leases that would have had to be disclosed on any exhibit hereto had such agreements or leases been entered into prior to the Effective Date without prior written notice to Purchaser and Purchaser's approval thereof, which approval shall not be unreasonably withheld; (g) keep in full force and effect present insurance policies through the Closing Date; (h) maintain and comply with, all Tenant Leases, each without change except as expressly provided herein; (i) not make any changes or modifications in any Tenant Leases unless such changes or modifications are in accordance with sound business judgment and do not adversely affect the operation of the Facility; and (j) maintain in good standing all Licenses and use commercially reasonable efforts to maintain all goodwill of tenants under the Tenant Leases.

4.2 Full Access and Disclosure. The term "Facility Management" means the following personnel: the principals of Seller, any regional vice presidents (or other personnel with managerial oversight of the Facility), the director or executive director, as applicable, of the Facility, the head nurse at the Facility and the head maintenance person at the Facility. On the Effective Date, Seller shall notify the Facility Management of the pending sale/leaseback of the Facility to Purchaser and instruct the Facility Management to fully cooperate with Purchaser and to treat the pending sale with utmost confidentiality. Thereafter, Seller shall afford to Purchaser and its counsel, accountants, environmental consultants, engineers, appraisers, lenders and other authorized representatives (collectively, "Purchaser's Representatives") access to the Facility during business hours, including, but not limited to, the roof, all FF&E, the heating and cooling systems, and any and all financial data and records, operating data and other information requested, including the Most Recent Financial Statements, audits, inspection reports, plans of correction with respect to Licensing Surveys, payroll information, Government Program reports, employment agreements, personnel policies, and all contracts, agreements, correspondence files and other documents relating to the Facility so that Purchaser may have a full opportunity to make such investigations of the Assets and the Facility as Purchaser shall desire to make. Seller shall be entitled to have a representative present during Purchaser's scheduled visits. Prior to expiration of the Due Diligence Period, Purchaser's access to personnel shall be limited to meeting with the Facility Management, unless otherwise approved by Seller, which approval may not be unreasonably withheld. At the request of either Purchaser or Seller, within five (5) Business Days after the expiration of the Due Diligence Period (and assuming this Agreement is not terminated), Seller and Purchaser shall hold joint meetings at the Facility with the facility-based Employees to announce that the Facility will be sold to Purchaser and leased to Tenant. At any time after those meetings, Purchaser will be entitled to meet with and interview any and all Employees. Seller shall furnish such additional financial and operating data and other information as Purchaser and Purchaser's Representatives shall from time to time request, and Seller shall supplement or amend any information, written or otherwise, previously delivered or otherwise disclosed to Purchaser with respect to any matter hereafter arising which, if existing or occurring at the Effective Date, would have been required to be set forth or disclosed.

4.3 Borrowing. Seller shall not create or permit to become effective any mortgage, pledge, lien, encumbrance or charge of any kind upon all or any portion of the Assets.

4.4 Consents. Seller shall obtain, at Seller's cost and expense, on or prior to Closing, all consents necessary for Seller, Tenant and Guarantor to fulfill Seller's, Tenant's and Guarantor's obligations to consummate the transactions contemplated hereby and pursuant to the Facility Lease and the Guaranty, including, without limitation, any required consents of any Governmental Authority.

4.5 Compliance with Laws. Seller shall comply with all Applicable Laws in conjunction with the execution, delivery and performance of this Agreement, the transactions contemplated hereby and the ownership, operation and maintenance of the Facility prior to Closing.

4.6 Taxes. Seller shall file all federal, state and local returns, and, to the extent applicable, estimates and reports and pay all amounts then due, for all taxes for all periods through and including the Closing Date to the extent due and payable at any time prior to the Closing Date hereunder and otherwise to the extent necessary to transfer the Facility to Purchaser in accordance with the terms of this Agreement.

4.7 No Disposition of Assets. Seller shall not sell, lease or otherwise dispose of or distribute any of the Assets or properties related thereto or necessary for operation of the Facility and, to the extent depleted or replaced in the ordinary course, Seller shall restock and replenish any portion of the Assets consumed or used between the Effective Date and the Closing Date with Assets of comparable quality.

4.8 Further Documentation. Seller agrees that following the Closing, upon request by Purchaser, Seller will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances and assurances as may be reasonably required, in order to more fully assign, grant, transfer, convey, assure and confirm to Purchaser, or to its successors and assigns, or for aiding and assisting in collecting and reducing to possession, any or all of the Assets to be sold to Purchaser pursuant to this Agreement. This Section shall survive Closing.

4.9 Confidentiality. Seller will use its commercially reasonable efforts to keep confidential all information relating to the terms of this Agreement and all information relating to Purchaser (other than information that is a matter of public knowledge or that has heretofore been or is hereafter published in any publication for public distribution or filed as public information with any Governmental Authority) and such information shall not at any time be used for the advantage of Seller or its representatives or disclosed to third parties (including Facility-based Employees) by Seller or its representatives, other than to the extent necessary to consummate the transactions contemplated hereby or as required by Applicable Law.

4.10 Title Insurance and Survey; Environmental Assessments.

(a) Existing Title Documents. As part of its delivery of the items on the Preliminary Due Diligence Checklist, Seller will provide to Purchaser a copy of Seller's currently effective title insurance policy and plats and surveys in its possession that relate to the Real Property.

(b) Title Commitment and Survey. Purchaser, at Purchaser's option, shall use commercially reasonable efforts to obtain the following prior to the expiration of the Due Diligence Period: (i) an updated real property survey for the Facility (the "Survey"), and (ii) a title commitment for the Facility (the "Title Commitment"), issued by a national title company selected by Purchaser (the "Title Company"), which Title Commitment shall contain a commitment by the Title Company to issue to Purchaser a title insurance policy on an extended coverage ALTA Owner's form, in form and substance reasonably acceptable to Purchaser (the "Title Policy") insuring the valid fee simple title to the Facility. In the event that Purchaser is unable to obtain the Survey and Title Commitment prior to the expiration of this Due Diligence Period, the Due Diligence Period shall be automatically extended until the date that is five (5) Business days after Purchaser receives both the Survey and Title Commitment. Seller will cause all standard exceptions to be deleted from the Title Policy at the Closing, other than exceptions for (i) such itemized matters shown on the Survey to which Purchaser does not object pursuant to the provisions hereof and (ii) taxes for the year in which the Closing occurs which are not yet due and payable, and Seller will execute and deliver or otherwise obtain such documents and instruments as the Title Company shall require, including, without limitation, Seller's affidavits, gap indemnities and the like. Purchaser shall have until the expiration of the Due Diligence Period to give written notice to Seller accepting or objecting to the Title Commitment and Survey, with any such notice of objection specifying the exceptions or other matters to which Purchaser objects. The failure of Purchaser to object to any matter reflected in the Title Commitment or Survey prior to the expiration of the Due Diligence Period shall cause such matter to become a Permitted Encumbrance; provided, however, Seller shall be unconditionally obligated to pay any outstanding indebtedness evidenced by, and cause the release of any lien, mortgage, deed of trust, deed to secure debt, security agreement, judgment, tax lien or other encumbrance affecting the Assets and capable of being released through or as a result of the payment of money (collectively, "Monetary Encumbrances") irrespective of whether Purchaser objects to same unless and only to the extent that such obligation is waived in writing by Purchaser. Notwithstanding the foregoing, Purchaser shall not have the right to object to any matters created or consented to in separate written consent by Purchaser, all of which shall be deemed to be "Permitted Encumbrances" hereunder. If Purchaser objects to any encumbrance or other matter reflected in the Title Commitment or Survey, Seller shall have ten (10) Business Days from the date of the notice of such objection within which to cure the same (which cure may be effected by payment and discharge of the objectionable item or by causing the Title Company to remove the same as an exception or affirmatively insure over such item provided such affirmative insurance shall be reasonably satisfactory to Purchaser and any lender of Purchaser and sufficient, in Purchaser's reasonable judgment, to adequately address Purchaser's and any lender's concerns with respect to such matter) and in the event Seller shall fail or refuse to do so within said ten (10) Business Day period, Purchaser shall have five (5) Business Days thereafter in which to advise Seller in writing of Purchaser's election (x) to make such payments as are necessary to effect releases of such claims Seller is not prepared to cure and to proceed to Closing or (y) to terminate this Agreement by notice to Seller, in which case the Deposit Balance shall be refunded to Seller, and neither party shall have any further rights, duties or obligations hereunder or (z) to extend the Closing Date for a period not to exceed thirty (30) days to enable Purchaser or Seller to so cure; provided, however, (i) Purchaser shall have the right, but shall not be obligated, to cure such matters, (ii) if neither party cures such matters in said thirty (30) day period, Purchaser shall again have the right to terminate this Agreement, in which case the Deposit Balance shall be refunded to Seller, and neither party shall have any further rights, duties or obligations hereunder and (iii) any such extension shall not limit or affect Seller's absolute obligation hereunder to cure all Monetary Encumbrances. In the event that any update to the Title Commitment prior to or on the Closing Date reveals any new matter not previously shown or disclosed on the prior Title Commitment, then Purchaser will have the same rights of objection, termination and extension of the Closing Date, and Seller will have the same obligations of cure, as set forth above. In the event Seller undertakes or commits to cure any item to which Purchaser objects and does not cure the same on or before Closing, completion of such cure to Purchaser's satisfaction shall be a condition to Purchaser's obligation to close the transaction contemplated herein.



(c) Environmental Reports. Seller will provide copies of any previously prepared Phase I environmental assessments or other environmental assessments in Seller's possession conducted for the Facility pursuant to the Preliminary Due Diligence Checklist and Seller will permit Purchaser and its agents to conduct an environmental assessment for the Facility (the "Phase I"). Purchaser will have until the expiration of the Due Diligence Period to approve or disapprove the Phase I in writing delivered to Seller. If the Phase I recommends that a Phase II Environmental Assessment (a "Phase II") be ordered for the Facility, then Purchaser will use commercially reasonable efforts to obtain such Phase II prior to the expiration of the Due Diligence Period. If the Phase II is not completed prior to the expiration of the Due Diligence Period, the Due Diligence Period shall automatically be extended until the date that is five (5) Business Days after the date that Purchaser receives the Phase II. Should Purchaser disapprove of any matter set forth in the Phase I or Phase II, Purchaser shall notify Seller in writing of such disapproval at or prior to the expiration of the Due Diligence Period (as such period may be extended as contemplated above) (the "Environmental Notice"). The failure of Purchaser to deliver an Environmental Notice to Seller on or prior to the expiration of the Due Diligence Period shall be deemed to be a waiver by Purchaser of any right to disapprove any matter specifically set forth in the Phase I or Phase II, respectively. If Purchaser delivers an Environmental Notice to Seller prior to the expiration of the Due Diligence Period, Seller shall have ten (10) Business Days from the date of Seller's receipt of such Environmental Notice in which to advise Purchaser whether or not Seller will cure the same prior to Closing, and if Seller fails or refuses to do so within said ten (10) Business Day period, Purchaser shall have five (5) Business Days thereafter in which to advise Seller in writing of Purchaser's election (x) to waive the matters to which Purchaser objected and to proceed to Closing or (y) to terminate this Agreement by notice to Seller, in which case the Deposit Balance shall be refunded to Seller, and neither party shall have any further rights, duties or obligations hereunder or (z) to extend the Closing Date for a period not to exceed thirty (30) days to enable Purchaser or Seller to so cure; provided, however, (i) Purchaser shall have the right, but shall not be obligated, to cure such matters and (ii) if neither party cures such matters in said thirty (30) day period, Purchaser shall again have the right to terminate this Agreement, in which case the Deposit Balance shall be refunded to Seller, and neither party shall have any further rights, duties or obligations hereunder.

(d) No Solicitation. After the Effective Date and before the Closing Date, Seller shall not directly or indirectly, through any officer, director, employee, agent or otherwise, solicit, initiate or encourage submission of proposals or offers from any person relating to any acquisition of all or any portion of the Assets, or any assets of or equity interest in Seller or any business combination involving Seller, or furnish to any other person any information with respect to, or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other person to do or seek any of the foregoing.

(e) Surveys; Relicensing Surveys and Cooperation. Seller shall provide to Purchaser any Licensure Surveys, including, without limitation, reports, waivers of deficiency, plans of correction, and any other investigation reports issued with respect to the Facility between the Effective Date and the Closing Date. Seller shall be obligated to deliver to Purchaser upon Purchaser's request all information and documentation within Seller's control to enable Purchaser to make timely filings with the Governmental Authorities.

(f) Capital Expenditures. Seller shall complete all capital projects as needed on an emergency basis or as otherwise required to maintain the Facility in good operating condition in a good and workmanlike manner, using materials and labor, all at Seller's sole cost and expense.

(g) Changes in Representations and Warranties. Throughout the period from the Effective Date through and including the Closing Date, Seller shall give Purchaser prompt written notice of (i) any representation and warranty made by Seller in this Agreement which Seller hereafter learns was inaccurate or incorrect when originally made and (ii) any event, change or occurrence which would make any representation or warranty of Seller inaccurate or incorrect as of the time of such event, change or occurrence (Seller hereby acknowledging and agreeing that all representations and warranties of Seller herein are hereby deemed to re-made and re-affirmed by Seller each and every day while this Agreement is in effect) and (iii) any event, change or occurrence which will or reasonably may be anticipated to prevent Seller from making the same representations and warranties as set forth herein on and as of the Closing Date. The giving of any such notices shall not limit or modify any rights of Purchaser hereunder arising in the case of a breach of a representation or warranty by Seller, and Purchaser shall have the right to terminate this Agreement at any time prior to Closing following receipt by Purchaser of any such notice of a materially inaccurate or incorrect representation or warranty, such determination of materiality to be made by Purchaser in its sole discretion.

## **ARTICLE V. COVENANTS OF PURCHASER**

Purchaser covenants and agrees with Seller that:

5.1 Confidentiality. Prior to Closing, Purchaser will use its commercially reasonable efforts to keep confidential all information relating to the terms of this Agreement, all information relating to Seller, and all financial statements, drawings, designs, customer and supplier lists by Purchaser (other than information which is a matter of public knowledge or which has heretofore been or is hereafter published in any publication for public distribution or filed as public information with any governmental authority or disclosed pursuant to Applicable Law, order, subpoena or demand of any Governmental Authority (including any disclosure required of Purchaser's parent company pursuant to applicable securities laws) or as is necessary to be disclosed to lessors, lenders, Governmental Authorities, Purchaser and Purchaser's employees and third parties in order to consummate this transaction).

5.2 Compliance with Laws. Purchaser shall comply in all material respects with all Applicable Laws Purchaser is required to comply with in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

5.3 Required Consents: Governmental Approvals.

(a) Subject to Purchaser's performance of its obligation to cooperate and provide information as contemplated herein, Seller shall make all filings with Governmental Authorities, and use commercially reasonable efforts to seek to obtain all permits, approvals, authorizations and consents of all Governmental Authorities required to consummate the transactions contemplated by this Agreement, including, without limitation, filing applications to obtain all necessary or appropriate approvals for all Licenses, agreements, certificates and other consents from all Governmental Authorities, third parties and Government Program agencies, including, without limitation, Government Program provider agreements entered into with each applicable Governmental Authority and the United States, if any, and any municipality, or other governmental agency or administrative body that authorizes or regulates the operation of the Facility and the conduct of the business thereon as presently operated upon terms and conditions acceptable to Purchaser in its sole discretion (individually and collectively, "Governmental Approvals"). Each party shall furnish promptly to each other all information that is not otherwise available to the other party and that such party may reasonably request in connection with any such filing.

(b) The Governmental Approvals **[PLEASE ADVISE OF DEAL-SPECIFIC/STATE-SPECIFIC APPROVALS REQUIRED WITH RESPECT TO LICENSURE ]** shall be referred to as "Required Consents".

(c) Further Documentation. Purchaser agrees that following the Closing Date, upon request by Seller, Purchaser will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, documents and assurances as may be reasonably required, without enlarging or extending any obligations or liability of Purchaser under this Agreement in any manner and without requiring the expenditure of funds by Purchaser, as necessary to fully consummate the transactions contemplated by this Agreement.

(d) Changes in Representations and Warranties. Throughout the period from the Effective Date through and including the Closing Date, Purchaser shall give Seller prompt written notice of any representation and warranty made by Purchaser in this Agreement which becomes materially inaccurate or incorrect, to the extent Purchaser obtains knowledge of such inaccuracy or incorrectness.

**ARTICLE VI.  
INDEMNIFICATION**

6.1 Indemnification by Seller. In addition to, and without limiting any indemnification obligation of Seller, as lessee under the Facility Lease, Seller unconditionally and irrevocably indemnifies, protects and agrees to defend and hold harmless Purchaser from and against any and all loss, cost or expense, including reasonable attorneys' fees, arising from (i) the breach or violation of any representation or warranty of Seller contained herein; (ii) the failure of Seller to satisfy or perform any covenant or other provision contained herein; (iii) any violation of any covenant, condition or restriction affecting any Property; (iv) any encroachment of buildings or other improvements onto adjoining lands or onto easements or licenses or rights-of-way located on any Property which is not a Permitted Encumbrances; (v) the presence or existence of any Hazardous Substance on, in or under any Property; and (vi) any claims made against Purchaser by any third party arising out of the transactions contemplated in this Agreement or the Exhibits hereto (collectively, "Purchaser Indemnified Losses"). Payment shall not be a condition precedent to recovery under the foregoing indemnification provision.

6.2 Indemnification by Purchaser. Purchaser hereby unconditionally and irrevocably indemnifies, protects and agrees to defend and hold harmless Seller from and against any and all loss, cost or expense, including costs and reasonable legal fees, incurred by Seller as a result of the breach or violation of any representation or warranty of Purchaser hereunder. Payment shall not be a condition precedent to recovery under the foregoing indemnification provision.

6.3 Notification of Claims.

(a) A party entitled to be indemnified pursuant to Section 6.1 or 6.2 (the "Indemnified Party") shall notify the party liable for such indemnification (the "Indemnifying Party") in writing of any claim or demand which the Indemnified Party has determined gives rise or will likely give rise to a right of indemnification under this Agreement, as soon as possible after the Indemnified Party becomes aware of such claim or demand and has made such determination; provided, however, that the Indemnified Party's failure to give such notice to the Indemnifying Party in a timely fashion shall not result in the loss of the Indemnified Party's rights with respect thereto except to the extent the Indemnified Party is prejudiced by the delay. Subject to the Indemnifying Party's right to defend in good faith third party claims as hereinafter provided, the Indemnifying Party shall satisfy its obligations under this Article VII within thirty (30) days after the receipt of written notice thereon from the Indemnified Party, it being agreed that the Indemnifying Party need not satisfy such obligations during any period in which the Indemnifying Party is defending in good faith the applicable third party claim in the manner described hereinbelow.

(b) If the Indemnified Party notifies the Indemnifying Party of any claim or demand pursuant to Section 6.3(a), and if such claim or demand relates to a claim or demand asserted by a third party against the Indemnified Party which the Indemnifying Party acknowledges is a claim or demand for which it must indemnify or hold harmless the Indemnified Party under Sections 6.1 or 6.2, the Indemnifying Party shall have the right to either (i) pay such claim or demand or (ii) employ counsel reasonably acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any such claim or demand. The Indemnifying Party shall notify the Indemnified Party in writing, as promptly as possible (but in any case reasonably in advance of the due date for the answer or response to a claim) after the date of the notice of claim given by the Indemnified Party to the Indemnifying Party under Section 6.3(a) of its election to defend in good faith any such third party claim or demand. So long as the Indemnifying Party is defending in good faith any such claim or demand asserted by a third party against the Indemnified Party and is able to demonstrate to the Indemnified Party its financial wherewithal to fully perform its indemnification obligation in the event such contested claim is resolved adversely to the Indemnified Party, the Indemnified Party shall not settle or compromise such claim or demand. The Indemnified Party shall make available to such counsel all records and other materials in the Indemnified Party's possession reasonably required by it for its use in contesting any third party claim or demand. Whether or not the Indemnifying Party elects to defend any such claim or demand, the Indemnified Party shall have no obligations to do so.

(c) The Indemnified Party shall have the right to participate in any matter through counsel of its own choosing at its own expense (unless the Indemnified Party determines in good faith that there is a conflict of interest that prevents counsel for the Indemnifying Party from representing the Indemnified Party, in which case the Indemnifying Party will have the right to choose and fund other counsel to represent the Indemnified Party or to reimburse the Indemnified Party for the expenses of its counsel). After the Indemnifying Party has notified the Indemnified Party of its intention to undertake to defend or settle any such Third Party Claim, and for so long as the Indemnifying Party diligently pursues such defense, the Indemnifying Party shall not be liable for any additional legal expenses incurred by the Indemnified Party in connection with any defense or settlement of such Third Party Claim, except to the extent such participation is requested by the Indemnifying Party, in which event the Indemnified Party shall be reimbursed by the Indemnifying Party for reasonable legal expenses and out-of-pocket expenses incurred in connection with such requested participation.

(d) An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any claim against an Indemnified Party or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent includes an unconditional release of the Indemnified Party from all liability arising out of such claim and does not contain any equitable order, judgment or term which in any manner affects, restrains or interferes with the business of the Indemnified Party or any of the Indemnified Party's affiliates.

**ARTICLE VII.  
CONDITIONS TO THE OBLIGATIONS OF PURCHASER**

Each and every obligation of Purchaser under this Agreement, except for the obligations of Purchaser to be fulfilled prior to the Closing and obligations that survive termination of this Agreement, shall be subject to the satisfaction, on or before the Closing, of each of the following conditions set forth in this Article, unless waived in writing by Purchaser. The following constitute material conditions to Purchaser's performance hereunder, the failure of any of which shall entitle Purchaser to terminate this Agreement upon written notice to Seller:

7.1 Representations and Warranties: Performance.

(a) The representations and warranties made by Seller herein and in the Related Documents shall be true and correct in all material respects (materiality to be determined by Purchaser in its discretion) as of the Effective Date and at and as of the Closing, with the same effect as though made on such date.

(b) Seller shall have performed and complied with each of its covenants pursuant to this Agreement or any Related Documents in all material respects through the Closing.

7.2 Required Consents: Authorization.

(a) Purchaser or its designee shall have received or obtained all internal approvals and Required Consents.

(b) Purchaser shall have received certified copies of resolutions duly adopted by the board of directors of Seller (or Seller's general partner, manager or members, as appropriate) approving the transactions contemplated by this Agreement.

(c) No Destruction or Condemnation of Property. The Facility shall not have suffered material damage, destruction or condemnation loss (or received notice of an impending condemnation loss). If, after the Effective Date, the Facility incurs damage, destruction or condemnation loss (or received notice of an impending condemnation loss) which is not material damage, destruction or loss, Seller shall be required to repair any such damage, destruction or loss (in all instances to restore the Facility to fully functional status consistent with prior operation) before Purchaser shall be obligated to proceed to Closing. For the purposes of this Section, "material damage, destruction or loss," shall mean damage to, or condemnation loss (or impending condemnation loss) that (a) is reasonably expected to cost \$100,000.00 or more to repair, (b) materially interferes with the operation of the Facility or (c) renders the Facility less than a functional structure in which Seller can operate the business currently conducted thereon.

(d) No Proceeding or Litigation. No injunction, judgment, order, decree, ruling or charge shall be in effect under any action, suit or proceeding before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator that (i) prevents consummation of any of the transactions contemplated by this Agreement or the Facility Lease or (ii) would cause any of the transactions contemplated by this Agreement or the Facility Lease to be rescinded following consummation, provided that Purchaser has not solicited or encouraged any such action, suit or proceeding.

(e) Title Insurance. Title to the Real Property shall be as required by Section 4.10 above, Purchaser shall have received the Title Policy in the form therein free and clear of encumbrances other than the Permitted Encumbrances.

(f) Material Adverse Change. There has been no Material Adverse Change. For purposes hereof, the term " Material Adverse Change " shall mean any change or event or effect that is materially adverse to the Assets, business, prospects or financial condition of the Facility or in the adjusted net operating income of the Facility, each as reasonably determined by Purchaser.

(g) Other Agreements. Seller shall have delivered into the Closing escrow its countersigned copies of the Seller Documents.

(h) Purchaser Financing. On terms and conditions satisfactory to Purchaser in its sole discretion, Purchaser shall have obtained financing secured by the Assets to complete the transaction contemplated by this Agreement. Seller shall reasonably cooperate with Purchaser to provide documents, records, financial statements and other such information as may be requested by Purchaser's lender in order for Purchaser to secure necessary financing. Such cooperation shall include, without limitation, execution and delivery of a subordination agreement for the Facility Lease, if required.

**ARTICLE VIII.  
CONDITIONS TO THE OBLIGATIONS OF SELLER**

Each and every obligation of Seller under this Agreement, except for the obligations to be fulfilled prior to the Closing and obligations that survive termination of this Agreement, shall be subject to the satisfaction, on or before the Closing, of each of the following conditions unless waived in writing by Seller:

8.1 Representations and Warranties: Performance.

(a) The representations and warranties made by Purchaser herein and in the Related Documents, shall be true and correct in all material respects on and as of the Effective Date and at and as of the Closing, with the same effect as though made on such date.

(b) Purchaser shall have performed and complied with all covenants required by this Agreement to be performed and complied in all material respects with by Purchaser prior to the Closing.

8.2 Other Agreements. Purchaser shall have delivered into the Closing escrow its countersigned copies of the Purchaser Documents.

**ARTICLE IX.  
CLOSING**

9.1 Possession and Closing Documents.

(a) Possession. Possession of all Assets sold hereunder shall be delivered to Purchaser on the Closing Date unless Tenant is entitled possession thereto pursuant to the terms of the Facility Lease.

(b) Closing Documents. Seller shall deliver to Purchaser on the Closing Date:

(i) A duly executed special warranty deed conveying the Real Property and Improvements to Purchaser, free and clear of all encumbrances other than the Permitted Encumbrances (the "Deed");

(ii) A duly executed Bill of Sale for any personal property that is a part of the Facility, in the form attached hereto as Exhibit I;

(iii) An assignment of the Tenant Leases to Tenant, in the form attached as Exhibit J. It is understood that the Tenant Leases will be subleases after Closing.

(iv) Such additional bills of sale, certificates of title and other appropriate instruments of assignment and conveyance, in form mutually but reasonably satisfactory to Purchaser and Seller, dated as of the Closing, conveying all title to the Assets, free and clear of all liens, liabilities, security interests or encumbrances except as otherwise permitted herein;

- (v) Evidence of the authority of Seller to execute and deliver the Seller Documents in order to effectuate the Closing;
  - (vi) Duly executed affidavit in form satisfactory to obtain the Title Policy, without exception for mechanic's, materialman's or other statutory liens;
  - (vii) A closing statement setting forth in reasonable detail the financial transactions contemplated by this Agreement, including, without limitation, the Purchase Price, all prorations, and the allocation of costs specified herein ("Closing Statement"), duly executed by Seller;
  - (viii) A duly executed bring-down certificate in form acceptable to Purchaser, reaffirming that the representations and warranties of Seller are true and correct as of the Closing Date;
  - (ix) A duly executed certificate and affidavit of non-foreign status;
  - (x) The duly executed Facility Lease and Guaranty in the form attached as Exhibit K. In addition, Tenant, as Tenant, shall execute and deliver to Purchaser, as lessor, such Uniform Commercial Code financing statements and/or fixture filings evidencing Purchaser's ownership of the Personal Property. Such financing statements and/or fixture filings shall describe with particularity the Personal Property, shall be in form sufficient for recording or filing, as applicable, with the appropriate Governmental Authority and shall be otherwise satisfactory to Purchaser; and
  - (xi) Any other documents reasonably required by the Title Company.
- (c) Purchaser shall deliver to Seller or cause to be delivered to Seller on the Closing Date, in addition to the Deposits set forth in Section 1.4 above, the following:
- (i) the duly executed Facility Lease;
  - (ii) the Closing Statement.

9.2 Closing Adjustments. There shall be no adjustment of taxes, assessments, water charges, utilities, receivables or rents, if any, premiums on existing insurance policies, if any, or any other items relating to the Assets, it being understood by the parties that Seller, as lessee under the Facility Lease, shall be obligated to pay the same under the terms thereof from and after the Closing Date.

9.3 Closing Costs. Seller shall pay all Closing costs up to One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "Cap"), including without limitation (i) any escrow or closing charges of the Title Company, (ii) the title exam fees and the premium for the Title Policy and Lender's title policy and the cost of all title endorsements required by Purchaser or its lender, (iii) any recording fees associated the recording of the Deeds, (iv) all grantor's tax or other similar transfer taxes, (v) all costs (including recording costs) to payoff and release any Monetary Encumbrance, (vi) any brokerage fees associated with this transaction, (vii) the costs of any UCC searches required by Purchaser or its lender; (viii) costs associated with the inspections and investigations conducted by Purchaser or its agents or representatives during the Due Diligence Period to the extent not covered by the Deposit; (v) all expenses incident to any financing obtained for the purchase of the Assets; and (vi) attorney's fees for Seller, Purchaser and any Purchaser's lender. The Deposit shall be applied to the Closing costs to be borne by Seller, with any excess remaining to be refunded to Seller at Closing. Seller shall either (i) bear the Closing costs up to the Cap; or (ii) the Closing costs up to the Cap to the Purchase Price at Closing, provided the Minimum Rent payable under the Facility Lease will be increased accordingly. Purchaser shall pay all Closing costs in excess of the Cap.



**ARTICLE X.**  
**DEFAULT; REMEDIES**

10.1 Purchaser's Default. If at any time Purchaser is in default of any representation, warranty or covenant of Purchaser under this Agreement in any material respect, and Seller gives notice of such default to Purchaser (" Seller's Notice ") then Purchaser will have a period expiring on the tenth (10<sup>th</sup>) Business Day after the date of Seller's Notice (" Purchaser's Cure Period "), to (i) correct or cure Purchaser's default or (ii) if the Due Diligence Period has not expired, to terminate this Agreement by notice to Seller, whereupon the Deposit Balance shall be returned to Seller and neither party shall have any further rights, duties or obligations hereunder except as expressly survive the termination hereof.

10.2 Default Cured. If Purchaser does not elect to terminate during the Due Diligence Period, and Purchaser's default is corrected or cured within Purchaser's Cure Period, the parties shall proceed to Closing as herein provided, with the Closing Date being extended by not more than fourteen (14) days to accommodate any delay resulting from such default.

10.3 Default Not Cured. If Purchaser does not elect to terminate during the Due Diligence Period, and Purchaser does not cure its default within the Purchaser's Cure Period, then, provided no default by Seller then exists and provided that Seller has not elected to waive such default, this Agreement shall terminate and the parties shall be released and discharged of and from all further obligations and liabilities under this Agreement, and the Deposit Balance shall be paid to Seller as Seller's sole and exclusive liquidated damages and in full and complete settlement and liquidation of all damages sustained by Seller, it being acknowledged by Seller and Purchaser that the amount of damages incurred by Seller as a result of Purchaser's default would be substantial but difficult, if not impossible, to ascertain and that such liquidated damages represent the parties' best estimate of the damages Seller will incur as a result of such default. Seller shall not be entitled to exercise any other rights, powers or remedies at law or in equity, other than its right to receive the Deposit Balance pursuant hereto, and Seller hereby expressly and irrevocably waives all such other rights, powers and remedies and hereby covenants not to sue.

10.4 Seller's Default. If Seller is in default of any representation, warranty or covenant of Seller under this Agreement in any material respect and Purchaser gives notice of such default to Seller (" Purchaser's Notice "), then Seller will have a period expiring on the tenth (10<sup>th</sup>) Business Day after the date of Purchaser's Notice (" Seller's Cure Period "), to correct or cure Seller's default.

10.5 Default Cured. If Seller's default is corrected or cured within Seller's Cure Period, the parties shall proceed to Closing as herein provided, with the Closing Date being extended by not more than fourteen (14) days to accommodate any delay resulting from such default.

10.6 Default Not Cured. If Seller does not cure its default within the Seller's Cure Period then, upon notice to Seller, Purchaser may elect to either (i) proceed to Closing, in which case, in addition to the right to monetary damages resulting from such default, Purchaser will have the right to maintain an equitable action against Seller for specific performance of its obligation to sell the Assets and to perform hereunder; or (ii) terminate this Agreement. If Purchaser elects to terminate this Agreement under subsection (ii) above, then (A) the Deposit shall be retained by Purchaser; and (B) Purchaser shall be entitled to pursue an action for damages against Seller.

**ARTICLE XI.  
MISCELLANEOUS PROVISIONS**

11.1 Amendment and Modification. This Agreement may be amended, modified and supplemented only by written agreement of all the parties with respect to any of the terms contained herein.

11.2 Waiver of Compliance: Consent. Any failure of Seller on the one hand, or Purchaser, on the other hand, to comply with any obligation, covenant, agreement or condition may be waived in writing by the other party, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section.

11.3 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be personally delivered, or sent by facsimile transmission (provided a copy is thereafter promptly mailed as hereinafter provided), or sent by overnight commercial delivery service (provided a receipt is available with respect to such delivery), or mailed by first-class registered or certified mail, return receipt requested, postage prepaid (and shall be effective when received, if sent by personal delivery or by facsimile transmission or by overnight delivery service, or on the third (3<sup>rd</sup>) day after mailing, if mailed):

If to Seller, to:

[Cherry Hills Real Estate, LLC]

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
E-mail: \_\_\_\_\_

with copies to (which shall not constitute notice):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Fax No.: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to Purchaser, to:

Global Medical REIT, Inc.  
4800 Montgomery Lane, Suite 450  
Bethesda, Maryland 20814  
Fax: 202 380 0891  
Email: AlfonsoL@GlobalMedicalREIT.com

with a copy to:

Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Attn: Ann Peldo Cargile  
Fax: 615-252-2373  
Email: acargile@babco.com

or to such other person or address as any party shall furnish to the other parties in writing pursuant to this Section. Notwithstanding the foregoing, Purchaser shall be permitted in connection with the exercise of its rights to terminate this Agreement or to give title, survey or environmental objections on or before the expiration of the Due Diligence Period to send any such termination or objection notice via electronic mail which shall constitute effective delivery for purposes hereof.

11.4 Brokers and Finders; Expenses. Except for Seller's retention of \_\_\_\_\_, whose compensation shall be the sole obligation and responsibility of Seller, the parties hereto represent and warrant to each other that none of them has retained any broker or finder in connection with this transaction. Seller on the one hand, and Purchaser, on the other, each agrees to indemnify the other for any losses incurred with respect to a breach of this Section. Except as otherwise provided herein, each party hereto shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

11.5 Attorney's Fees. In the event any proceeding or suit is brought to enforce this Agreement, the prevailing party shall be entitled to all reasonable costs and expenses (including reasonable attorneys' fees) incurred by such party in connection with any action, suit or proceeding to enforce the other's obligations under this Agreement.

11.6 Assignment. This Agreement and all the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and permitted assigns. Purchaser may assign its rights under the Agreement to an affiliate that controls Purchaser or is controlled by Purchaser or is under common control with Purchaser, including joint venture entities in which Purchaser or its affiliates share control with third parties, without the prior written consent of Seller (each such assignee a "Purchaser's Permitted Assignee"). Other than the foregoing, neither Purchaser nor Seller may assign this Agreement without first obtaining the other party's written consent, which may be withheld in such other party's sole discretion. Upon an assignment by Purchaser of its rights under the Agreement in accordance with this Section, Purchaser's Permitted Assignee(s) shall be deemed to be the Purchaser hereunder and shall be the beneficiary of all of Seller's warranties, representations and covenants in favor of Purchaser under this Agreement. If there is more than one Seller hereunder, the obligations of Sellers hereunder shall be joint and several.

11.7 Governing Law. This Agreement shall be governed by the laws of the State where the Facility is located as to, including, but not limited to, matters of validity, construction, effect and performance but exclusive of its conflicts of laws provisions.

11.8 Business Day. If the date for the giving of notice or performance of any duty or obligation hereunder falls on a day that is not a Business Day, such date shall be automatically extended to the next Business Day. As used herein, a "Business Day" means any day other than a Saturday, Sunday or any other day on which banks are authorized to be closed in the State of Tennessee.

11.9 Counterparts; Facsimile Signature. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed counterparts of this Agreement or any amendment hereto may be delivered by electronic or facsimile transmission.

11.10 Headings. The Article and Section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.11 Entire Agreement. This Agreement, which term as used throughout includes the Exhibits hereto, embodies the entire agreement and understanding of the parties in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the parties hereto with respect to such subject matters contained herein.

11.12 Warranty of Authority. Each of the parties warrants that the persons signing on their behalf have the right and power to enter into this Agreement and to bind them to the terms of this Agreement.

11.13 Exhibits. Nothing in any Exhibit shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the applicable Exhibit identifies the exception and the specific representation to which it relates with reasonable particularity and describes the relevant facts in reasonable detail. Any fact or item disclosed on any Exhibit hereto shall not be deemed by reason only of such inclusion, to be material and shall not be employed as a point of reference in determining any standard of materiality under this Agreement.

11.14 Reliance. In executing and in carrying out the provisions of this Agreement, the parties are relying solely on the representations, warranties and agreements contained in this Agreement and on any writing delivered pursuant to provisions of this Agreement or at the Closing of the transactions herein provided for and not upon any representation, warranty, agreement, promise or information, written or oral, made by any person other than as specifically set forth herein or therein.

11.15 Publicity. No party shall issue any press release or public announcement relating to the subject matter of this Agreement without the prior written approval of the other parties, which approval shall not be unreasonably withheld or delayed; provided, however, that any party may make the following public disclosure (without the consent of the other party): (a) if prior to Closing, such disclosure it believes in good faith is required by Applicable Law or stock market rule; or (b) if post-Closing, disclosure of such of the principal terms of the transaction contemplated by this Agreement that such party elects to make.

11.16 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BROUGHT ON OR WITH RESPECT TO THIS AGREEMENT, INCLUDING TO ENFORCE OR DEFEND ANY RIGHTS HEREUNDER, AND AGREES THAT ANY SUCH ACTION SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**[SIGNATURE PAGES FOLLOW]**

**IN WITNESS WHEREOF** , the parties hereto have executed or have caused their duly authorized officers to execute this Agreement as of the date first written above.

**GLOBAL MEDICAL REIT, INC .**, a Maryland corporation

By: \_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_, 20\_\_

**[SELLER'S SIGNATURE PAGES TO FOLLOW]**

**IN WITNESS WHEREOF** , the parties hereto have executed or have caused their duly authorized officers to execute this Agreement as of the date first written above.

[ **CHERRY HILLS REAL ESTATE, LLC**, a limited liability company]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

**EXHIBIT A**

The Facility

<u>Name</u>	<u>Address</u>	<u>Type</u>
Surgical Institute of Michigan	33545 Cherry Hill Rd, Westland, Michigan	Surgery Center

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**EXHIBIT B**

Legal Description of the Real Property

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## EXHIBIT C

### Preliminary Due Diligence Checklist

1. Company Information
    - a. Bios for key management team
    - b. Organizational structure and ownership charts
    - c. Description of entity ownership, ownership record book, and equity holder list
    - d. List of medical staff by specialty (age, board certification)
    - e. Description of physician recruitment efforts and plans
    - f. List/description of key contracts (physicians, managed care, suppliers, software vendors, service agreements, facilities, etc.)
    - g. Insurance certificate and loss run reports for the Operator/Tenant
    - h. Description of current loans and material covenants
    - i. Description of any pending, threatened, or past litigations
  2. Certification, Compliance, and Regulator
    - a. Accreditation certificates (JCAHO, AAAHC, etc.) and any accreditation survey reports and the responses to any noted deficiencies or to conditional accreditation
    - b. Any governmental approvals, permits, certificates, registrations, licenses and the like required in order for the facility to conduct its business
    - c. Quality reports or summary quality data for the facility
    - d. Copies of Medicare Cost Report (if applicable)
    - e. Summary of any notices from governmental entities regarding any possible violations
  3. Real Estate Physical Assessment Due Diligence
    - a. Environmental Phase I and physical assessment condition reports
    - b. Surveys, title insurance policy, and title commitments
    - c. Copies of any document affecting use of property (easements, HOAs, CCRCs, etc)
    - d. Building floor plans and space measurement reports
    - e. Any certificate or license needed to occupy and use the building
    - f. List of major capital expenditures in the past three years
    - g. Fixed asset roll-forward report and depreciation schedules
  4. Financial Information
    - a. Operator/Tenant and Guarantor Financial Statements
    - b. Cash flow statement, income statement, and balance sheet
    - c. Year-end and year-to-date for past three years
    - d. Monthly for trailing twelve months (preferably in excel or text)
    - e. Current and next year detailed budget with supporting assumptions
    - f. Entity that owns real estate being sold (if applicable)
    - g. Cash flow statement, income statement, and balance sheet
    - h. Year-end and year-to-date for past three years
  5. Information on real estate being sold
    - a. Copies of appraisals done to obtain bank financing
    - b. Copies of utility bills for past two years
    - c. Copies of any leases or subleases
    - d. Property tax bills for the past two years (assessment notice & tax bills)
    - e. Summary/list of any building service contract (HVAC, elevators, etc)
-

6. Revenue Due Diligence
- a. Revenue break downs, collection rate, A/R schedule, and bad debt allowance by payor for past two years, including out-of-network and co-pays percentages
  - b. Description of billing and collections systems and practices
  - c. Utilization stats, case volumes and revenue by specialty and by physician
  - d. List/description of contracts with insurance companies

**EXHIBIT D**

Tenant Leases

Affiliates in Urology, P.C., a Michigan professional corporation.

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**EXHIBIT E**

Licenses

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**EXHIBIT F**

Required Notices to Governmental Authorities

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**EXHIBIT G**

Litigation

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**EXHIBIT H**

Insurance

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**EXHIBIT I**

THIS BILL OF SALE AND ASSIGNMENT (this "Bill of Sale and Assignment")' is made this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Transferor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Transferee"). All capitalized terms used herein, but not specifically defined herein, shall have the meanings given to such terms in that certain Asset Purchase Agreement dated of even date herewith (the "Agreement") by and between Transferor and Transferee.

**RECITALS**

A. Transferor is the owner of that certain real property located in \_\_\_\_\_ County, -----, consisting of approximately \_\_\_\_\_ acres as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Land"). Transferor is also the owner of all buildings, structures and other improvements situated on the Land comprising the approximately \_\_\_\_\_ square foot, \_\_\_\_\_ unit \_\_\_\_\_ facility (collectively, the "Improvements"), together with the Personal Property (as defined herein) used in connection therewith. The Land and the Improvements shall be referred to herein, collectively, as the "Facility."

B. Pursuant to the Agreement, Transferor is required to transfer and assign to Transferee as of the Closing Date (as defined in the Agreement) all of Transferor's right, title and interest in and to the Facility, including the Personal Property.

C. In order to perfect the transfer and vesting of the Personal Property to and in Transferee and in order that Transferee shall be in possession of an instrument evidencing the same, as set forth more fully herein and in the Agreement, Transferor and Transferee have made and entered into this Bill of Sale and Assignment.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Transfer and Assignment of Personal Property. Effective as of the date hereof, Transferor hereby grants, assigns, transfers, conveys and delivers to Transferee, absolutely and unconditionally, and free from all encumbrances and other claims of any kind, all of Transferor's right, title and interest in and to the Personal Property (as defined in the Agreement). Transferor hereby warrants and defends unto Transferee, its successors and assigns, all right, title and interest in the Personal Property against every person whomsoever claiming all or any part thereof or interest therein.

2. Acceptance. Except as otherwise provided in the Agreement, Transferee hereby accepts the foregoing transfer and assignment of Personal Property.

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3. Further Assurances. Transferor transfers the Personal Property to Transferee, its successor and assigns, to have and hold to and for its and their own use and benefit forever. Transferor, for itself and its successors and assigns, hereby covenants that, from time to time after the Closing Date, at Transferee's request and without further consideration, Transferor shall execute and deliver such other instruments of conveyance and transfer and take such other actions as Transferee reasonably may require to vest more effectively the Personal Property in Transferee, its successors and assigns, and to place Transferee in possession of the Personal Property, and to do all other things and execute and deliver all other instruments and documents as may be required to effect the same.

4. Enforcement. In the event of any action or suit by either party hereto against the other arising from or interpreting this Bill of Sale and Assignment, the prevailing party in such action or suit shall, in addition to such other relief as may be granted, be entitled to recover its costs of suit and actual attorneys' fees, whether or not the same proceeds to final judgment.

5. Successors and Assigns. This Bill of Sale and Assignment shall be binding upon and inure to the benefit of Transferor and Transferee and their respective successors and assigns.

6. Counterparts. This Bill of Sale and Assignment may be executed in multiple counterparts, all of which shall be but one and the same instrument, binding on all parties when all separately executed copies have been fully delivered.

7. Governing Law. This Bill of Sale and Assignment shall be construed and enforced according to and governed by the laws of the State in which the Land is located.

[Remainder of Page Intentionally Left Blank. Signatures on Following Page.]

IN WITNESS WHEREOF, Transferor and Transferee have executed this Bill of Sale and Assignment as of the date first written above.

**" Transferor "**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**" Transferee "**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT J**

ASSIGNMENT AND ASSUMPTION OF LEASE

The Parties to this Assignment are \_\_\_\_\_ (“Assignor”), whose mailing address is \_\_\_\_\_ and \_\_\_\_\_ (“Assignee”), whose mailing address is \_\_\_\_\_. This Assignment shall be effective as of \_\_\_\_\_, 20\_\_ (the “Effective Date”). Assignor and Assignee are sometimes referred to herein as the “Parties.”

WHEREAS, Assignor is the landlord under that certain Lease dated March, 2001 with \_\_\_\_\_, a \_\_\_\_\_ (“Tenant”), amended by that certain \_\_\_\_\_ dated \_\_\_\_\_ (collectively, the “Lease”), which Lease is guaranteed by \_\_\_\_\_ (“Guarantor”) pursuant to which the Tenant leases the Premises, as described in the Lease; and

WHEREAS, Assignee desires to purchase and assume from Assignor, and Assignor desires to sell and assign to Assignee all of the rights, benefits, and privileges as “Landlord” under the Lease, as set forth in this Assignment.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein set forth:

1. As of the Effective Date, Assignor does hereby assign, transfer, and deliver unto Assignee all of the right, benefits and privileges as “Landlord” under the Lease, subject to all terms, conditions, reservations and limitations set forth in the Lease.
  2. As of the Effective Date, Assignee accepts, on the terms and conditions herein specified, this Assignment, and assumes the obligations, liabilities and performance of all the terms and conditions of “Landlord” to be performed under the Lease from and after the Effective Date.
  3. Assignor hereby agrees to indemnify and hold harmless Assignee from and against any and all loss, cost or expense (including, without limitation, reasonable attorney’s fees) to the extent resulting by reason of the failure of Assignor to perform any of the obligations as “Landlord” under the Lease prior to the Effective Date.
  4. Assignee hereby agrees to indemnify and hold harmless Assignor from and against any and all loss, cost or expense (including, without limitation, reasonable attorney’s fees) resulting by reason of the failure of Assignee to perform any of the obligations as “Landlord” under the Lease on and after the Effective Date.
  5. Assignor hereby covenants with Assignee and its heirs, successors or assigns to warrant and defend Assignee against any person lawfully claiming by, under or through Assignor in a manner adverse to Assignee’s interest as “Landlord” in the Lease on and from the Effective Date.
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6. No course or dealing between Assignor and Assignee and no delay on the part of any party in exercising any rights under this Assignment shall operate as a waiver of the rights of the Assignor or the Assignee. No covenant or other provision of this Assignment may be waived unless by a written instrument signed by the Parties so waiving such covenant or other provision.

7. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited or invalid, the remainder of this Assignment shall continue in full force and effect. This Assignment has been made and entered into in the State of , and the laws of the state shall govern the validity and interpretation hereof and the performance hereunder by the Parties hereto.

8. The signatories to this Assignment represent that they have the right and power to legally bind to this Assignment the partnerships they represent. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors and assigns.

9. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed counterparts of this Assignment or any amendment hereto may be delivered by electronic or facsimile transmission.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the Effective Date.

ASSIGNOR:

\_\_\_\_\_

By:

\_\_\_\_\_

Title:

\_\_\_\_\_

**[ASSIGNEE'S SIGNATURE PAGE TO FOLLOW]**

**EXHIBIT K**

Facility Lease

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**LEASE**

**between**

**[AFFILIATE OF GLOBAL MEDICAL REIT, INC.], a Delaware limited liability company as Landlord**

**AND**

**THE SURGICAL INSTITUTE OF MICHIGAN, LLC, a Delaware limited liability company  
as Tenant**

Dated as of \_\_\_\_\_, \_\_\_, 20\_\_

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## LEASE

THIS LEASE (“Lease”) is dated as of \_\_\_\_\_, \_\_\_\_, 20\_\_, and is by and between \_\_\_\_\_, a Delaware limited liability company (“Landlord”), and THE SURGICAL INSTITUTE OF MICHIGAN, LLC, a Delaware limited liability company (“Tenant”), on the other hand.

### SECTION 1

1.1 Premises; Term. Upon and subject to the terms and conditions hereinafter set forth, Landlord leases to Tenant, and Tenant leases from Landlord, all of Landlord’s rights and interests in and to the following (collectively, the “Premises”):

(a) the real property or properties described in Exhibit A hereto (the “Land”);

(b) all buildings, structures, Fixtures (as hereinafter defined) and other improvements of every kind now or hereafter located on the Land, including alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site to the extent Landlord has obtained any interest in the same), parking areas and roadways appurtenant to such buildings and structures and Capital Additions thereto (collectively, the “Leased Improvements”);

(c) all easements, rights and appurtenances relating to the Land and the Leased Improvements (collectively, the “Related Rights”);

(d) all equipment, machinery, fixtures, and other items of real and/or personal property, including all components thereof, now and hereafter located in, on or used in connection with and permanently affixed to or incorporated into the Leased Improvements, including all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air cooling and air conditioning systems, apparatus, sprinkler systems, fire and theft protection equipment; and built in oxygen and vacuum systems (if any), all of which, to the greatest extent permitted by law, are hereby deemed to constitute real estate, together with all replacements, modifications, alterations and additions thereto (collectively, the “Fixtures”); and

(e) the machinery, equipment, furniture and other personal property described on Exhibit B attached hereto, together with any other items of personal property conveyed to Landlord pursuant to the Purchase Contract, together with all replacements, modifications, alterations and substitutes therefor (whether or not constituting an upgrade) (collectively, “Landlord’s Personal Property”).

SUBJECT, HOWEVER, to the easements, encumbrances, covenants, conditions and restrictions and other matters that affect the Premises as of the date hereof or the Commencement Date or that are created thereafter as permitted hereunder, TO HAVE AND TO HOLD for (1) the Fixed Term (as defined below), and (2) the Extended Terms provided for in Section 19.1, unless this Lease is earlier terminated as hereinafter provided.

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## SECTION 2

2.1 Definitions. For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (a) the terms defined in this Section have the meanings assigned to them in this Section and include the plural as well as the singular; (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP as at the time applicable; (c) all references in this Lease to designated “Sections,” “Sections” and other subdivisions are to the designated Sections and other subdivisions of this Lease; (d) the word “including” shall have the same meaning as the phrase “including, without limitation,” and other similar phrases; and (e) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Section, Section or other subdivision:

Acquisition Price : The sum of \$4,750,000.

Additional Charges : As defined in Section 3.2.

Affiliate : Any Person which, directly or indirectly (including through one or more intermediaries), controls or is controlled by or is under common control with any other Person, including any Subsidiary of a Person. For purposes of this definition, the definition of Controlling Person below, and Section 24.1.1 below, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of such Person, through the ownership or control of voting securities, partnership interests or other equity interests or otherwise. Without limiting the generality of the foregoing, when used with respect to any corporation, limited liability company or other legal entity, the term “Affiliate” shall also include (i) any Person which owns, directly or indirectly (including through one or more intermediaries), Fifty Percent (50%) or more of any class of voting security or equity interests of such entity, (ii) any Subsidiary of such entity and (iii) any Subsidiary of a Person described in clause (i).

AIU. Affiliates in Urology, P.C., a Michigan professional corporation.

AIU December 2021 Rent. The rent payable by AIU under its sublease for December 2021.

Appraiser : As defined in Section 34.1

Award : All compensation, sums or anything of value awarded, paid or received on a total or partial Condemnation.

Bankruptcy Code : The United States Bankruptcy Code (11 U.S.C. § 101 et seq.), and any successor statute or legislation thereto.

Business Day : Each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which national banks in the City of New York, New York are authorized, or obligated, by law or executive order, to close.

Capital Additions : One or more new buildings, or one or more additional structures annexed to any portion of any of the Leased Improvements, or the material expansion of existing improvements that are constructed on any parcel or portion of the Land during the Term including the construction of a new wing or new story, or the repair, replacement, restoration, remodeling or rebuilding of the existing Leased Improvements or any portion thereof.

Capital Addition Costs : The costs of any Capital Addition made to the Premises whether paid for by Tenant or Landlord, including (i) all permit fees and other costs imposed by any governmental authority, the cost of site preparation, the cost of construction including materials and labor, the cost of supervision and related design, engineering and architectural services, the cost of any fixtures, and if and to the extent approved by Landlord, the cost of construction financing; (ii) fees paid to obtain necessary licenses and certificates; (iii) if and to the extent approved by Landlord in writing and in advance, the cost of any land contiguous to the Premises that is to become a part of the Premises purchased for the purpose of placing thereon the Capital Addition or any portion thereof or for providing means of access thereto, or parking facilities therefor, including the cost of surveying the same; (iv) the cost of insurance, real estate taxes, water and sewage charges and other carrying charges for such Capital Addition during construction; (v) the cost of title insurance; (vi) reasonable fees and expenses of legal counsel; (vii) filing, registration and recording taxes and fees; (viii) documentary stamp and similar taxes; and (ix) all reasonable costs and expenses of Landlord and any Person that has committed to finance the Capital Addition, including (1) the reasonable fees and expenses of their respective legal counsel; (2) printing expenses; (3) filing, registration and recording taxes and fees; (4) documentary stamp and similar taxes; (5) title insurance charges and appraisal fees; (6) rating agency fees; and (7) commitment fees charged by any Person advancing or offering to advance any portion of the financing for such Capital Addition.

Code : The Internal Revenue Code of 1986, as amended.

Collateral : As defined in Section 16.7.1.

Commencement Date : The date hereof.

Condemnation : The exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor or a voluntary sale or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

Condemnor : Any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

Controlling Person : Any (i) Person(s) that, directly or indirectly (including through one or more intermediaries), controls Tenant and would be deemed an Affiliate of Tenant, including any partners, shareholders, principals, members, trustees and/or beneficiaries of any such Person(s) to the extent the same control Tenant and would be deemed an Affiliate of Tenant, and (ii) Person(s) that controls, directly or indirectly (including through one or more intermediaries), any other Controlling Person(s) and which would be deemed an Affiliate of any such Controlling Person(s).

Coverage Requirement. A minimum EBITDARM/Rent ratio from Tenant operations of 2:1.

CPI Increase: The percentage increase from (a) the CPI in effect two months prior to the Commencement Date; to (b) the CPI in effect two months prior to the applicable anniversary of the Commencement Date. “CPI” shall mean the monthly index of the “All Items” Consumer Price Index for Urban Consumers, 1982-84=100, compiled by the U.S. Department of Labor, Bureau of Labor Statistics. If at the time of such computation no CPI is compiled and published by any agency of the federal government, then the statistics reflecting cost of living increases for the periods specified above, as compiled by an institution, organization or individual generally recognized as an authority by financial and insurance institutions, shall be used as a basis for such computations.

Date of Taking: The date the Condemnor has the right to possession of the property being condemned.

EBITDARM. For any period, NOI, adjusted to add thereto, to the extent allocable to the Premises, without duplication, (i) interest expense; (ii) income tax expense; (iii) depreciation and amortization expense; (iv) rental expense; and (v) management fee expenses, in each case determined in accordance with GAAP, to the extent applicable;

Environmental Costs: As defined in Section 37.4.

Environmental Laws: Any and all federal, state, municipal and local laws, statutes, ordinances, rules, regulations, guidances, policies, orders, decrees and/or judgments, whether statutory or common law, as amended from time to time, now or hereafter in effect, or promulgated, pertaining to the environment, public health and safety and industrial hygiene, including the use, generation, manufacture, production, storage, release, discharge, disposal, handling, treatment, removal, decontamination, clean-up, transportation or regulation of any Hazardous Substance, including the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act.

Event of Default: As defined in Section 16.1.

Extended Term(s): Two (2) consecutive terms of ten (10) years each.

Fair Market Value : The fair market value of the Premises, or applicable portion(s) thereof, determined in accordance with the appraisal procedures set forth in Section 34 and this definition. Fair Market Value shall be obtained by assuming that the Premises, or applicable portion(s) thereof, are unencumbered by this Lease. Fair Market Value shall also be the higher value obtained by valuing the Premises, or applicable portion(s) thereof, for their highest and best use or as a fully-permitted facility operated in accordance with the provisions of this Lease. In addition, the negative value of (i) any deferred maintenance or other items of repair or replacement of the Premises; (ii) any then current or prior licensure or certification violations and/or admissions holds; and (iii) any other breach or failure of Tenant to perform or observe its obligations hereunder, shall not be taken into account in determining Fair Market Value; rather, the Premises shall be deemed to be in the condition required by this Lease (i.e., reasonably good order and repair) and Tenant shall at all times be deemed to have operated the Premises in compliance with and to have performed all obligations of the Tenant under this Lease.

Fiscal Year : Tenant's Fiscal Year, which now ends December 31 in each calendar year, with the new Fiscal Year beginning on the following January 1. If Tenant changes its Fiscal Year at any time during the Term, Tenant shall promptly give Landlord notice specifying such change. If any such change is made, all reporting and accounting procedures set forth in this Lease shall continue to be made in accordance with GAAP. Any appropriate adjustments to such procedures as a result of such change shall be made upon the mutual consent of Landlord and Tenant. No such change or adjustment shall alter the Term, and Tenant shall bear any accounting costs reasonably incurred by Landlord as a result of any such change or adjustment.

Fixed Term : The period of time commencing on the Commencement Date and ending at 11:59 p.m. where the Premises are located on the expiration of the tenth (10<sup>th</sup>) Lease Year.

Fixtures : As defined in Section 1.1(d).

GAAP : Generally accepted accounting principles consistently applied.

Guarantor : Surgical Management Professionals, LLC, a South Dakota limited liability company.

Guaranty : The Guaranty of even date herewith executed by Guarantor.

Handling : As defined in Section 37.4.

Hazardous Substances : Collectively, any medical waste, petroleum, petroleum product or byproduct or any substance, material or waste regulated or listed pursuant to any Environmental Law.

**Impositions** : Collectively, all taxes, including capital stock, franchise and other state taxes, ad valorem, sales, use, single business, gross receipts, transaction privilege, rent or similar taxes; assessments including assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term; ground rents; water, sewer and other utility levies and charges; excise tax levies; fees including license, permit, inspection, authorization and similar fees; and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Premises and/or the Rent and all interest and penalties thereon attributable to any failure in payment by Tenant which at any time prior to, during or in respect of the Term hereof may be assessed or imposed on or in respect of or be a lien upon (i) Landlord or Landlord's interest in the Premises, (ii) the Premises or any parts thereof or any rent therefrom or any estate, right, title or interest therein, or (iii) any occupancy, operation, use or possession of, or sales from or activity conducted on or in connection with the Premises or the leasing or use of the Premises or any parts thereof; provided, however, that the following shall be expressly excluded from the definition of "Impositions": (1) any tax based on net income (whether denominated as a franchise or capital stock or other tax) imposed on Landlord, (2) any tax imposed with respect to the sale, exchange or other disposition by Landlord of the Premises or the proceeds thereof, (3) any recording taxes, indebtedness taxes or other taxes imposed with respect to or in connection with any of the Mortgages, and (4) any principal or interest on any indebtedness on the Premises for which Landlord is the obligor, except to the extent that any tax, assessment, tax levy or charge, of the type described in any of clauses (1), (2) or (3) above is levied, assessed or imposed in lieu of or as or as a substitute for any tax, assessment, levy or charge which is otherwise included in this definition of an "Imposition."

**Insurance Requirement** : The terms of any insurance policy required by this Lease and all requirements of the issuer of any such policy and of any insurance board, association, organization or company necessary for the maintenance of any such policy.

**Intangible Property** : All accounts, proceeds of accounts, rents, profits, income or revenues derived from the use of rooms or other space within the Premises or the providing of services in or from the Premises; documents, chattel paper, instruments, contract rights, deposit accounts, general intangibles, commercial tort claims and causes of action, now owned or hereafter acquired by Tenant (including any right to any refund of any Impositions) arising from or in connection with Tenant's operation or use of the Premises; all licenses and permits now owned or hereinafter acquired by Tenant which are necessary or desirable for Tenant's use of the Premises for the Primary Intended Use, including, if applicable, any certificate of need or similar certificate; the right to use any trade name or other name associated with the Premises; and any and all third-party provider agreements (including Medicare and Medicaid, if applicable),

**Investment Amount** : The sum of Acquisition Price , plus all Capital Addition Costs funded by Landlord, if any.

**Land** : As defined in Section 1.1(a).

**Lease** : As defined in the preamble.

**Lease Year** : Each period of twelve (12) full calendar months from and after the Commencement Date, unless the Commencement Date is a day other than the first (1st) day of a calendar month, in which case the first Lease Year shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) month following the month in which the Commencement Date occurs and each subsequent Lease Year shall be each period of twelve (12) full calendar months after the last day of the prior Lease Year; provided, however, that the last Lease Year during the Term may be a period of less than twelve (12) full calendar months and shall end on the last day of the Term.

**Leased Improvements** : As defined in Section 1.1(b).

Legal Requirements : (i) All federal, state, county, municipal and other governmental statutes, laws (including common law and Environmental Laws), rules, policies, guidance, codes, orders, regulations, ordinances, permits, licenses, covenants, conditions, restrictions, judgments, decrees and injunctions, including those affecting the Premises, Tenant's Personal Property or the construction, use or alteration thereof, whether now or hereafter enacted and in force, including any which may (1) require repairs, modifications or alterations in or to the Premises and all Tenant's Personal Property, (2) in any way adversely affect the use and enjoyment thereof, or (3) regulate the transport, handling, use, storage or disposal or require the cleanup or other treatment of any Hazardous Substance, and (ii) all covenants, agreements, restrictions, and encumbrances either now or hereafter of record or known to Tenant (other than encumbrances created by Landlord without the consent of Tenant except as otherwise expressly permitted hereunder) affecting the Premises.

Landlord : As defined in the preamble.

Landlord's Personal Property : As defined in Section 1.1(e)

Letter of Credit Requirements : As defined in Section 21.3.

Minimum Net Worth : Three Hundred Thousand Dollars (\$300,000.00), consisting of any combination of demonstrable fungible and fixed assets, including without limitation impounds and reserves required by Landlord and the Rent Reserve Fund, all as determined in accordance with GAAP.

Minimum Rent : The amount of minimum rent as determined pursuant to Section 3.1.

Minimum Required Liquidity : Six (6) months of Minimum Rent.

Mortgage : As defined in Section 13.1.

Mortgagee : As defined in Section 13.1.

Mortgage Documents : With respect to each Mortgage and Mortgagee, the applicable Mortgage, loan or credit agreement, lease, note, collateral assignment instruments, guarantees, indemnity agreements and other documents or instruments evidencing, securing or otherwise relating to the loan made, credit extended, lease or other financing vehicle pursuant thereto.

Mortgage Reserve Account : As defined in Section 36.3.2.

NOI : The total revenues of the Premises for a given period less all operating expenses of the Premises for such period. For purposes of this definition, the term "operating expenses" shall not include depreciation, amortization, impairments or interest expense.

Occupancy Arrangement : Any sublease, license or other arrangement with a Person for the right to use, occupy or possess any portion of the Premises.

Occupant : Any Person having rights of use, occupancy or possession under an Occupancy Arrangement.

Officer's Certificate : A certificate of Tenant signed by an officer duly authorized to so sign on Tenant's behalf.

Payment Date : Any due date for the payment of the installments of Minimum Rent or any other sums payable under this Lease.

Person : Any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

Personal Property : All machinery, furniture and equipment, including phone systems and computers, trade fixtures, inventory (including raw materials, work in process and finished goods), supplies and other personal property used or useful in the use of the Premises for their Primary Intended Use, other than Fixtures.

Premises : As defined in Section 1.1.

Primary Intended Use : The operation of an outpatient surgery center and such other uses necessary or incidental to such use.

Purchase Contract : That certain Asset Purchase Agreement dated [\_\_\_\_\_, 2015] , by and between [Cherry Hills Real Estate, LLC] and Landlord's Affiliate.

Quarter : During each applicable Fiscal Year, the first three (3) calendar month period commencing on the first (1st) day of such Fiscal Year and each subsequent three (3) calendar month period within such Fiscal Year

Related Rights : As defined in Section 1.1(c).

Rent : Collectively, Minimum Rent, Additional Charges and all other amounts payable under this Lease.

Rent Reserve Fund : As defined in Section 21.2.

Seller Note . A promissory note made by [Cherry Hills Real Estate, LLC] in favor of Tenant, as holder in an amount equal to twelve (12) times the rent payable by AIU current Sub-Lessee, Affiliates in Urology (" AIU ") under its lease for December 2021 (the " AIU December 2021 Rent ").

State : The State or Commonwealth in which the Premises are located.

Subsidiaries : Corporations, partnerships, limited liability companies, business trusts or other legal entities with respect to which a Person owns, directly or indirectly (including through one or more intermediaries), more than fifty percent (50%) of the voting stock or partnership, membership or other equity interest, respectively.

Tenant : As defined in the preamble.



Tenant's Personal Property : The Personal Property other than Landlord's Personal Property.

Term : The Fixed Term and any Extended Terms, unless earlier terminated pursuant to the provisions hereof.

Unsuitable for Its Primary Intended Use : A state or condition of the Premises such that by reason of Condemnation, in the good faith judgment of Landlord and Tenant, the Premises cannot be operated on a commercially practicable basis for the Primary Intended Use.

### SECTION 3

#### 3.1 Rent.

3.1.1 Method and Timing of Payment. Tenant shall pay to Landlord in lawful money of the United States of America which shall be legal tender for the payment of public and private debts, without offset or deduction, the amounts set forth hereinafter as Minimum Rent during the Term. Payments of Minimum Rent shall be made by wire transfer of funds initiated by Tenant to Landlord's account or to such other Person as Landlord from time to time may designate in writing. For the entire Fixed Term and each Extended Term, Tenant shall pay to Landlord Minimum Rent monthly, in advance, on or before the first (1st) day of each calendar month. The first monthly payment of Minimum Rent shall be payable on the Commencement Date (prorated as to any partial calendar month at the beginning of the Term).

3.1.2 Minimum Rent for First Lease Year. For the period from the Commencement Date and through and including the expiration of the first (1st) Lease Year, monthly "Minimum Rent" shall initially be in an amount equal to Three Hundred Eighty Thousand and No/100 Dollars (\$ 380,000.00), which is based on eight percent (8%) of the Acquisition Price. The Minimum Rent shall be increased by the same percentage of any Capital Addition Costs funded by Landlord, if any.

3.1.3 Minimum Rent Increases during Fixed Term. At the commencement of the second (2<sup>nd</sup>) Lease Year of the Fixed Term and at the commencement of each successive Lease Year thereafter during the Fixed Term, the monthly Minimum Rent shall increase to an amount equal to one hundred two and one-half percent (102.5%) of the Minimum Rent payable during the last full month of the previous Lease Year.

3.1.4 Minimum Rent during Extended Terms. At the commencement of each Lease Year during the Extended Term, monthly Minimum Rent shall be adjusted to an amount equal to the Fair Market Rent, as provided in Section 19.2.

3.2 Additional Charges. In addition to the Minimum Rent, (i) Tenant shall also pay and discharge as and when due and payable all other amounts, liabilities, obligations and Impositions which Tenant assumes or agrees to pay under this Lease; and (ii) in the event of any failure on the part of Tenant to pay any of those items referred to in clause (i) above, Tenant shall also promptly pay and discharge every fine, penalty, interest and cost which may be added for non-payment or late payment of such items (the items referred to in clauses (i) and (ii) above being referred to herein collectively as the "Additional Charges"), and Landlord shall have the same remedies in the case of non-payment of the Additional Charges as in the case of non-payment of the Minimum Rent.

3.3 Late Payment of Rent. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated hereunder, the amount of which will be difficult to ascertain. Accordingly, if any installment of Rent shall not be paid within five (5) days after its due date, Tenant will pay Landlord on demand a late charge equal to the lesser of (i) five percent (5%) of the amount of such installment per month until paid, or (ii) the maximum amount permitted by law. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. The parties further agree that such late charge is rent and not interest and such assessment does not constitute a lender or borrower/creditor relationship between Landlord and Tenant. In addition, the amount unpaid, including any late charges, shall bear interest at the Overdue Rate compounded monthly from the due date of such installment to the date of payment thereof, and Tenant shall pay such interest to Landlord on demand. The payment of such late charge or such interest shall not constitute waiver of, nor excuse or cure, any default under this Lease, nor prevent Landlord from exercising any other rights and remedies available to Landlord.

3.4 Net Lease. This Lease is and is intended to be what is commonly referred to as a “net, net, net” or “triple net” lease. The Rent shall be paid absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount or benefit (as applicable) of the installments of Minimum Rent and Additional Charges throughout the Term.

#### SECTION 4

##### 4.1 Impositions.

4.1.1 Subject to Section 12.1 relating to permitted contests, Tenant shall pay, or cause to be paid, all Impositions before any fine, penalty, interest or cost may be added for nonpayment. Subject to Section 4.4 below, Tenant shall make such payments directly to the taxing authorities where feasible, and promptly furnish to Landlord copies of official receipts or other satisfactory proof evidencing such payments.

4.1.2 Landlord shall prepare and file all tax returns and reports as may be required by Legal Requirements with respect to Landlord’s net income, gross receipts, franchise taxes and taxes on its capital stock, and Tenant shall prepare and file all other tax returns and reports as may be required by Legal Requirements with respect to or relating to the Premises and Tenant’s Personal Property.

4.1.3 Landlord and Tenant shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Premises as may be necessary to prepare any required returns and reports to taxing authorities. If any property covered by this Lease is classified as personal property for tax purposes, Tenant shall file all personal property tax returns in such jurisdictions where it must legally so file. Landlord, to the extent it possesses the same, and Tenant, to the extent it possesses the same, shall provide the other party, upon request, with cost and depreciation records necessary for filing returns for any property so classified as personal property. Where Landlord is legally required to file personal property tax returns and to the extent practicable, Tenant shall be provided with copies of assessment notices indicating a value in excess of the reported value in sufficient time for Tenant to file a protest.

4.1.4 Subject to the conditions set forth in Section 12.1, Tenant may, upon notice to Landlord, at Tenant's option and at Tenant's sole cost and expense, protest, appeal, or institute such other proceedings as Tenant may deem appropriate to effect a reduction of real estate or personal property assessments and Landlord, at Tenant's expense as aforesaid, shall reasonably cooperate with Tenant in such protest, appeal, or other action but at no cost or expense to Landlord. Billings for reimbursement by Tenant to Landlord of personal property or real property taxes shall be accompanied by copies of a bill therefor and payments thereof which identify the personal property or real property with respect to which such payments are made. Any refund due from any taxing authority in respect of any Imposition paid by Tenant shall be paid over to Tenant if no Event of Default shall have occurred and be continuing hereunder. Any other refund shall be paid over to, or retained by, Landlord and applied to the payment of Tenant's obligations under this Lease in such order of priority as Landlord shall determine.

4.1.5 Landlord shall give prompt notice to Tenant of all Impositions payable by Tenant hereunder of which Landlord has actual knowledge, but Landlord's failure to give any such notice shall in no way diminish Tenant's obligations hereunder to pay such Impositions.

4.1.6 Impositions imposed or assessed in respect of the tax-fiscal period during which the Term commences or terminates shall be adjusted and prorated between Landlord and Tenant, whether or not such Imposition is imposed or assessed before or after such commencement or termination, and Tenant's obligation to pay its prorated share thereof shall survive termination of this Lease.

4.2 Utility Charges. Tenant shall pay or cause to be paid all charges for electricity, power, gas, oil, water and other utilities used in the Premises. Tenant shall also pay or reimburse Landlord for all costs and expenses of any kind whatsoever which at any time with respect to the Term hereof may be imposed against Landlord, Tenant and/or the Premises by reason of any of the easements, covenants, conditions and/or restrictions affecting or benefiting the Premises and/or any part(s) thereof, or with respect to easements, licenses or other rights over, across or with respect to any adjacent or other property which benefits the Premises, including any and all costs and expenses associated with any utility, drainage and parking easements.

4.3 Insurance Premiums. Tenant shall pay or cause to be paid all premiums for the insurance coverage required to be maintained by Tenant hereunder.

4.4 Impound Account. Notwithstanding any provision of this Lease to the contrary, during the Term, Tenant shall deposit, at the time each payment of Minimum Rent is due by Tenant under this Lease, an amount equal to one-twelfth of (a) Tenant's estimated annual Impositions relating to real estate and personal property taxes, of every kind and nature, required pursuant to Section 4.1, and (b) the estimated amount of insurance premiums required to procure the insurance coverage required to be maintained by Tenant pursuant to Section 13 below, into an impound account as directed by Landlord. The estimated amounts described in clauses (a) and (b) of the preceding sentence shall be established by Landlord in its reasonable discretion and may be adjusted from time to time by Landlord in its reasonable discretion. The cost of administering such impound account shall be paid by Tenant. At the time any payment of Impositions and/or insurance premiums for the insurance coverages required pursuant to Section 13 below is due, and upon request by Tenant, accompanied by copies of all tax bills, invoices or other evidence reasonably satisfactory to Landlord of the amounts so due, Landlord shall apply funds on deposit with Landlord in such impound account to the appropriate amount due to the appropriate taxing authority and/or insurance provider: provided, however, that (i) Landlord shall have no obligation to deliver funds in excess of the total amount of funds held in such account, and (ii) upon the occurrence of an Event of Default, Landlord shall not be obligated to make such payments, but may instead apply such funds to payment of Tenant's other obligations under this Lease in such order as Landlord may determine. On the Commencement Date, Tenant shall deposit with Landlord such amounts, when considered with the monthly payments to be made by Tenant pursuant to this Section, as may reasonably be required to pay the full amount of such Impositions and insurance premiums at the time(s) the same become next due, all as reasonably determined by Landlord. No amount deposited with Landlord or into an impound account established pursuant to this Section shall be or be deemed to be escrow or trust funds, and at Landlord's option and in Landlord's discretion, any amounts deposited with Landlord may either be held in a separate account or be commingled by Landlord with the general funds of Landlord. Tenant shall not be entitled to interest on funds deposited with Landlord or contained in any impound account established pursuant to this Section. Any amounts deposited with Landlord or contained in any impound account established pursuant to this Section shall be solely for the protection of Landlord and the Premises and entail no responsibility on Landlord's part beyond the application of such amounts as provided above. In the event of a transfer of Landlord's interest in the Premises or an assignment of Landlord's interest in this Lease, Landlord shall have the right to transfer to the transferee the amounts deposited by Tenant with Landlord or in any impound account established by Landlord pursuant to this Section and thereupon shall, without any further agreement between the parties, be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment of such amounts to such a transferee/assignee. The amounts deposited by Tenant with Landlord or in any impound account established by Landlord pursuant to this Section may also be assigned as security in connection with a Mortgage. Nothing contained in this Section shall be deemed to affect any right or remedy of Landlord hereunder.

## SECTION 5

5.1 No Termination, Abatement, etc. Except as otherwise specifically provided in this Lease, Tenant shall remain bound by this Lease in accordance with its terms and shall not seek or be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent. Except as expressly set forth in this Lease, the respective obligations of Landlord and Tenant shall not be affected by reason of damage to or destruction of the Premises, Condemnation of the Premises, any claim that Tenant has or might have against Landlord, or any bankruptcy, insolvency, reorganization or other proceedings affecting Landlord or any assignee or transferee of Landlord, or for any other cause, whether similar or dissimilar to any of the foregoing, other than a discharge of Tenant from any such obligations as a matter of law. Tenant hereby specifically waives all rights arising from any occurrence whatsoever that may now or hereafter be conferred upon it by law (a) to modify, surrender or terminate this Lease or quit or surrender the Premises and/or any part(s) thereof; or (b) which may entitle Tenant to any abatement, reduction, suspension or deferment of the Rent or other sums payable by Tenant hereunder, except as otherwise specifically provided in this Lease. The obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements and the Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease or by any termination of this Lease other than by reason of an Event of Default.

## SECTION 6

6.1 Ownership of the Premises. Tenant acknowledges that the Premises are the property of Landlord and that Tenant has only the right to the exclusive possession and use of the Premises upon the terms and conditions of this Lease. Upon the expiration or earlier termination of this Lease, Tenant shall, at its expense, repair and restore the Premises to the condition required by Section 9.1.4.

6.2 Personal Property. During the Term, Tenant shall, as necessary and at its expense, install, affix or assemble or place on any parcels of the Land or in any of the Leased Improvements, any items of Tenant's Personal Property and replacements thereof which shall be the property of and owned by Tenant. Except as provided in Sections 6.3 and 16.7, Landlord shall have no rights to Tenant's Personal Property during the Term. Tenant shall provide and maintain during the entire Term all Personal Property necessary in order to operate the Premises in compliance with all licensure and certification requirements, all Legal Requirements and all Insurance Requirements and otherwise in accordance with customary practice in the industry for the Primary Intended Use. In addition, Tenant shall be required to replace, modify, alter or substitute any of Landlord's Personal Property that has become obsolete or worn out with personal property of equal or better quality. Any such replacements, modifications, alterations or substitutions (whether or not upgrades thereof) shall become Landlord's Personal Property.

6.3 Transfer of Personal Property and Capital Additions to Landlord. Upon the expiration or earlier termination of this Lease (unless such termination is the result of Tenant's purchase of the Premises), all Capital Additions not owned by Landlord and all of Tenant's Personal Property (including all motor vehicles (if any) owned by Tenant used to transport patients) shall become the property of Landlord, free of any encumbrance, and Tenant shall execute all documents and take any actions reasonably necessary to evidence such ownership and discharge any encumbrance. Notwithstanding anything to the contrary in this Lease, upon the expiration or earlier termination of this Lease, Landlord shall not be obligated to reimburse Tenant for any replacements, rebuildings, alterations, additions, substitutions, and/or improvements that are surrendered as part of or with the Premises.

## SECTION 7

7.1 Condition of the Premises. Tenant acknowledges that it has been managing or operating the Premises and has knowledge of the condition of the Premises. Tenant is leasing the Premises "AS IS" in its present condition. Tenant waives any claim or action against Landlord in respect of the condition of the Premises including any defects or adverse conditions not discovered or otherwise known by Tenant as of the date hereof. LANDLORD MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE PREMISES OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, OR AS TO THE NATURE OR QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, OR THE EXISTENCE OF ANY HAZARDOUS SUBSTANCE, IT BEING AGREED THAT ALL SUCH RISKS, LATENT OR PATENT, ARE TO BE BORNE SOLELY BY TENANT INCLUDING ALL RESPONSIBILITY AND LIABILITY FOR ANY ENVIRONMENTAL REMEDIATION AND COMPLIANCE WITH ALL ENVIRONMENTAL LAWS.

### 7.2 Use of the Premises.

7.2.1 Tenant covenants that it will obtain and maintain all authorizations and approvals needed to use and operate the Premises for such the Primary Intended Use and any other use conducted on the Premises as may be permitted from time to time hereunder in accordance with Legal Requirements including applicable licenses, provider agreements, permits, and Medicare and/or Medicaid certification (if applicable).

7.2.2 Tenant shall use or cause to be used the Premises and the improvements thereon for the Primary Intended Use. Tenant shall not use the Premises or any part(s) thereof for any other use without the prior written consent of Landlord.

7.2.3 Tenant shall operate continuously the entire Premises in accordance with the Primary Intended Use. Tenant shall devote the entirety of the Premises to the Primary Intended Use, except for areas reasonably required for office, storage space or ancillary service uses incidental to the Primary Intended Use. Tenant shall not modify the services offered or take any other action (e.g., removing patients or directing patients, or prospective patients, to another facility) if such modification of services or the taking of such action would materially reduce gross revenues from the Premises or the Fair Market Value of the Premises. Tenant shall at all times maintain an adequate staff for the service of its patients, in each case assuming an occupancy and/or use level that is not less than the average occupancy and/or use level for similar facilities in the State. Tenant shall employ its best judgment, efforts and abilities to operate the entirety of the Premises in such a manner so as to enhance the reputation and attractiveness of the Premises.

7.2.4 Tenant shall conduct its business at the Premises in conformity with the highest standards of patient care practice provided in similar facilities in the State.

7.2.5 Tenant shall not commit or suffer to be committed any waste on the Premises or cause or permit any nuisance to exist thereon or with respect thereto.

7.2.6 Tenant shall neither suffer nor permit the Premises or any part(s) thereof, or Tenant's Personal Property, to be used in such a manner as (a) might reasonably tend to impair Landlord's title thereto or to any portion thereof or (b) may make possible a claim of adverse use or possession, or an implied dedication of the Premises or any part(s) thereof.

7.2.7 Tenant shall not commit or suffer to be committed any waste on the Premises or cause or permit any nuisance to exist thereon or with respect thereto.

7.2.8 There shall be no change in the holder of any license for the Premises without Landlord's prior written consent, which consent may be given or withheld in Landlord's sole and absolute discretion.

7.3 Landlord to Grant Easements, etc. Landlord shall, from time to time so long as no Event of Default has occurred and is continuing, at the request of Tenant and at Tenant's cost and expense, but subject to the approval of Landlord, (a) grant easements and other rights in the nature of easements; and (b) release existing easements or other rights in the nature of easements which are for the benefit of the Premises. Except as set forth in Section 36.1 with respect to granting Mortgages, or unless otherwise requested by Tenant, Landlord shall not grant any easements or impose any covenants, conditions or restrictions on the Premises without Tenant's consent, which consent shall not be unreasonably withheld.

7.4 Preservation of Value. Tenant acknowledges that a fair return to Landlord on its investment in the Premises is dependent, in part, on the concentration on the Premises during the Term of the core community business of Tenant and its Affiliates in the geographical area of the Premises. Tenant further acknowledges that diversion of patients, from the Premises to other facilities or institutions and/or reemployment by Tenant of management or supervisory personnel working at the Premises following the expiration or earlier termination of this Lease at other facilities or institutions owned, operated or managed, whether directly or indirectly, by Tenant or its Affiliates could have a material adverse impact on the value and utility of the Premises. Accordingly, Landlord and Tenant agree as follows:

7.4.1 During the Term and for a period of one (1) year thereafter, neither Tenant nor any of its Affiliates, directly or indirectly, shall operate, own, manage or have any interest in or otherwise participate in or receive revenues from any other facility or institution providing services or goods similar to those provided in connection with the Premises and its Primary Intended Use, within a fifty (50) mile radius outward from the outside boundary of the Premises. All distances shall be measured on a straight line rather than on a driving distance basis. In the event that any portion of such other facility or institution is located within such restricted area the entire facility or institution shall be deemed located within such restricted area.

7.4.2 For a period of two (2) years following any termination of this Lease for an Event of Default by Tenant, neither Tenant nor any of its Affiliates shall hire, engage or otherwise employ any management or supervisory personnel working solely on or solely in connection with the Premises.

## SECTION 8

8.1 Compliance with Legal and Insurance Requirements, Instruments, etc. Subject to Section 12.1 regarding permitted contests, Tenant, at its expense, shall at all times (a) comply with all Legal Requirements and Insurance Requirements regarding the use, operation, maintenance, repair and restoration of the Premises and Tenant's Personal Property, whether or not compliance therewith may require structural changes in any of the Leased Improvements; and (b) procure, maintain and comply with all licenses, certificates of need, provider agreements and other authorizations required for the use of the Premises and Tenant's Personal Property for the applicable Primary Intended Use and for the proper erection, installation, operation and maintenance of the Premises and Tenant's Personal Property. If, after thirty (30) days of receiving notice from Landlord, Tenant fails to comply with the provisions of this Section, Landlord may, but shall not be obligated to, enter upon the Premises and make all Capital Additions and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Premises, and Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in connection with such actions. Tenant covenants and agrees that none of the Premises, Tenant's Personal Property or any Capital Additions shall be used for any unlawful purpose.

## SECTION 9

### 9.1 Maintenance and Repair

9.1.1 Tenant, at its expense, shall maintain the Premises and the Tenant's Personal Property in good order and repair, and, with reasonable promptness, make all necessary and appropriate repairs thereto of every kind and nature, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the Commencement Date. All repairs shall be at least equivalent in quality to the original work. Tenant will not take or omit to take any action the taking or omission of which might impair the value or the usefulness of the Premises for the Primary Intended Use.

9.1.2 Landlord shall not under any circumstances be required to (a) build or rebuild any improvements on the Premises; (b) make any repairs, replacements, alterations, restorations or renewals of any nature to the Premises, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto; or (c) maintain the Premises in any way. Tenant hereby waives, to the extent permitted by law, the right to make repairs at the expense of Landlord pursuant to any law in effect at the time of the execution of this Lease or hereafter enacted.

9.1.3 Nothing contained in this Lease and no action or inaction by Landlord shall be construed as (a) constituting the consent or request of Landlord, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials or other property for the construction, alteration, addition, repair or demolition of or to the Premises or any part(s) thereof; or (b) giving Tenant any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord in respect thereof or to make any agreement that may create, or in any way be the basis for, any right, title, interest, lien, claim or other encumbrance upon the estate of Landlord in the Premises or any part(s) thereof.

9.1.4 Unless Landlord shall convey any of the Premises to Tenant pursuant to the provisions of this Lease, Tenant shall, upon the expiration or earlier termination of the Term, vacate and surrender the Premises and the Tenant's Personal Property to Landlord in the condition in which the Premises was originally received from Landlord or (if applicable) were originally introduced to the Premises, except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Lease and except for ordinary wear and tear.



9.2 Encroachments; Restrictions. Tenant shall take all steps necessary to cause the Leased Improvements to not encroach upon any property, street, right-of-way, easement or set-back line, or to not violate any restrictive covenant or other agreement affecting the Premises.

## SECTION 10

10.1 Construction of Capital Additions and Other Alterations to the Premises. Without the prior written consent of Landlord, Tenant shall not (a) make any Capital Additions on or structural alterations to the Premises; (b) enlarge or reduce the size of the Premises or otherwise materially alter or affect (other than repair and replacement thereof) any main building systems, including any main plumbing, electrical or heating, ventilating and air conditioning systems; or (c) make any Capital Additions or other alterations which would tie in or connect with any improvements on property adjacent to the Land. Tenant may, without Landlord's prior written consent, make any alterations, additions, or improvements (collectively, "alterations") to the Premises if such alterations are not of the type described in either clause (a), (b) or (c) above, so long as in each case: (i) the same do not (A) decrease the value of the Premises, (B) affect the exterior appearance of the Premises, or (C) adversely affect the structural components of the Leased Improvements or the main electrical, mechanical, plumbing or ventilating and air conditioning systems; (ii) the same are consistent or better in terms of style, quality and workmanship to the original Leased Improvements and Fixtures; (iii) the same are constructed and performed in accordance with the provisions of this Section; and (iv) the cost thereof does not exceed, in the aggregate, \$100,000 for any twelve (12) month period. Any alterations (other than alterations described in clauses (a), (b) or (c) above, and other than alterations which meet the foregoing requirements of clauses (i), (ii), and (iii) and (iv) above) shall be subject to Landlord's prior written consent, which consent shall not be unreasonably withheld. To the extent Landlord's prior written consent shall be required in connection with any alterations or Capital Additions, Landlord may impose such conditions thereon in connection with its approval thereof as Landlord in its sole but reasonable judgment deems appropriate. Notwithstanding the foregoing, Landlord agrees that painting, landscaping, and replacement of floor, wall and window coverings shall be deemed alterations which do not require Landlord's consent, regardless of the cost thereof, so long as the same meet the requirements of clauses (ii) and (iii) above. With respect to any Capital Additions or alterations permitted hereunder, (A) all work done in connection with such construction shall be done promptly and in a good and workmanlike manner using first-class materials and in conformity with all Legal Requirements; (B) promptly following the completion of such construction, Tenant shall deliver to Landlord "as built" drawings of such addition, certified as accurate by the licensed architect or engineer selected by Tenant to supervise such work; and (C) if by reason of the construction thereof, a new or revised Certificate of Occupancy for any component of the Premises is required, Tenant shall obtain and furnish a copy of the same to Landlord promptly upon completion thereof.

## SECTION 11

11.1 Liens. Subject to the provisions of Section 12.1 relating to permitted contests, Tenant will not directly or indirectly create or allow to remain and will promptly discharge at its expense any lien, encumbrance, attachment, title retention agreement or claim upon the Premises, excluding, however, the matters that exist as of the Commencement Date.

## SECTION 12

12.1 Permitted Contests. Tenant, upon prior written notice to Landlord, on its own or in Landlord's name, at Tenant's expense, may contest, by appropriate legal proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any licensure or certification decision, Imposition, Legal Requirement, Insurance Requirement, lien, attachment, levy, encumbrance, charge or claim; subject, however, to the further requirement that (a) the commencement and continuation of such proceedings shall suspend the collection thereof from Landlord and from the Premises; (b) neither the Premises nor the Rent therefrom nor any part or interest in either thereof would be in any danger of being sold, forfeited, attached or lost pending the outcome of such proceedings; (c) neither Landlord nor Tenant would be in any danger of civil or criminal liability for failure to comply therewith pending the outcome of such proceedings; and (d) Tenant shall give such reasonable security as may be required by Landlord to insure ultimate payment of the same and to prevent any sale or forfeiture of the Premises or the Rent by reason of such nonpayment or noncompliance. If any such contest is finally resolved against Landlord or Tenant, Tenant shall promptly pay the amount required to be paid, together with all interest and penalties accrued thereon, or comply with the applicable Legal Requirement or Insurance Requirement. Tenant shall indemnify, defend, protect and save Landlord harmless from and against any liability, cost or expense of any kind that may be imposed upon Landlord in connection with any such contest and any loss resulting therefrom.

## SECTION 13

13.1 General Insurance Requirements. During the Term, Tenant shall at all times keep the Premises, and all property located in or on the Premises, including all Capital Additions, the Fixtures and the Personal Property, insured with the kinds and amounts of insurance described below. Each element of the insurance described in this Section shall be maintained with respect to the Premises and the Personal Property and operations thereon. This insurance shall be written by companies authorized to do insurance business in the State in which the Premises is located. All liability type policies (a) must name Landlord as an "additional insured" and (b) shall be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord shall be excess and non-contributing with any insurance required of Tenant. All property, loss of rental and business interruption type policies shall name Landlord as "loss payee." Losses shall be payable to Landlord and/or Tenant as provided in Section 14. In addition, the policies, as appropriate, shall name as an "additional insured" or "loss payee" the holder of any mortgage, deed of trust or other security agreement ("Mortgagee") securing any indebtedness or any other encumbrance placed on any Premises in accordance with the provisions of Section 36.3.1 ("Mortgage") by way of a standard form of mortgagee's loss payable endorsement; provided that Landlord delivers the name and address of any such Mortgagee to Tenant. Any loss adjustment shall require the written consent of Landlord, Tenant and each Mortgagee. Evidence of insurance shall be deposited with Landlord and, if requested, with any Mortgagee(s). The policies shall insure against the following risks:

13.1.1 Loss or damage by fire, vandalism and malicious mischief, extended coverage perils commonly known as special form perils, earthquake (including earth movement), sinkhole and windstorm in an amount not less than the insurable value on a replacement cost basis (as defined below in Section 13.2) and including a building ordinance coverage endorsement;

13.1.2 Loss or damage by explosion of steam boilers, pressure vessels or similar apparatus, now or hereafter installed in the Premises, in such limits with respect to any one accident as may be reasonably requested by Landlord from time to time;

13.1.3 Flood (when the Premises is located in whole or in part within a designated 100-year flood plain area) and such other hazards and in such amounts as may be customary for comparable properties in the area;

13.1.4 Loss of rental value in an amount not less than twelve (12) months' Rent payable hereunder or business interruption in an amount not less than twelve (12) months of income and normal operating expenses including payroll and Rent payable hereunder with an endorsement extending the period of indemnity by at least ninety (90) days (Building Ordinance Increased Period of Restoration Endorsement) necessitated by the occurrence of any of the hazards described in Sections 13.1.1, 13.1.2 or 13.1.3; and

13.1.5 (a) Bodily injury and property damage under a policy of commercial general liability insurance (including broad form property damage and broad form contractual liability) and (b) medical professional liability, with amounts not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence and Ten Million and No/100 Dollars (\$10,000,000.00) in the annual aggregate.

13.2 Replacement Cost. The term "replacement cost" shall mean the actual replacement cost of the insured property from time to time with new materials and workmanship of like kind and quality. If either party believes that the replacement cost has increased or decreased at any time during the Term, it shall have the right to have such replacement cost redetermined by an impartial national insurance company reasonably acceptable to both parties (the "impartial appraiser"). The party desiring to have the replacement cost so redetermined shall forthwith, on receipt of such determination by the impartial appraiser, give written notice thereof to the other party hereto. The determination of the impartial appraiser shall be final and binding on the parties hereto, and Tenant shall forthwith increase or decrease the amount of the insurance carried pursuant to this Section to the amount so determined by the impartial appraiser. Tenant shall pay the fee, if any, of the impartial appraiser. If Tenant has made improvements to the Premises, including any Capital Additions. If Tenant has made improvements to the Premises, Landlord may, at Tenant's expense, have the replacement cost redetermined at any time after such improvements are made, regardless of when the replacement cost was last determined.

13.3 Additional Insurance. In addition to the insurance described above, Tenant shall maintain such additional insurance as may be reasonably required from time to time by Landlord and shall further at all times maintain adequate workers' compensation coverage and any other coverage required by Legal Requirements for all Persons employed by Tenant on the Premises in accordance with Legal Requirements.

13.4 Waiver of Subrogation. All insurance policies carried by either party covering the Premises and Tenant's Personal Property including contents, fire and casualty insurance, shall expressly waive any right of subrogation on the part of the insurer against the other party. Each party waives any claims it has against the other party to the extent such claim is covered by insurance.

13.5 Policy Requirements. All of the policies of insurance referred to in this Section shall be written in form satisfactory to Landlord and by insurance companies with a policyholder rating of "A" and a financial rating of "X" in the most recent version of Best's Key Rating Guide. Additionally, all of the insurance referred to in this Section shall be on an occurrence (rather than a claims-made) basis. Tenant shall pay all of the premiums therefor, and deliver such policies or certificates thereof to Landlord prior to their effective date (and with respect to any renewal policy, shall deliver to Landlord's reasonable satisfaction, evidence of renewal at least thirty (30) days prior to the expiration of the existing policy), and in the event of the failure of Tenant either to effect such insurance in the names herein called for or to pay the premiums therefor, or to deliver such policies or certificates thereof to Landlord, at the times required, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, in which event the cost thereof, together with interest thereon at the Overdue Rate, shall be repayable to Landlord upon demand therefor. Each insurer shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Landlord, that it will give to Landlord thirty (30) days' written notice before the policy or policies in question shall be materially altered, allowed to expire or canceled. Each policy shall have a deductible or deductibles, if any, which are no greater than those normally maintained for similar facilities in the State of similar size, financial condition, **[resident mix and number]**; provided, however, that in no event shall the deductibles for any medical professional liability policies or general liability policies exceed \$25,000.00.

13.6 Increase in Limits. If either party shall at any time believe the limits of the insurance required hereunder to be either excessive or insufficient, the parties shall endeavor to agree in writing on the proper and reasonable limits for such insurance to be carried and such insurance shall thereafter be carried with the limits thus agreed on until further change pursuant to the provisions of this Section. If the parties shall be unable to agree thereon, the proper and reasonable limits for such insurance to be carried shall be determined by an impartial third party reasonably selected by Landlord and Tenant. Nothing herein shall permit the amount of insurance to be reduced below the amount or amounts required by any of the Mortgagees.

13.7 Blanket Policies and Policies Covering Multiple Locations. Notwithstanding anything to the contrary contained in this Section, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that the coverage afforded Landlord will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Lease by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Section are otherwise satisfied. For any liability policies covering any other facilities in addition to the Premises, Landlord may require excess limits as Landlord reasonably determines.

13.8 No Separate Insurance. Tenant shall not, on Tenant's own initiative or pursuant to the request or requirement of any third party, (a) take out separate insurance concurrent in form or contributing in the event of loss with that required in this Section to be furnished by, or which may reasonably be required to be furnished by, Tenant or (b) increase the amounts of any then existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Landlord and all Mortgagees, are included therein as additional insured and the loss is payable under such insurance in the same manner as losses are payable under this Lease. Tenant shall immediately notify Landlord of the taking out of any such separate insurance or of the increasing of any of the amounts of the then existing insurance by securing an additional policy or additional policies.

#### SECTION 14

14.1 Insurance Proceeds. All proceeds payable by reason of any loss or damage to the Premises under any policy of insurance required to be carried hereunder shall be paid to Landlord and made available by Landlord to Tenant from time to time for the reasonable costs of reconstruction or repair, as the case may be, of any damage to or destruction of the Premises. Any excess proceeds of such insurance remaining after the completion of (and payment for) the restoration or reconstruction of the Premises (or in the event neither Landlord nor Tenant is required or elects to repair and restore, all such insurance proceeds) shall be retained by Landlord, except as otherwise specifically provided below in this Section. All salvage resulting from any risk covered by insurance shall, at Landlord's option, belong to Landlord.

14.2 Casualty.

14.2.1 If the Premises is damaged or destroyed by fire or other casualty, Tenant shall restore such Premises to substantially the same condition as existed immediately before such damage or destruction.

14.2.2 If the cost of the repair or restoration exceeds the amount of proceeds received by Landlord from the insurance required to be carried hereunder, Tenant shall contribute any excess amounts needed to restore the Premises. Such difference shall be paid by Tenant to Landlord together with any other insurance proceeds, for application to the cost of repair and restoration.

14.2.3 If Tenant purchases the Premises pursuant to Section 40, and if such purchase occurs after a fire or other casualty has damaged or destroyed the Premises, but prior to the completion by Tenant of its repair and restoration obligations under Section 14.2, Landlord shall remit to Tenant, at the Close of Escrow, all insurance proceeds that are then being held by Landlord with respect to such casualty.

14.3 No Abatement of Rent. This Lease shall remain in full force and effect and Tenant's obligation to pay the Rent and all other charges required by this Lease shall remain unabated during the period required for adjusting insurance, satisfying Legal Requirements, repair and restoration. All proceeds payable by reason of any loss of rental or business interruption under any policy of insurance required to be carried by Tenant hereunder shall be paid to Landlord and, provided that no Event of Default has occurred and is continuing, Landlord shall (a) apply, on a monthly basis, all such proceeds paid by reason of loss of rental towards Tenant's obligation to pay Rent; and (b) after Rent has been paid, make available to Tenant for Tenant's operating costs (e.g., payment of salaries, taxes, etc.), on a monthly basis, all such proceeds paid by reason of business interruption. Any excess proceeds of such insurance remaining after such rent and operating costs have been paid shall be delivered to Tenant

14.4 Waiver. Tenant waives any statutory rights of termination that may arise by reason of any damage or destruction of the Premises.

## SECTION 15

15.1 Condemnation.

15.1.1 Total Taking. If the Premises are totally and permanently taken by Condemnation, this Lease shall terminate as of the day before the Date of Taking.

15.1.2 Partial Taking. If a portion of the Premises is taken by Condemnation, this Lease shall remain in effect if the Premises is not thereby rendered Unsuited for Its Primary Intended Use (except that this Lease shall terminate with respect to the portion of the Premises so taken), but if the Premises are thereby rendered Unsuited for its Primary Intended Use, this Lease shall terminate as of the day before the Date of Taking. In the event of any such partial taking in which the Lease is not so terminated and such partial taking affects the building (as opposed to components of the Premises such as parking, landscaping, sidewalks, etc.), Minimum Rent shall be adjusted in a manner that is fair, just and equitable to both Landlord and Tenant.

15.1.3 Restoration. If there is a partial taking of the Premises and this Lease remains in full force and effect pursuant to Section 15.1.2, Landlord shall make available to Tenant the portion of the Award necessary and specifically identified or allocated for restoration of the Premises and Tenant shall accomplish all necessary restoration whether or not the amount provided or allocated by the Condemnor for restoration is sufficient.

15.1.4 Award Distribution. Subject to Section 15.1.3 above, the entire Award shall belong to and be paid to Landlord, except that Tenant shall be entitled to receive from the Award, if and to the extent such Award specifically includes such item, lost profits value and moving expenses.

15.1.5 Temporary Taking. The taking of the Premises and/or any part(s) thereof, shall constitute a taking by Condemnation only when the use and occupancy by the taking authority has continued for longer than one hundred eighty (180) consecutive days. During any shorter period, which shall be considered a temporary taking, all the provisions of this Lease shall remain in full force and effect and the Award allocable to the Term shall be paid to Tenant.

15.1.6 Sale under Threat of Condemnation. A sale by Landlord to any Condemnor, either under threat of Condemnation or while Condemnation proceedings are pending, shall be deemed a Condemnation for purposes of this Lease. Subject to Tenant's consent, which shall not be unreasonably withheld, Landlord may, without any obligation to Tenant, agree to sell and/or convey to any Condemnor all or any portion of the Premises free from this Lease and the rights of Tenant hereunder without first requiring that any action or proceeding be instituted or pursued to judgment.

## SECTION 16

16.1 Events of Default. Any one or more of the following shall constitute an "Event of Default":

16.1.1 a default shall occur under any other lease or other agreement or instrument, now or hereafter with or in favor of Landlord or any Affiliate of Landlord and made by or with Tenant or any Affiliate of Tenant where such default is not cured within applicable notice and cure periods in such lease, agreement or instrument;

16.1.2 Tenant shall fail to pay any installment of Rent by the last day of the applicable calendar month and does not cure such failure within ten (10) days of notice from Landlord that the same is past due;

16.1.3 except as otherwise specifically provided for in this Section, if Tenant shall fail to observe or perform any other term, covenant or condition of this Lease and such failure is not cured by Tenant within thirty (30) days after notice thereof from Landlord, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to be an Event of Default if Tenant commences to cure such failure within such 30-day period and thereafter proceeds promptly and with reasonable diligence to cure the failure and diligently completes the curing thereof; provided, however, that (i) such notice shall be in lieu of and not in addition to any notice required under applicable law; and (ii) in no event shall the cure period set forth above continue for more than sixty (60) days after the initial notice of such default is delivered by Landlord to Tenant;

16.1.4 Tenant or any Guarantor shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency act, make an assignment for the benefit of its creditors, consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof;

16.1.5 Tenant or any Guarantor shall be adjudicated as bankrupt or a court of competent jurisdiction shall enter an order or decree appointing a receiver of Tenant or of the whole or substantially all of its property and such judgment, order or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof;

16.1.6 Tenant or any Guarantor shall be liquidated or dissolved, or shall begin proceedings toward such liquidation or dissolution, or shall, in any manner, permit the sale or divestiture of substantially all its assets (except to the extent such a sale is expressly permitted hereunder);

16.1.7 any breach or default of the provisions of Section 24.1 occurs;

16.1.8 any of the representations or warranties made by Tenant herein or by any Guarantor in the Guaranty proves to be untrue when made in any material respect;

16.1.9 any license or third-party provider reimbursement agreements material to operation of the Premises for its Primary Intended Use are at any time terminated or revoked or suspended;

16.1.10 Tenant fails to give notice to Landlord not later than ten (10) days after any notice, claim or demand from any governmental authority, or any officer acting on behalf thereof, of any material violation of any Legal Requirement with respect to the operation of the Premises. For purposes of this Subsection, a "material violation" shall mean a violation of any such Legal Requirement that is reasonably likely to (i) have a material adverse effect on Tenant's operations in the Premises; or (ii) impose any liability on Landlord;

16.1.11 Tenant fails to cure or abate any material violation (except for violations being contested by Tenant pursuant to Section 12.1 hereof) occurring during the Term that is claimed by any governmental authority, or any officer acting on behalf thereof, of any law, order, ordinance, rule or regulation pertaining to the operation of the Premises, and within the time permitted by such authority for such cure or abatement. For purposes of this Subsection, a "material violation" shall mean a violation of any such law, order, ordinance, rule or regulation that is reasonably likely to (i) have a material adverse effect on Tenant's operations in the Premises; or (ii) impose any liability on Landlord;

16.1.12 Tenant fails to notify Landlord within three (3) business days after receipt of any notice from any governmental agency terminating or suspending or reflecting a material risk of imminent termination or suspension, of any material license or certification relating to the Premises;

16.1.13 any proceedings are instituted against Tenant by any governmental authority that are reasonably likely to result in (i) the revocation of any license granted to Tenant that is material to the operation of the Premises; (ii) the decertification of the Premises from participation in the Medicare or Medicaid reimbursement program if participation in such programs is applicable and is material to the operation of the Premises; or (iii) the issuance of a stop placement order against Tenant;

16.1.14 any default and acceleration of any indebtedness of borrowed money in excess of \$250,000 of Tenant, Guarantor or any Affiliate of Tenant or Guarantor has occurred;

16.1.15 any default shall occur under any Guaranty;



16.1.16 Tenant or its Affiliates, as applicable, shall fail to comply with the provisions of Section 47.1 below;

16.1.17 Tenant fails maintain the Coverage Requirement for two (2) successive reporting quarters (a “ Coverage Default ”), and thereafter does not meet the Coverage Requirement within two (2) reporting quarters after receipt of notice thereof from Landlord;

16.1.18 Tenant fails to maintain the Minimum Net Worth; provided, however, that such event shall only constitute an Event of Default hereunder if Landlord delivers notice of such failure to Tenant and if such failure continues beyond any cure period expressly afforded by Landlord to Tenant in such notice (it being agreed, however, that the decision as to whether a cure period shall be granted and the duration of such cure period, if any, shall be determined by Landlord in its sole and absolute discretion);

16.2 Certain Remedies. If an Event of Default shall have occurred, Landlord may terminate this Lease, by giving Tenant notice of such termination and the Term shall terminate and all rights of Tenant under this Lease shall cease. Landlord shall have all rights at law and in equity available to Landlord as a result of any Event of Default. Tenant shall pay as Additional Charges all costs and expenses incurred by or on behalf of Landlord, including reasonable attorneys’ fees and expenses, as a result of any Event of Default hereunder. If an Event of Default shall have occurred and be continuing, whether or not this Lease has been terminated pursuant to this Section, Tenant shall, to the extent permitted by law, if required by Landlord so to do, immediately surrender to Landlord possession of the Premises and quit the same and Landlord may enter upon and repossess the Premises by reasonable force, summary proceedings, ejectment or otherwise, and may remove Tenant and all other Persons and any of Tenant’s Personal Property from the Premises.

16.3 Damages. The (a) termination of this Lease; (b) repossession of the Premises; (c) failure of Landlord, notwithstanding reasonable good faith efforts, to relet the Premises; (d) reletting of all or any portion of the Premises; or (e) failure or inability of Landlord to collect or receive any rentals due upon any such reletting, shall not relieve Tenant of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any such termination occurs, Tenant shall forthwith pay to Landlord all Rent due and payable with respect to the Premises to and including the date of such termination. Thereafter, following any such termination, Tenant shall forthwith pay to Landlord, at Landlord’s option, as and for liquidated and agreed current damages for an Event of Default by Tenant, the sum of:

16.3.1 the worth at the time of award of the unpaid Rent (including all monthly Minimum Rent) which had been earned at the time of termination,

16.3.2 the worth at the time of award of the amount by which the unpaid Rent (including all monthly Minimum Rent) which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided,

16.3.3 the worth at the time of award of the amount by which the unpaid Rent (including all monthly Minimum Rent) for the balance of the then current Term (not including any Extended Terms that have not yet been exercised, but including any Extended Term which has been exercised but has not yet commenced) after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, plus

16.3.4 any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used in Subsections 16.3.1 and 16.3.2 above, the "worth at the time of award" shall be computed by allowing interest at the Overdue Rate. As used in Subsection 16.3.3 above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of New York at the time of award plus One Percent (1%). Alternatively, if Landlord does not elect to terminate this Lease, then Tenant shall pay to Landlord, at Landlord's option, as and for agreed damages for such Event of Default without termination of Tenant's right to possession of the Premises and any Capital Additions, each installment of said Rent (including the monthly Minimum Rent) and other sums payable by Tenant to Landlord under this Lease as the same becomes due and payable with respect to the Premises, together with interest at the Overdue Rate from the date when due until paid, and Landlord may enforce, by action or otherwise, any other term or covenant of this Lease.

16.4 Receiver. Upon the occurrence of an Event of Default, and upon commencement of proceedings to enforce the rights of Landlord hereunder, Landlord shall be entitled, as a matter of right, to the appointment of a receiver or receivers acceptable to Landlord of the Premises and/or of the revenues, earnings, income, products and profits thereof, pending the outcome of such proceedings, with such powers as the court making such appointment shall confer.

16.5 Waiver. If Landlord initiates judicial proceedings or if this Lease is terminated by Landlord pursuant to this Section, Tenant waives, to the extent permitted by applicable law, (a) any right of redemption, re-entry or repossession; and (b) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

16.6 Application of Funds. Any payments received by Landlord under any of the provisions of this Lease during the existence or continuance of any Event of Default that are made to Landlord rather than Tenant due to the existence of an Event of Default (including all rentals received as a result of any reletting) shall be applied to Tenant's obligations in the order which Landlord may determine or as may be prescribed by the laws of the State in which the Premises are located.

16.7 Landlord's Security Interest. The parties intend that if an Event of Default occurs under this Lease, Landlord will control Tenant's Personal Property and the Intangible Property so that Landlord or its designee or nominee can operate or re-let the Premises intact for their Primary Intended Use. Accordingly, to implement such intention, and for the purpose of securing the payment and performance obligations of Tenant hereunder, Landlord and Tenant agree as follows:

16.7.1 Tenant, as debtor, hereby grants to Landlord, as secured party, a security interest in, and an express contractual lien upon, all of Tenant's right, title and interest in and to (a) Tenant's Personal Property and in and to the Intangible Property and any and all products, rents, proceeds and profits thereof in which Tenant now owns or hereafter acquires an interest or right, including any leased Tenant's Personal Property, and further including the property and interests in property described on Exhibit C hereto (except to the extent such items constitute Landlord's Personal Property), and (b) all of Tenant's right, title and interest in and to the Seller Note (collectively, the "Collateral"). This Lease constitutes a security agreement covering all such Tenant's Personal Property and the Intangible Property. The security interest granted to Landlord with respect to Tenant's Personal Property in this Subsection is intended by Landlord and Tenant to be subordinate to any security interest granted in connection with the financing or leasing of all or any portion of the Tenant's Personal Property so long as the lessor or financier of such Tenant's Personal Property agrees to give Landlord written notice of any default by Tenant under the terms of such lease or financing arrangement, to give Landlord a reasonable time following such notice to cure any such default and consents to Landlord's written assumption of such lease or financing arrangement upon Landlord's curing of any such defaults.

16.7.2 Tenant hereby authorizes Landlord to file such financing statements, continuation statements and other documents as may be necessary or desirable to perfect or continue the perfection of Landlord's security interest in the Collateral. In addition, if required by Landlord at any time during the Term, (Tenant shall execute and deliver to Landlord, in form reasonably satisfactory to Landlord, additional security agreements, financing statements, fixture filings and such other documents as Landlord may reasonably require to perfect or continue the perfection of Landlord's security interest in the Collateral. In the event Tenant fails to execute any financing statement or other documents for the perfection or continuation of Landlord's security interest, Tenant hereby appoints Landlord as its true and lawful attorney-in-fact to execute any such documents on its behalf, which power of attorney shall be irrevocable and is deemed to be coupled with an interest.

16.7.3 Tenant will give Landlord at least thirty (30) days' prior written notice of any change in Tenant's name, identity, jurisdiction of organization or corporate structure. With respect to any such change, Tenant will promptly execute and deliver such instruments, documents and notices and take such actions, as Landlord deems necessary or desirable to create, perfect and protect the security interests of Landlord in the Collateral.

16.7.4 Upon the occurrence of an Event of Default, Landlord shall be entitled to exercise any and all rights or remedies available to a secured party under the Uniform Commercial Code, or available to a lessor under the laws of the State, with respect to Tenant's Personal Property and the Intangible Property, including the right to sell the same at public or private sale.

16.7.5 Tenant shall deposit the Seller Note with Landlord as further security for this Lease. At any time after December 31, 2021 that AIU is not a subtenant paying rent at least equal to the AIU December 2021 Rent, Tenant will have the right to draw upon the Seller Note in monthly increments equal to the AIU December 2021 Rent, until the AIU space is re-subleased to a tenant at least as creditworthy as AIU for at least five (5) years at a rent at least equal to the AIU December 2021 Rent. If an Event of Default by Tenant occurs, Landlord shall have the right to make draws under the Seller Note upon the terms set forth above.

## SECTION 17

17.1 Landlord's Right to Cure Tenant's Default. If Tenant shall fail to make any payment or to perform any act required to be made or performed hereunder within fifteen (15) days after written demand by Landlord (except in case of emergencies), Landlord, without waiving or releasing any obligation or default, may, but shall be under no obligation to, make such payment or perform such act for the account and at the expense of Tenant, and may, to the extent permitted by law, enter upon the Premises for such purpose and take all such action thereon as, in Landlord's opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Tenant. All sums so paid by Landlord and all costs and expenses, including reasonable attorneys' fees and expenses, so incurred, together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Landlord, shall be paid by Tenant to Landlord on demand.

## SECTION 18

18.1 Intentionally Omitted.

## SECTION 19

19.1 Renewal Terms. Provided that no Event of Default has occurred and is continuing, either at the date of exercise or upon the commencement of an Extended Term (as hereunder defined), then Tenant shall have the right to renew this Lease with respect to the Premises of all (but not less than all) of the Premises for the Extended Term(s). Tenant shall be deemed to have exercised its renewal options in this Section unless Tenant gives written notice to Landlord of Tenant's election not to exercise such renewal option at least twenty-four (24) months prior to the expiration of the then applicable current Term. During each Extended Term, all of the terms and conditions of this Lease shall continue in full force and effect, except for the Minimum Rent, which shall be as set forth in Section 19.2.

19.2 Determination of Fair Market Rent. If Tenant's renewal option is deemed exercised as provided in the preceding Section, Landlord shall notify Tenant of the proposed Fair Market Rent for the Premises at least eight (8) months prior to the expiration of the then applicable Term. "Fair Market Rent" shall be the anticipated rate in effect for the Premises as of the commencement of the applicable Extended Term, based upon the rents generally in effect for new leases of space in the area in which the Premises are located of equivalent quality, size, utility and location, with the length of the extended term and the credit standing of Tenant to be taken into account. In no event shall the Fair Market Rent be less than the Minimum Rent set forth herein. Landlord shall lease to Tenant the Premises in their then-current condition, and Landlord shall not provide to Tenant any allowances (e.g., moving allowance, construction allowance, free rent or the like) or other tenant inducements. If Tenant does not accept the rate set forth in Landlord's notice, Tenant shall have the right, upon notice sent to Landlord within fifteen (15) days of receipt of Landlord's notice containing the proposed Fair Market Rent, to require that Fair Market Rent be determined by an appraisal. If Tenant does not so notify Landlord, Tenant shall be deemed to have accepted the Fair Market Rent set forth in Landlord's notice. In the event Tenant elects to have an appraisal, the following shall apply:

19.2.1 Landlord shall send written notice to Tenant (" Landlord's Notice ") designating the name of Landlord's independent, third party Appraiser (" Landlord's Appraiser ").

19.2.2 Within five (5) days of receipt of Landlord's notice, Tenant shall notify Landlord of either (i) Tenant's acceptance of Landlord's Appraiser; or (ii) the name of Tenant's independent third party Appraiser (" Tenant's Appraiser "). If Tenant fails to so notify Landlord, Tenant shall be deemed to have accepted Landlord's Appraiser.

19.2.3 If Tenant accepts Landlord's Appraiser, the Fair Market Rent shall be determined by Landlord's Appraiser within thirty (30) days of Landlord's Notice.

19.2.4 If Tenant does not accept Landlord's Appraiser, within thirty (30) days of Landlord's Notice Landlord's Appraiser and Tenant's Appraiser shall each state what they believe the Fair Market Rent to be. If the two (2) rates vary by five percent (5%) or less, then the Fair Market Rent shall be the average of the two (2) rates. If the two (2) rates vary by more than five percent (5%), such two Appraisers shall select an independent third party Appraiser no later than sixty (60) days after Landlord's Notice, and within five (5) days after such appointment, the third Appraiser shall select one (1) of the two (2) rates set by Landlord's Appraiser and Tenant's Appraiser as the Fair Market Rent.

19.2.5 Each party shall bear the cost of its Appraiser; provided, however (i) if Tenant accepts Landlord's Appraiser, the parties shall share equally the cost of Landlord's Appraiser; or (ii) if a third Appraiser is appointed, the parties shall share equally the cost of such third Appraiser.

19.2.6 "Appraiser" shall mean a real estate broker who has a minimum of five (5) years' experience in the Westland, Michigan leasing market for properties to the Premises, who is licensed by the State of Michigan, and who is not affiliated with either party or involved in an active transaction with either party.

## SECTION 20

20.1 Holding Over. If Tenant shall for any reason remain in possession of the Premises after the expiration or earlier termination of the Term, such possession shall be as a month-to-month tenant during which time Tenant shall pay as Rent each month one hundred fifty percent (150%) of the sum of (a) monthly Minimum Rent applicable to the prior Lease Year, together with (b) all Additional Charges and all other sums payable by Tenant pursuant to this Lease. During such period of month-to-month tenancy, Tenant shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to month-to-month tenancies, to continue its occupancy and use of the Premises. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the expiration or earlier termination of this Lease.

## SECTION 21

### 21.1 Security for Tenant Obligations.

21.1.1 If a Coverage Default is not cured as provided in Section 16.1.17, in addition to any other remedies to which Landlord may be entitled, Landlord may require that Tenant provide to Landlord a letter of credit complying with the Letter of Credit Requirements as security for Tenant's obligations under this Lease (a "Security Letter of Credit"). The face amount of the Security Letter of Credit shall be one (1) year's Minimum Rent (the "Required Coverage"). If at any time face amount of the Security Letter of Credit held by Landlord pursuant to this paragraph, shall be less than the Required Coverage, Tenant shall deliver to Landlord one or more replacement or additional Security Letters of Credit (or amendments to the existing Security Letters of Credit) to the extent necessary to cause the face amount of the Security Letters of Credit held by Landlord pursuant to this paragraph, to be at least equal to the Required Coverage.

21.1.2 If Tenant meets the Coverage Requirement for four (4) successive quarters, the Security Letter of Credit shall be returned to Tenant, and shall not be required thereafter unless another Coverage Default occurs. Further, If Tenant shall fully and faithfully perform every provision of this Lease to be performed by Tenant, upon the expiration of the Term, the Security Letter of Credit shall be returned to within ninety (90) days after the expiration of such Term.

21.2 Rent Reserve Fund. Tenant will maintain and demonstrate, on demand from Landlord, a cash (including cash equivalents and accounts receivable) account on its balance sheet, or alternatively, at Tenant's option, a letter of credit (the "Rent Reserve Letter of Credit") at least equal to the Minimum Required Rent Reserve (the "Rent Reserve Fund"). Tenant may use the cash account or direct the Landlord to draw upon the Rent Reserve Letter of Credit, as applicable, to pay Rent (a "Rent Reserve Fund Draw"). If a Rent Reserve Fund Draw occurs, then Tenant or Guarantor will replenish the Rent Reserve Fund monthly in the amount of Fifty Thousand Dollars (\$50,000) per month until the Rent Reserve Fund reaches the Minimum Required Rent Reserve. The Rent Reserve Fund will count as part of any cash reserve requirement and in the Minimum Net Worth computation.

21.3 Letter of Credit Requirements. The following requirements shall apply to any letters of credit posted by Tenant in connection with this Lease (the "Letter of Credit Requirements"):

21.3.1 Each letter of credit must be unconditional, irrevocable and in substantially the form attached hereto as Exhibit D (or another form satisfactory to Landlord).

21.3.2 Each letter of credit must be issued by a financial institution having offices located in New York, New York and otherwise reasonably satisfactory to Landlord.

21.3.3 Tenant understands that Landlord is relying upon the financial condition of the issuer of the letter of credit, as a primary inducement to Landlord to lease the Premises to Tenant. In the event Moody's rating on the issuer's long term senior debt becomes less than Baa2 while the letter of credit is outstanding, Landlord may notify Tenant of such fact, and Tenant shall have five (5) days from the date of such notice within which to either (i) secure the letter of credit with additional collateral acceptable to Landlord in its sole discretion; (ii) provide a substitute letter of credit in the same form as the letter of credit but issued by a banking institution reasonably satisfactory to Landlord having its senior long term debt rated at least Baa2 by Moody's or equivalent rating service; or (iii) have the letter of credit confirmed by a banking institution reasonably satisfactory to Landlord having its senior long term debt rated at least Baa2 by Moody's or equivalent rating service. Failure to do one of the foregoing within such time shall constitute an Event of Default and shall entitle Landlord to present the letter of credit for payment at any time after such default, without providing Tenant any further notice or opportunity to cure, and the entire sum drawn thereunder shall be held by Landlord as provided in Subsection 21.2.13, below.

21.3.4 Each letter of credit must expressly permit partial drawings on multiple occasions.

21.3.5 Each letter of credit shall provide that it is assignable by Landlord without charge to Landlord and without limitation on the permitted number of assignments.

21.3.6 Unless otherwise provided herein, the initial letter of credit shall expire no sooner than twelve (12) months from the date thereof. The letter of credit must be satisfactorily renewed or replaced with replacement letters of credit meeting all of the Letter of Credit Requirements except that the expiration date shall be no less than twelve (12) months from the date of issuance. Such renewal or replacement letters of credit must be in Landlord's possession no later than sixty (60) days prior to the expiration of the then current letter of credit. Tenant shall be responsible for obtaining such renewal or replacement letters of credit at its sole expense. Failure to renew a letter of credit in accordance with the foregoing will entitle Landlord to present the letter of credit for payment, without providing Tenant any notice or opportunity to cure, and the entire sum drawn thereunder shall be held by Landlord as provided in subsection 21.2.13, below.

21.3.7 Each letter of credit shall provide that it will be honored upon a signed statement by Landlord that Landlord is entitled to draw upon such letter of credit under this Lease and shall require no signature or statement from any party other than Landlord.

21.3.8 Each letter of credit shall provide that, following the honor of any drafts in an amount less than the aggregate amount thereof, the financial institution shall return the original letter of credit to Landlord and Landlord's rights as to the remaining amount of such letter of credit will not be extinguished.

21.3.9 In the event of a transfer of Landlord's interest in the Premises, Landlord may transfer any letter of credit held by Landlord to the transferee and thereupon shall, without any further agreement between the parties, be released by Tenant from all liability therefor, and it is agreed that the provisions hereof shall apply to every transfer or assignment of any such letter of credit to a new Landlord.

21.3.10 Landlord's rights in and to any letter of credit may be assigned and pledged by Landlord to a Mortgagee as security in connection with a Mortgage.

21.3.11 Tenant will not assign or encumber the letter of credit or any part thereof and agrees that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

21.3.12 Upon the occurrence of an Event of a Default, in addition to any or all of its other remedies contained in this Lease, Landlord shall have the right (but not the obligation) to present the letter of credit for payment and to draw thereon, in whole or in part. In the event of any such draw, Landlord may require that Tenant forthwith provide Landlord with an additional letter of credit in an amount sufficient to restore the aggregate amounts of the letter(s) of credit held by Landlord to the amount prior to such draw.

21.3.13 Landlord may use or apply the whole or any part of the amounts drawn on the letter(s) of credit (the "Proceeds") for the payment of Tenant's obligations under this Lease. Any Proceeds not otherwise applied to amounts then due Landlord shall serve as security for the prompt, full, and faithful performance by Tenant of the terms and provisions of this Lease. Tenant's obligation to furnish the letter of credit and any use, application or retention by Landlord of all or any part of the Proceeds shall not be deemed in any way to constitute liquidated damages for any default by Tenant, or to limit the remedies to which Landlord is otherwise entitled under the terms of this Lease. In the event the Proceeds are reduced below the original amount of the letter of credit by such use or application, Tenant shall deposit with Landlord, within ten (10) days after notice, an amount sufficient to restore the amount of the Proceeds to the original amount. Landlord shall not be required to keep the Proceeds separate from Landlord's general funds or pay interest on the Proceeds. Provided Tenant has performed all of its obligations under this Lease, any remaining portion of the Proceeds shall be returned to Tenant within thirty (30) days subsequent to the expiration of the Term. No trust or fiduciary relationship is created herein between Landlord and Tenant with respect to the Proceeds. If Landlord transfers the Premises during the Term of this Lease, Landlord may pay the Proceeds to Landlord's successor-in-interest, in which event the transferring Landlord shall be released from all liability for the return of the Proceeds.

21.3.14 Landlord shall return the letter of credit to Tenant within thirty (30) days following the expiration of the Term; provided however, no such release shall occur at any time when Tenant has failed to perform any of its obligations under the under the Lease, regardless of whether any applicable notice or cure periods have expired.

21.4 Subordination of Debt and Distributions. Tenant will not seek to subordinate the Rent payable under this Lease to any creditor obligation or debt. Rent will be paid and received, and current under this Lease, before (a) any other creditor obligation or debt is paid; and (b) any profits are distributed to Tenant's owners or assigns.



## SECTION 22

22.1 Risk of Loss. The risk of loss or of decrease in the enjoyment and beneficial use of the Premises as a consequence of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of foreclosures, attachments, levies or executions (other than by Landlord and Persons claiming from, through or under Landlord) is assumed by Tenant, and no such event shall entitle Tenant to any abatement of Rent.

## SECTION 23

23.1 General Indemnification. In addition to the other indemnities contained herein, and notwithstanding the existence of any insurance carried by or for the benefit of Landlord or Tenant, and without regard to the policy limits of any such insurance, Tenant shall protect, indemnify, save harmless and defend Landlord and its Affiliates from and against all liabilities, obligations, claims, damages penalties, causes of action, costs and expenses, including reasonable attorneys', consultants' and experts' fees and expenses, imposed upon or incurred by or asserted against Landlord by reason of: (a) any accident, injury to or death of Persons or loss of or damage to property occurring on or about the Premises or adjoining sidewalks thereto; (b) any use, misuse, non-use, condition, maintenance or repair by Tenant of the Premises; or (c) any failure on the part of Tenant to perform or comply with any of the terms of this Lease; (d) the non-performance of any of the terms and provisions of any and all existing and future subleases of the Premises to be performed by any party thereunder; (e) any claim for malpractice, negligence or misconduct committed by any Person on or working from the Premises or any Capital Additions; and (f) the violation of any Legal Requirement. Any amounts that become payable by Tenant under this Section shall be paid within ten (10) days after demand by Landlord, and if not timely paid shall bear interest at the Overdue Rate from the date of such determination to the date of payment. Tenant, at its sole cost and expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Landlord or its Affiliates or may compromise or otherwise dispose of the same as Tenant sees fit; provided, however, that any legal counsel selected by Tenant to defend Landlord shall be reasonably satisfactory to Landlord. All indemnification covenants are intended to apply to losses, damages, injuries, claims, etc. incurred directly by the indemnified parties and their property, as well as by the indemnifying party or third party, and their property. For purposes of this Section, any acts or omissions of Tenant, or by employees, agents, assignees, contractors, subcontractors or others acting for or on behalf of Tenant (whether or not they are negligent, intentional, willful or unlawful), shall be strictly attributable to Tenant. It is understood and agreed that payment shall not be a condition precedent to enforcement of the foregoing indemnification obligations.

## SECTION 24

### 24.1 Transfers.

#### 24.1.1 Assignment.

(a) Tenant shall not, without Landlord's prior written consent, either directly or indirectly or through one or more step transactions or tiered transactions, voluntarily or by operation of law, (i) assign, convey, sell, pledge, mortgage, hypothecate or otherwise encumber, transfer or dispose of all or any part of this Lease or Tenant's leasehold estate hereunder; (ii) engage the services of any Person for the management or operation of all or any part of the Premises or any Capital Additions; (iii) convey, sell, assign, transfer or dispose of any stock or partnership, membership or other interests (whether equity or otherwise) in Tenant (which shall include any conveyance, sale, assignment, transfer or disposition of any stock or partnership, membership or other interests (whether equity or otherwise) in any Controlling Person(s)), if such conveyance, sale, assignment, transfer or disposition results, directly or indirectly, in a change in control of Tenant (or in any Controlling Person(s)); (iv) dissolve, merge, reorganize, recapitalize, exchange shares or consolidate Tenant (which shall include any dissolution, merger, reorganization, recapitalization, exchange of shares or consolidation of any Controlling Person) with any other Person, if such dissolution, merger, reorganization, recapitalization, exchange of shares or consolidation, directly or indirectly, results in a change in control of Tenant or in any Controlling Person(s); (v) sell, convey, assign, or otherwise transfer all or substantially all of the assets of Tenant (which shall include any sale, conveyance, assignment, or other transfer of all or substantially all of the assets of any Controlling Person(s)); or (vi) enter into or permit or allow to be entered into any agreement or arrangement to do any of the foregoing or to grant any option or other right to any Person to do any of the foregoing (each of the aforesaid acts referred to in clauses (a) through (g) being referred to herein as a "Transfer"). If Tenant so allows, causes, permits or suffers any such Transfer without Landlord's consent in each such instance, such event shall constitute an Event of Default by Tenant under this Lease.

(b) Notwithstanding the foregoing, Landlord's consent to an assignment shall not be required as long as (i) the creditworthiness of the proposed assignee is equal to or greater than the creditworthiness of Tenant as of the date of this Lease or the date of the proposed assignment, whichever is higher; (ii) the proposed assignee meets all other requirements of this Lease, including without limitation insurability and legal diligence, and (iii) Tenant and Guarantor are not released from liability under this Lease. It is understood that Landlord may nonetheless withhold consent despite satisfaction of the conditions in the foregoing subsections based on other reasonable grounds.

24.1.2 Subletting. Subletting will not require approval of Landlord but will be limited to ancillary licensed medical operators, services and concessions (including pharmacy, ambulance service, physician joint venture, mobile imaging, etc.). Landlord will not unreasonably withhold its consent for subleases of vacant space to other third party subtenants. Tenant will not pledge or encumber any sublease rents to any third party. Upon any Event of Default under this Lease, all sublease rents will be paid directly to Landlord. Tenant shall not, without Landlord's prior written consent in each instance, allow, cause, permit or suffer all or any portion of the Premises to be leased, subleased or licensed to, or used or occupied by, any other Person and Landlord may, in Landlord's sole and absolute discretion, grant, withhold or place conditions upon such consent. If Tenant allows, causes, permits or suffers any sublease or occupancy without Landlord's prior written consent if required hereunder, same shall constitute an Event of Default by Tenant under this Lease.

24.1.3 Costs. Tenant shall reimburse Landlord for Landlord's actual costs and expenses incurred in conjunction with the processing and documentation of any request to Transfer, including attorneys', architects', engineers' or other consultants' fees, whether or not such Transfer is actually consummated.

24.1.4 No Release of Tenant's Obligations. No assignment, conveyance, subletting or other action pursuant to this Section shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder.

24.1.5 REIT Protection. Anything contained in this Lease to the contrary notwithstanding, (a) no Transfer shall be consummated on any basis such that the rental or other amounts to be paid by the Occupant, assignee, manager or other transferee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of the Occupant, assignee, manager or other transferee; (b) Tenant shall not furnish or render any services to an Occupant, assignee, manager or other transferee with respect to whom Transfer Consideration is required to be paid or manage or operate the Premises and/or any Capital Additions so Transferred with respect to which consideration for the Transfer is being paid; (c) Tenant shall not consummate a Transfer with any Person in which Landlord or its Affiliate owns an interest, directly or indirectly by applying constructive ownership rules set forth in Section 856(d)(5) of the Code; and (d) Tenant shall not consummate a Transfer with any Person or in any manner which could cause any portion of the amounts received by Landlord pursuant to this Lease or any Occupancy Arrangement to fail to qualify as “rents from real property” within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto or that could cause any other income of Landlord or its Affiliate to fail to qualify as income described in Section 856(c)(2) of the Code.

24.1.6 Transfers in Bankruptcy. In the event of a Transfer or assignment of this Lease pursuant to the provisions of the Bankruptcy Code, all consideration payable or otherwise to be delivered in connection with such Transfer or assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any consideration constituting Landlord’s property pursuant to the immediately preceding sentence and not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. For purposes of this Subsection, the term “consideration” shall mean and include money, services, property and any other thing of value such as payment of costs, cancellation or forgiveness of indebtedness, discounts, rebates, barter and the like. If any such consideration is in a form other than cash (such as in kind, equity interests, indebtedness earn-outs, or other deferred payments, consulting or management fees, etc.), Landlord shall be entitled to receive in cash the then present fair market value of such consideration.

## SECTION 25

### 25.1 Officer’s Certificates and Financial Statements.

25.1.1 Officer’s Certificate. At any time and from time to time upon Tenant’s receipt of not less than ten (10) days’ prior written request by Landlord, Tenant shall furnish to Landlord an Officer’s Certificate certifying (a) that this Lease is unmodified and in full force and effect, or that this Lease is in full force and effect as modified and setting forth the modifications; (b) the dates to which the Rent has been paid; (c) whether or not, to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge; and (d) responses to such other questions or statements of fact as Landlord, any ground or underlying lessor, any purchaser or any current or prospective Mortgagee shall reasonably request. Tenant’s failure to deliver such statement within such time shall constitute an acknowledgment by Tenant that (i) this Lease is unmodified and in full force and effect except as may be represented to the contrary by Landlord; (ii) Landlord is not in default in the performance of any covenant, agreement or condition contained in this Lease; and (iii) the other matters set forth in such request, if any, are true and correct. Any such certificate furnished pursuant to this Section may be relied upon by Landlord and any current or prospective Mortgagee, ground or underlying lessor or purchaser of the Premises or any portion thereof.

25.1.2 Statements. Tenant shall furnish the following statements to Landlord:

(a) Tenant shall, as soon as available and in any event within one hundred twenty (120) days after the end of each Fiscal Year, provide to Landlord annual audited financial statements of Guarantor and Tenant for such Fiscal Year, including therein the balance sheets of Guarantor and Tenant as of the end of such Fiscal Year and statements of earnings and statements of cash flow of Guarantor and Tenant for such Fiscal Year, in each case certified in a manner acceptable to Landlord by independent certified public accountants of recognized national standing selected by Tenant and reasonably acceptable to Landlord (the form of such certification to be reasonably satisfactory to Landlord), prepared in accordance with GAAP, except as otherwise noted therein, on a basis consistent with prior periods and fairly presenting the financial condition of Guarantor and Tenant at the end of such Fiscal Year and the immediately preceding Fiscal Year and in comparative columnar form.

(b) Tenant shall, as soon as available and in any event within forty-five (45) days after the end of each Quarter, provide to Landlord quarterly financial statements of the Tenant for such Quarter, including therein the balance sheets of Guarantor and Tenant as of the end of such Quarter, and statements of earnings and statements of cash flow of Guarantor and Tenant for such Quarter, in each case certified in a manner acceptable to Landlord by such entity's chief accounting officer as being prepared in accordance with GAAP, except as otherwise noted therein, and that such quarterly financial statements fairly present to financial condition of each of Guarantor and Tenant as of the end of such Quarter and year-to-date.

(c) with the statements submitted pursuant to Subsections (a) and (b) of this Section, a certificate signed on behalf of Tenant by the principal financial or accounting officer of Tenant to the effect that no Event of Default specified herein nor any event which, upon notice or with the passage of time or both, would constitute such an Event of Default has occurred and is continuing, or, in each case, if any such Event of Default or event has occurred and is continuing, specifying the nature and extent thereof; and

(d) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Tenant as Landlord may reasonably request, including, without limitation, prompt notice of any Event of Default or any event which, with the passage of time or the giving of notice, or both, would constitute an Event of Default and prompt notice of any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency which, if adversely determined, would materially adversely affect Tenant's or the Premises' business, operations, properties, assets or condition, financial or otherwise.

25.1.3 Licensing Information. Tenant shall promptly furnish to Landlord complete copies of all surveys, examinations, inspections, compliance certificates and similar reports of any kind issued to Tenant or its property manager by any governmental agencies or authorities having jurisdiction over the licensing of the operation of the Premises that are material to the Premises or their ownership or operation.

#### **SECTION 26**

26.1 Landlord's Right to Inspect and Show the Premises. Tenant shall permit Landlord and its authorized representatives, upon reasonable prior notice, to (a) inspect the Premises and (b) exhibit the same to prospective purchasers and lenders, and during the last twelve (12) months of the Term to prospective lessees or managers, in each instance during usual business hours and subject to any reasonable security, health, safety or confidentiality requirements of Tenant or any Legal Requirement or Insurance Requirement. Tenant shall cooperate with Landlord in exhibiting the Premises to prospective purchasers, lenders, lessees and managers. Additionally, Landlord shall have the right to make site visits to the Premises for purposes of inspecting the Premises from time to time, as Landlord may determine in its reasonable discretion.

#### **SECTION 27**

27.1 No Waiver. No failure by Landlord to insist upon the strict performance of any term hereof or to exercise any right, power or remedy hereunder and no acceptance of full or partial payment of Rent during the continuance of any default or Event of Default shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

#### **SECTION 28**

28.1 Remedies Cumulative. Each legal, equitable or contractual right, power and remedy of Landlord now or hereafter provided either in this Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by Landlord of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Landlord of any or all of such other rights, powers and remedies.

#### **SECTION 29**

29.1 Acceptance of Surrender. No surrender to Landlord of this Lease or of the Premises shall be valid or effective unless agreed to and accepted in writing by Landlord and no act by Landlord or any representative or agent of Landlord, other than such a written acceptance by Landlord, shall constitute an acceptance of any such surrender.

#### **SECTION 30**

30.1 No Merger. There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate; and (b) the fee estate in the Premises.

### SECTION 31

31.1 Conveyance by Landlord. Landlord may, without the consent or approval of Tenant, sell, transfer, assign, convey or otherwise dispose of the Premises, subject, however, to this Lease. If Landlord or any successor owner of the Premises shall sell, transfer, assign, convey or otherwise dispose of the Premises other than as security for a debt, Landlord or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Landlord with respect to the Premises under this Lease arising or accruing from and after the date of such sale, transfer, assignment or other disposition and all such future liabilities and obligations with respect to the Premises shall thereupon be binding upon such purchaser, grantee, assignee or transferee.

### SECTION 32

32.1 Quiet Enjoyment. So long as Tenant shall pay the Rent as the same becomes due and shall fully comply with all of the terms of this Lease and fully perform its obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the Term, free of any claim or other action by Landlord or anyone claiming by, through or under Landlord, but subject to all liens and encumbrances of record as of the Commencement Date or created thereafter as permitted hereunder or thereafter consented to by Tenant.

### SECTION 33

33.1 Notices. Any notice, consent, approval, demand or other communication required or permitted to be given hereunder (a "notice") must be in writing and may be served personally or by U.S. Mail. If served by U.S. Mail, it shall be addressed as follows:

If to Landlord:

\_\_\_\_\_  
c/o Global Medical REIT, Inc.  
4800 Montgomery Lane, Suite 450  
Bethesda, Maryland 20814  
Fax: 202 380 0891  
Attn: Alfonzo Leon  
Fax: 202 380 0891

with a copy to:

Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Attn: Ann Peldo Cargile  
Fax: 615-252-2373

If to Tenant: The Surgical Institute of Michigan, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_  
Fax: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn.: \_\_\_\_\_  
Fax: \_\_\_\_\_

Any notice which is personally served shall be effective upon the date of service; any notice given by U.S. Mail shall be deemed effectively given, if deposited in the United States Mail, registered or certified with return receipt requested, postage prepaid and addressed as provided above, on the date of receipt, refusal or non-delivery indicated on the return receipt. In lieu of notice by U.S. Mail, either party may send notices by facsimile or by a nationally recognized overnight courier service which provides written proof of delivery (such as UPS or Federal Express). Any notice sent by facsimile shall be effective upon confirmation of receipt in legible form, provided that an original of such facsimile is also sent to the intended addressee by another method approved in this Section, and any notice sent by a nationally recognized overnight courier shall be effective on the date of delivery to the party at its address specified above as set forth in the courier's delivery receipt. Either party may, by notice to the other from time to time in the manner herein provided, specify a different address for notice purposes.

**SECTION 34**

34.1 Appraiser. If it becomes necessary to determine the Fair Market Value of the Premises for any purpose of this Lease, the same shall be determined by an independent appraisal firm, in which one or more of the members, officers or principals of such firm are Members of the Appraisal Institute (or any successor organization thereto) and who are expert in valuation of facilities used for the Primary Intended Use, as may be reasonably selected by Landlord and approved by Tenant (the "Appraiser"). Landlord shall cause such Appraiser to determine the Fair Market Value of the Premises as of the relevant date (giving effect to the impact, if any, of inflation from the date of the Appraiser's decision to the relevant date) and the determination of such Appraiser shall be final and binding upon the parties. A written report of such Appraiser shall be delivered and addressed to each of Landlord and Tenant. To the extent consistent with sound appraisal practice as then existing at the time of any such appraisal, an appraisal of Fair Market Value for purposes of this Lease shall take into account and shall give appropriate consideration to all three customary methods of appraisal (i.e., the cost approach, the sales comparison approach and the income approach), and no one method or approach shall be deemed conclusive simply by reason of the nature of Landlord's business or because such approach may have been used for purposes of determining the fair market value of the Premises at the time of acquisition thereof by Landlord. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law. Tenant shall pay the fees and expenses of the Appraiser and all other costs and expenses incurred in connection with such appraisal. If Landlord and Tenant are unable to agree upon the Appraiser within fifteen (15) days after Landlord notifies Tenant of the identity of Landlord's selected Appraiser, then the following shall apply:

34.1.1 Within fifteen (15) days after Tenant's receipt of Landlord's selected Appraiser, Tenant shall by notice to Landlord appoint a second Appraiser meeting the requirements set forth above to act on its behalf. In such event, the Appraisers thus appointed shall, within sixty (60) days after the date of Landlord's notice of its originally selected Appraiser, proceed to determine the Fair Market Value of the Premises as of the relevant date (giving effect to the impact, if any, of inflation from the date of their decision to the relevant date); provided, however, that if Tenant fails to appoint its Appraiser within the time permitted, or if two Appraisers shall have been so appointed but only one such Appraiser shall have made such determination within such sixty (60) day period, then the determination of such sole Appraiser shall be final and binding upon the parties.

34.1.2 If the two Appraisers shall have been appointed and shall have made their determinations within the respective requisite periods set forth above and if the difference between the amounts so determined shall not exceed five percent (5%) of the lesser of such amounts, then the Fair Market Value of the Premises shall be an amount equal to average of the two appraisals. If the difference between the amounts so determined shall exceed five percent (5%) of the lesser of such amounts, then such two Appraisers shall have twenty (20) days to appoint a third Appraiser meeting the above requirements, but if such Appraisers fail to do so, then either party may request the CPR or AAA (as such terms are defined in Section 44.1.1) or any successor organization(s) thereto to appoint an Appraiser meeting the above requirements within twenty (20) days of such request, and both parties shall be bound by any appointment so made within such twenty (20) day period. If no such Appraiser shall have been appointed within such twenty (20) days or within one hundred five (105) days of the original request for a determination of Fair Market Value, whichever is earlier, either Landlord or Tenant may apply to any court having jurisdiction to have such appointment made by such court. Any Appraiser appointed by the original Appraisers, by the CPR or AAA or by such court shall be instructed to one of the two (2) the Fair Market Values of the Premises, as determined by the original two (2) Appraisers, as the Fair Market Value within thirty (30) days after appointment of such Appraiser.

34.1.3 The determination by the third Appraiser described above (if applicable), shall be final and binding upon Landlord and Tenant as the Fair Market Value of the Premises. This provision for determination by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and any determination hereunder shall be final and binding upon the parties except as otherwise provided by applicable law.

34.1.4 If the foregoing two (2) or three (3) Appraiser system is utilized, then Landlord and Tenant shall each pay the fees and expenses of the Appraiser appointed by it and each shall pay one-half (1/2) of the fees and expenses of any third Appraiser.



## SECTION 35

### 35.1 Intentionally Omitted.

## SECTION 36

36.1 Landlord May Grant Liens. Without the consent of Tenant, Landlord may, from time to time, directly or indirectly, create or otherwise cause to exist any Mortgage upon the Premises. This Lease is and at all times shall be subject and subordinate to any Mortgage that may now or hereafter affect the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof or any part(s) or portion(s) thereof. This clause shall be self-operative and no further instrument of subordination shall be required; *provided, however*, that in confirmation of such subordination, Tenant shall execute promptly any certificate or document that Landlord or any Mortgagee may request for such purposes. If, in connection with obtaining financing or refinancing for the Premises, a Mortgagee or prospective Mortgagee shall request reasonable modifications to this Lease as a condition to such financing or refinancing, Tenant shall not withhold or delay its consent thereto.

36.2 Attornment. If Landlord's interest in the Premises is sold, conveyed or terminated upon the exercise of any remedy provided for in any Mortgage, or otherwise by operation of law: (a) at the new owner's option, Tenant shall attorn to and recognize the new owner as Tenant's Landlord under this Lease or enter into a new lease substantially in the form of this Lease with the new owner, and Tenant shall take such actions to confirm the foregoing within ten (10) days after request; and (b) the new owner shall not be (i) liable for any act or omission of Landlord under this Lease occurring prior to such sale, conveyance or termination, (ii) subject to any offset, abatement or reduction of rent because of any default of Landlord under this Lease occurring prior to such sale, conveyance or termination, (iii) bound by any previous modification or amendment to this Lease or any previous prepayment of more than one month's rent, unless such modification, amendment or prepayment shall have been approved in writing by the Mortgagee or, in the case of such prepayment, such prepayment of rent has actually been delivered to such successor lessor, or (iv) liable for any security deposit or other collateral deposited or delivered to Landlord pursuant to this Lease unless such security deposit or other collateral has actually been delivered to such successor lessor.

### 36.3 Compliance with Mortgage Documents.

36.3.1 With respect to any Mortgages and any refinancing of any Mortgage, prior to the execution and delivery of any Mortgage Documents relating thereto, Landlord shall provide copies of the same to Tenant for Tenant's review. Tenant acknowledges that any Mortgage Documents executed by Landlord will impose certain obligations on the "Borrower" thereunder to comply with or cause the operator and/or lessee of the Premises to comply with all representations, covenants and warranties contained therein relating to the Premises and the operator and/or lessee thereof, including, covenants relating to (a) the maintenance and repair of the Premises; (b) maintenance and submission of financial records and accounts of the operation of the Premises and related financial and other information regarding the operator and/or lessee of the Premises; (c) the procurement of insurance policies with respect to the Premises; and (d) without limiting the foregoing, compliance with all Legal Requirements relating to the Premises and the operation thereof for their Primary Intended Use. For so long as any Mortgages encumber the Premises, or any portion thereof, Tenant covenants and agrees, at its sole cost and expense and for the express benefit of Landlord, to operate the Premises in strict compliance with the terms and conditions of the Mortgage Documents (other than payment of any indebtedness evidenced or secured thereby) and to timely perform all of the obligations of Landlord relating thereto, or to the extent that any of such duties and obligations may not properly be performed by Tenant, Tenant shall cooperate with and assist Landlord in the performance thereof (other than payment of any indebtedness evidenced or secured thereby); *provided, however*, that Landlord shall use good faith efforts to ensure that the duties and obligations imposed upon Tenant by the Mortgage Documents relating thereto and this Section entered into after the Commencement Date are not materially more burdensome to Tenant than Tenant's obligations to Landlord under this Lease

36.3.2 Without limiting Tenant's obligations pursuant to any other provision of this Section, during the Term of this Lease, Tenant acknowledges and agrees that, except as expressly provided elsewhere in this Lease, it shall undertake at Tenant's own cost and expense the performance of any and all repairs, replacements, capital improvements, maintenance items and all other requirements relating to the condition of the Premises which are required by any Mortgage Documents, and Tenant shall be solely responsible and hereby covenants to fund and maintain any and all impound, escrow or other reserve or similar accounts required under any Mortgage Documents as security for or otherwise relating to any operating or capital expenses of the Premises, including any capital repair or replacement reserves and/or impounds or escrow accounts for Impositions or insurance premiums (a "Mortgage Reserve Account"); *provided, however*, that any amount deposited by Tenant in any Mortgage Reserve Account pursuant to this Subsection shall be credited (a) in the case of any Impositions or insurance premiums, against any amounts otherwise required to be deposited or impounded by Tenant with Landlord pursuant to Section 4.4 hereof; and (b) in the case of any capital repair or replacement reserves, any amounts otherwise required to be deposited or impounded pursuant Section 35 hereof. During the Term of this Lease and provided that no Event of Default shall have occurred and be continuing hereunder, Tenant shall, subject to the terms and conditions of the Mortgage Reserve Account and the requirements of the Mortgagee(s) thereunder, have access to and the right to apply or use (including for reimbursement) to the same extent of Landlord all monies held in the Mortgage Reserve Account for the purposes and subject to the limitations for which the Mortgage Reserve Account is maintained, and Landlord agrees to reasonably cooperate with Tenant in connection therewith; *provided, however*, that notwithstanding terms for release or application of any amounts held in any Mortgage Reserve Account, the right of Tenant to apply or use (including for reimbursement) the same shall be subject further to the following: (i) in the case of any amounts deposited in a Mortgage Reserve Account on account of Impositions or taxes, the provisions of Section 4.4 as if such amounts were deposited or impounded directly with Landlord; and (ii) in the case of an amounts deposited in a Mortgage Reserve Account on account of any capital repairs or replacements, the provisions of Section 35.1 as if such amounts were deposited directly in the Replacement Reserve.

## SECTION 37

37.1 Hazardous Substances. Tenant shall not allow any Hazardous Substance to be located, stored, disposed of, released or discharged in, on, under or about the Premises or incorporated in the Premises; provided, however, that Hazardous Substances may be brought, kept, used or disposed of in, on or about the Premises in quantities and for purposes similar to those brought, kept, used or disposed of in, on or about similar facilities used for purposes similar to the Primary Intended Use and which are brought, kept, used and disposed of in strict compliance with Legal Requirements.

37.2 Notices. Tenant shall provide to Landlord promptly, and in any event immediately upon Tenant's receipt thereof, a copy of any notice or notification with respect to (a) any violation of a Legal Requirement relating to Hazardous Substances located in, on, or under the Premises; (b) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed or threatened with respect to the Premises; (c) any claim made or threatened by any Person against Tenant or the Premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Substance; and (d) any reports made to any federal, state or local environmental agency arising out of or in connection with any Hazardous Substance in, on, under or removed from the Premises, including any complaints, notices, warnings or asserted violations in connection therewith.

37.3 Remediation. If Tenant becomes aware of a violation of any Legal Requirement relating to any Hazardous Substance in, on, under or about the Premises or any adjacent property thereto, or if Tenant, Landlord or the Premises becomes subject to any order of any federal, state or local agency to repair, close, detoxify, decontaminate or otherwise remediate the Premises, Tenant shall immediately notify Landlord of such event and, at its sole cost and expense, cure such violation or effect such repair, closure, detoxification, decontamination or other remediation. If Tenant fails to implement and diligently pursue any such cure, repair, closure, detoxification, decontamination or other remediation, Landlord shall have the right, but not the obligation, to carry out such action and to recover from Tenant all of Landlord's costs and expenses incurred in connection therewith.

37.4 Indemnity. Tenant shall indemnify, defend, protect, save, hold harmless, and reimburse Landlord for, from and against any and all costs, losses (including, losses of use or economic benefit or diminution in value), liabilities, damages, assessments, lawsuits, deficiencies, demands, claims and expenses (collectively, "Environmental Costs") (whether or not arising out of third-party claims and regardless of whether liability without fault is imposed, or sought to be imposed, on Landlord) incurred in connection with, arising out of, resulting from or incident to, directly or indirectly, before or during the Term (a) the production, use, generation, storage, treatment, transporting, disposal, discharge, release or other handling or disposition of any Hazardous Substances from, in, on or about the Premises (collectively, "Handling"); (b) the presence of any Hazardous Substances in, on, under or about the Premises and (c) the violation of any Legal Requirements (including Environmental Laws). "Environmental Costs" include interest, costs of response, removal, remedial action, containment, cleanup, investigation, design, engineering and construction, damages (including actual, consequential and punitive damages) for personal injuries and for injury to, destruction of or loss of property or natural resources, relocation or replacement costs, penalties, fines, charges or expenses, attorney's fees, expert fees, consultation fees, and court costs, and all amounts paid in investigating, defending or settling any of the foregoing. Without limiting the scope or generality of the foregoing, Tenant expressly agrees to reimburse Landlord for any and all costs and expenses incurred by Landlord:

- 37.4.1 In investigating any and all matters relating to the Handling of any Hazardous Substances, in, on, from, under or about the Premises;
- 37.4.2 In bringing the Premises into compliance with all Legal Requirements; and
- 37.4.3 Removing, treating, storing, transporting, cleaning-up and/or disposing of any Hazardous Substances used, stored, generated, released or disposed of in, on, from, under or about the Premises or offsite.

If any claim is made hereunder, Tenant agrees to pay such claim promptly, and in any event to pay such claim within thirty (30) calendar days after receipt by Tenant of notice thereof. If any such claim is not so paid and Landlord is ultimately found or agrees to be responsible therefore, Tenant agrees also to pay interest on the amount paid from the date of the first notice of such claim, at the Overdue Rate.

37.5 Environmental Inspection. If Landlord reasonably believes the Premises to be in violation of applicable Environmental Laws, then (a) Landlord shall have the right, from time to time, and upon not less than five (5) days' written notice to Tenant, except in the case of an emergency in which event no notice shall be required, to conduct an inspection of the Premises and all Capital Additions to determine the existence or presence of Hazardous Substances on or about the Premises or any such Capital Additions; (b) Landlord shall have the right to enter and inspect the Premises and all Capital Additions, conduct any testing, sampling and analyses it deems necessary and shall have the right to inspect materials brought into the Premises or any such Capital Additions; (c) Landlord may retain such experts as it deems necessary or desirable to conduct the inspection, perform the tests referred to herein, and to prepare a written report in connection therewith; and (d) all costs and expenses incurred by Landlord under this Section shall be paid on demand as Additional Charges by Tenant to Landlord. Failure to conduct an environmental inspection or to detect unfavorable conditions if such inspection is conducted shall in no fashion be intended as a release of any liability for environmental conditions subsequently determined to be associated with or to have occurred during Tenant's tenancy. Tenant shall remain liable for any environmental condition related to or having occurred during its tenancy regardless of when such conditions are discovered and regardless of whether or not Landlord conducts an environmental inspection at the termination of this Lease. The obligations set forth in this Section shall survive the expiration or earlier termination of the Lease.

### SECTION 38

38.1 Memorandum of Lease. Landlord and Tenant shall, promptly upon the request of either, enter into one or more short form memoranda of this Lease, each in form suitable for recording under the laws of the applicable State. Tenant shall pay all costs and expenses of recording any such memoranda and shall fully cooperate with Landlord in removing from record any such memoranda upon the expiration or earlier termination of the Term.

## SECTION 39

39.1 Sale of Assets. Notwithstanding any other provision of this Lease, Landlord shall not be required to (a) sell or transfer the Premises, or any portion thereof, which is a real estate asset as defined in Section 856(c)(5)(B) of the Code, or functionally equivalent successor provision, of the Code, to Tenant if Landlord's counsel advises Landlord that such sale or transfer may not be a sale of property described in Section 857(b)(6)(C), or functionally equivalent successor provision, of the Code; or (b) sell or transfer the Premises, or any portion thereof, to Tenant if Landlord's counsel advises Landlord that such sale or transfer could result in an unacceptable amount of gross income for purposes of the Ninety-Five percent (95%) gross income test contained in Section 856(c)(2), or functionally equivalent successor provision, of the Code. If Tenant has the right or obligation to purchase the property pursuant to the terms herein, and if Landlord determines not to sell such property pursuant to the above sentence, then Tenant shall purchase such property, upon and subject to all applicable terms and conditions set forth in this Lease, including the provisions of Section 40.1, at such time as the transaction, upon the advice of Landlord's counsel, would be a sale of property (to the extent the Premises is a real estate asset) described in Section 857(b)(6)(C), or functionally equivalent successor provision, of the Code, and would not result in an unacceptable amount of gross income to Landlord for purposes of the Ninety-Five Percent (95%) gross income test contained in Section 856(c)(2), or functionally equivalent successor provision of the Code and until such time Tenant shall lease the Premises and all Capital Additions from Landlord for the then current Minimum Rent under this Lease.

## SECTION 40

### 40.1 [ OPTIONAL ]

#### Option to Purchase .

40.1.1 Exercise of Option. Provided no Event of Default, or event which, with notice or lapse of time or both, would constitute an Event of Default, has occurred and is continuing under this Lease, Landlord hereby grants to Tenant the option to purchase, on the Option Closing Date, all (but not less than all) of the Premises at the Option Repurchase Price. Subject to the foregoing, such option shall be exercised, if at all, upon written notice from Tenant to Landlord given not earlier than two hundred seventy (270) days prior to the Option Closing Date. Such option shall be a one-time option occurring on the Option Closing Date. In no event shall Tenant be entitled to exercise such option prior to or after the time period described above.

40.1.2 Closing Funds. On or before the Option Closing Date, Tenant shall pay to Landlord, in cash or other immediately available funds, the Option Repurchase Price plus any other sums payable by Tenant pursuant to the provisions hereof.

40.1.3 Close of Escrow. If Tenant purchases the Premises pursuant to this Section, Landlord shall, upon receipt from Tenant of the Option Repurchase Price, together with full payment of any unpaid Rent due and payable with respect to any period ending on or before the Option Purchase Date, deliver to Tenant an appropriate special or limited warranty deed conveying the entire interest of Landlord in and to the Premises to Tenant free and clear of all encumbrances other than (a) those that Tenant has agreed hereunder to pay or discharge; (b) those liens and encumbrances which were in effect on the date of conveyance of such Premises to Landlord; and (c) any other encumbrances permitted hereunder to be imposed on the Premises. All expenses of such conveyance, including the cost of title insurance, attorneys' fees incurred by Landlord in connection with such conveyance and release, transfer taxes and recording and escrow fees, shall be paid by Tenant.

40.1.4 Landlord's Election of 1031 Exchange. In the event that Tenant exercises its option to purchase the Premises as provided in this Section, Landlord may, elect to sell the Premises or its interests therein to Tenant in the form of a simultaneous, tax-deferred forward or reverse exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended ("1031 Exchange"). In the event that Landlord shall so elect, Landlord shall give written notice to Tenant of such election and Tenant shall fully cooperate with any such 1031 Exchange, including but not limited to executing and delivering additional documents reasonably requested or approved by Landlord; provided that Tenant shall not be required to incur any additional costs or liabilities or financial obligation as a consequence of any of the foregoing exchange transactions.

40.1.5 Right of First Refusal to Provide Financing. In the event Tenant desires to develop or recapitalize any portion of the Land, including but not limited to construction of medical office building(s), outpatient treatment facilities, expansions or additions to the existing facility, or parking garage(s) (an "Additional Facility"). Landlord (and/or its Affiliates) shall have a right of first refusal to provide such financing by an amendment of this Lease to provide such additional capital, or a separate, market-competitive financial instrument. In the event Tenant desires to construct the Additional Facility, Tenant shall seek bids (in the form of commitment letters or letters of intent) (each, a "Financing Bid") from third party lenders for such financing (which financing must be for a minimum term of five (5) years) and shall deliver to Landlord a copy of any Financing Bid that Tenant desires to accept. Within thirty (30) days after Landlord's receipt of such Financing Bid, Landlord may elect to provide the same financing to Tenant in the same amount, and upon the same terms, as are set forth in such Financing Bid. Such election shall be made if at all, by Landlord (or its Affiliates) providing written notice of such election to Tenant within said thirty (30) day period after Landlord's receipt of such Financing Bid. If Landlord makes such election in a timely manner, Landlord shall be entitled to provide such financing to Tenant. If Landlord fails to make such election in a timely manner, Landlord shall be deemed to have waived its right to provide such financing, and Tenant may obtain such financing from other sources. If Landlord does not elect to be the financing source for such Additional Facility, Tenant will ground lease the portion of the Land for such Additional Facility from Landlord at prevailing market rates that meet with Landlord's approval. All such Additional Facilities shall be subject to the reasonable approval of Landlord so as not to impair the operation of the premises for the Primary Intended Use.

#### SECTION 41

41.1 Authority. If Tenant is a corporation, limited liability company, trust, or partnership, Tenant and each individual executing this Lease on behalf of Tenant represent and warrant that each is duly authorized to execute and deliver this Lease on behalf of Tenant and shall concurrently with the execution and delivery of this Lease to Landlord deliver to Landlord evidence of such authority satisfactory to Landlord.

#### SECTION 42

42.1 Attorneys' Fees. If Landlord or Tenant brings an action or other proceeding (including an arbitration pursuant to Section 44) against the other to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Lease, or by reason of any breach or default hereunder or thereunder, the party prevailing in any such action or proceeding and any appeal thereupon shall be paid all of its costs and reasonable attorneys' fees incurred therein. In addition to the foregoing and other provisions of this Lease that specifically require Tenant to reimburse, pay or indemnify against Landlord's attorneys' fees, Tenant shall pay, as Additional Charges, all of Landlord's reasonable attorneys' fees incurred in connection with the administration or enforcement of this Lease, including attorneys' fees incurred in connection with Tenant's exercise of its option to purchase the Premises or the renewal of this Lease for any Extended Term, the review of any letters of credit, the review, negotiation or documentation of any subletting, assignment, or management arrangement or any consent requested in connection therewith, and the collection of past due Rent.

#### SECTION 43

43.1 Brokers. Tenant warrants that it has not had any contact or dealings with any Person or real estate broker (except for the Tenant's broker described in the Purchase Contract, which broker shall not be entitled to a separate commission upon the rents payable pursuant to this Lease) which would give rise to the payment of any fee or brokerage commission in connection with this Lease and Tenant shall indemnify, protect, hold harmless and defend Landlord from and against any liability with respect to any fee or brokerage commission arising out of any act or omission of Tenant. Landlord warrants that it has not had any contact or dealings with any Person or real estate broker which would give rise to the payment of any fee or brokerage commission in connection with this Lease, and Landlord shall indemnify, protect, hold harmless and defend Tenant from and against any liability with respect to any fee or brokerage commission arising out of any act or omission of Landlord.

## SECTION 44

### 44.1 Submission to Arbitration.

44.1.1 Except as provided below, any controversy, dispute or claim of whatsoever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this Lease, including any claim based on contract, tort or statute, shall be determined by final and binding, confidential arbitration in accordance with the then current CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration of Business Disputes (“CPR”), by a sole arbitrator mutually selected by Landlord and Tenant from among the CPR Panel of Distinguished Neutrals; provided, however, that if the CPR (or any successor organization thereto) no longer exists, then such arbitration shall be administered by the American Arbitration Association (“AAA”) in accordance with its then-existing Commercial Arbitration Rules, and the sole arbitrator shall be selected in accordance with such AAA rules. Any arbitration hereunder shall be governed by the United States Arbitration Act, 9 U.S.C. 1-16 (or any successor legislation thereto), and judgment upon the award rendered by the arbitrator may be entered by any state or federal court having jurisdiction thereof. If Landlord and Tenant are not able to agree on an arbitrator, then an arbitrator shall be appointed by the CPR or AAA upon application by either party. The cost of the arbitrator and the expenses relating to the arbitration (exclusive of legal fees) shall be borne equally by Landlord and Tenant unless otherwise specified in the award of the arbitrator. Such fees and costs paid or payable to the arbitrator shall be included in “costs and reasonable attorneys’ fees” for purposes of Section 42.1 and the arbitrator shall specifically have the power to award to the prevailing party pursuant to such Section 42.1 such party’s costs and expenses incurred in such arbitration, including fees and costs paid to the arbitrator.

44.1.2 The provisions of this Section shall not apply to:

(a) Any unlawful detainer or other similar summary or expedited proceeding for ejectment or recovery of possession of the Premises instituted by Landlord in accordance with applicable Legal Requirements as the result of an Event of Default or alleged Event of Default by Tenant pursuant to this Lease, and any compulsory counterclaim of Tenant with respect thereto. In addition, if permitted by applicable Legal Requirements, Landlord shall be entitled in connection with any such proceeding to seek any damages to which it is entitled at law, including those set forth in Section 16.

(b) Any specific controversy, dispute, question or issue as to which this Lease specifically provides another method of determining such controversy, dispute, question or issue and provides that a determination pursuant to such method is final and binding, unless both Landlord and Tenant agree in writing to waive such procedure and proceed instead pursuant to this Section.

(c) Any request or application for an order or decree granting any provisional or ancillary remedy (such as a temporary restraining order or injunction) with respect to any right or obligation of either party to this Lease, and any preliminary determination of the underlying controversy, dispute, question or issue as is required to determine whether or not to grant such relief. A final and binding determination of such underlying controversy, dispute, question or issue shall be made by an arbitration conducted pursuant to this Section after an appropriate transfer or reference to the arbitrator selected pursuant to this Section upon motion or application of either party hereto. Any ancillary or provisional relief which is granted pursuant to this clause (c) shall continue in effect pending an arbitration determination and entry of judgment thereon pursuant to this Section.



## SECTION 45

### 45.1 Miscellaneous.

45.1.1 Survival. Anything contained in this Lease to the contrary notwithstanding, all claims against, and liabilities and indemnities of, Tenant or Landlord arising prior to the expiration or earlier termination of the Term shall survive such expiration or termination. In addition, all claims against, and all liabilities and indemnities hereunder of, Tenant shall continue in full force and effect and in favor of the Landlord named herein and its successors and assigns, notwithstanding any conveyance of the Premises to Tenant.

45.1.2 Severability. If any term or provision of this Lease or any application thereof shall be held invalid or unenforceable, the remainder of this Lease and any other application of such term or provision shall not be affected thereby.

45.1.3 Non-Recourse. Tenant specifically agrees to look solely to the Premises (and any proceeds thereof) for recovery of any judgment from Landlord. It is specifically agreed that no constituent partner in Landlord or officer, director or employee of Landlord shall ever be personally liable for any such judgment or for the payment of any monetary obligation to Tenant. The provision contained in the foregoing sentence is not intended to, and shall not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or any action not involving the personal liability of Landlord. Furthermore, except as otherwise expressly provided herein, in no event shall Landlord ever be liable to Tenant for any indirect or consequential damages suffered by Tenant from whatever cause.

45.1.4 Licenses and Operation Transfer Agreements. Upon the expiration or earlier termination of the Term (unless the Premises has been purchased by Tenant), Tenant shall use its best efforts to transfer to Landlord or Landlord's nominee the Premises in a fully operational condition and shall cooperate with Landlord or Landlord's designee or nominee in connection with the processing by Landlord or Landlord's designee or nominee of any applications for all licenses, operating permits and other governmental authorization, all contracts, including contracts with governmental or quasi-governmental entities, business records, data, **[patient and resident]** records, and **[patient and resident]** trust accounts, which may be necessary or useful for the operation of the Premises; provided that the costs and expenses of any such transfer or the processing of any such application shall be paid by Landlord or Landlord's designee or nominee. Tenant shall not commit any act or be remiss in the undertaking of any act that would jeopardize the licensure or certification of the Premises, and Tenant shall comply with all reasonable requests for an orderly transfer of the same upon the expiration or early termination of the Term. Without limiting the generality of the foregoing, if requested by Landlord or a proposed replacement operator for the Premises, Tenant hereby agrees to enter into a reasonable operations transfer agreement with such replacement operator as is customary in the transfer to a new operator of the operations of a facility similar to the Premises. Tenant shall not unreasonably withhold, condition or delay its consent to entering into any interim subleases or management agreements as may be necessary to effectuate an early transfer of the operations of the Premises prior to the time that such replacement operator holds all licenses and permits from all applicable governmental authorities with jurisdiction necessary to operate the Premises for their Primary Intended Use. In addition, upon request, Tenant shall promptly deliver copies of all books and records relating to the Premises and operations thereon to Landlord or Landlord's designee or nominee. Tenant shall indemnify, defend, protect and hold harmless Landlord from and against any loss, damage, cost or expense incurred by Landlord or Landlord's designee or nominee in connection with the correction of any and all deficiencies of a physical nature identified by any governmental authority responsible for licensing the Premises in the course of any change of ownership inspection and audit.

45.1.5 Successors and Assigns. This Lease shall be binding upon Landlord and its successors and assigns and, subject to the provisions of Section 24.1, upon Tenant and its successors and assigns.

45.1.6 Termination Date. If this Lease is terminated by Landlord or Tenant under any provision hereof, and upon the expiration of the Term (collectively, the "termination date"), the following shall pertain:

(a) Tenant shall vacate and surrender the Premises and all Tenant's Personal Property to Landlord in the condition required by this Lease. Prior to such vacation and surrender, Tenant shall remove any items which Tenant is permitted or required to remove hereunder. Tenant shall, at Tenant's cost, repair any damage to such Premises and/or any Tenant's Personal Property caused by such vacation and/or removal of any items which Tenant is required or permitted hereunder to remove. Any items that Tenant is permitted to remove but which Tenant fails to remove prior to the surrender to Landlord of such Premises shall be deemed abandoned by Tenant, and Landlord may retain or dispose of the same as Landlord sees fit without claim by Tenant thereto or to any proceeds thereof. If Landlord elects to remove and dispose of any such items abandoned by Tenant, the cost of such removal and disposal shall be an Additional Charge payable by Tenant to Landlord upon demand.

(b) Without limiting any other provision of this Lease, upon any such termination or expiration of this Lease, the following shall pertain:

(i) Tenant agrees to defend, protect, indemnify, defend and hold harmless Landlord from and against any and all claims, costs, losses, expenses, damages, actions, and causes of action for which Tenant is responsible under this Lease (including Tenant's indemnification obligations under this Lease that accrue or have accrued on or before the termination date.

(ii) Tenant shall remain liable for the cost of all utilities used in or at the Premises through the termination date and accrued and unpaid, whether or not then billed, as of the termination date until full payment thereof by Tenant. Tenant shall obtain directly from the companies providing such services closing statements for all services rendered through the termination date and shall promptly pay the same. If any utility statement with respect to such Premises includes charges for a period partially prior to and partially subsequent to the termination date, such charges shall be prorated as between Landlord and Tenant, with Tenant responsible for the portion thereof (based upon a fraction the numerator of which is the number of days of service on such statement through the termination date and the denominator of which is the total number of days of service on such statement) through the termination date and Landlord shall be responsible for the balance. The party receiving any such statement which requires proration hereunder shall promptly pay such statement and the other party shall, within ten (10) days after receipt of a copy of such statement, remit to the party paying the statement any amount for which such other party is responsible hereunder.

(iii) Tenant shall remain responsible for any and all Impositions imposed against the Premises, the Personal Property with a lien date prior to the termination date (irrespective of the date of billing therefor) and for its pro rata share of any Impositions imposed in respect of the tax-fiscal period during which the Term terminates as provided in Section 4.1.6, and Tenant shall indemnify and hold Landlord harmless with respect to any claims for such Impositions or resulting from nonpayment thereof.

(iv) Tenant shall (A) execute all documents and take any actions reasonably necessary to cause the transfer to Landlord of all of Tenant's Personal Property not owned by Landlord, as provided in Section 6.3, in each case free of any encumbrance, as provided in Section 6.3, and (C) comply with its covenants set forth in Section 45.1.4.

(v) Tenant shall observe any covenant or agreement of Tenant in this Lease that is intended to or expressly provides that it shall survive the expiration or sooner termination of this Lease.

45.1.7 Governing Law. THIS LEASE WAS NEGOTIATED IN THE STATE IN WHICH THE PREMISES ARE LOCATED, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. ACCORDINGLY, IN ALL RESPECTS THIS LEASE (AND ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED (WITHOUT REGARD OF PRINCIPLES OR CONFLICTS OF LAW) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

45.1.8 Waiver of Trial by Jury. EACH OF LANDLORD AND TENANT ACKNOWLEDGES THAT IT HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHTS TO TRIAL BY JURY UNDER THE CONSTITUTION OF THE UNITED STATES, AND THE LAW OF THE STATE IN WHICH THE PREMISES ARE LOCATED. EACH OF LANDLORD AND TENANT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) OR (B) IN ANY MANNER CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF LANDLORD AND TENANT WITH RESPECT TO THIS LEASE (OR ANY AGREEMENT FORMED PURSUANT TO THE TERMS HEREOF) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; EACH OF LANDLORD AND TENANT HEREBY AGREES AND CONSENTS THAT, SUBJECT TO SECTION 44, ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY, AND THAT EITHER PARTY MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS CONCLUSIVE EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

45.1.9 Tenant Counterclaim and Equitable Remedies. Tenant hereby waives the right to interpose counterclaim (other than compulsory counterclaims) in any summary proceeding instituted by Landlord against Tenant in any court or in any action instituted by Landlord in any court for unpaid Rent under this Lease. In the event that Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval hereunder, or in any case where Landlord's reasonableness in exercising its judgment is in issue, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction, and in no event shall Tenant be entitled to any monetary damages for a breach of such covenant, and in no event shall Tenant claim or assert any claims for monetary damages in any action or by way of set-off defense or counterclaim, and Tenant hereby specifically waives the right to any monetary damages or other remedies in connection with any such claim or assertion.

45.1.10 Entire Agreement. This Lease, the Exhibits hereto and thereto and such other documents as are contemplated hereunder or thereunder, constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be changed or modified except by an agreement in writing signed by the parties. Landlord and Tenant hereby agree that all prior or contemporaneous oral understandings, agreements or negotiations relative to the leasing of the Premises are merged into and revoked by this Lease.

45.1.11 Headings. All titles and headings to sections, subsections, paragraphs or other divisions of this Lease are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other contents of such sections, subsections, paragraphs or other divisions, such other content being controlling as to the agreement among the parties hereto.

45.1.12 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be a valid and binding original, but all of which together shall constitute one and the same instrument. Executed counterparts of this Lease or any amendment hereto may be delivered by electronic or facsimile transmission.

45.1.13 Joint and Several. If more than one Person is the Tenant under this Lease, the liability of such Persons under this Lease shall be joint and several.

45.1.14 Interpretation. Both Landlord and Tenant have been represented by counsel and this Lease and every provision hereof has been freely and fairly negotiated. Consequently, all provisions of this Lease shall be interpreted according to their fair meaning and shall not be strictly construed against any party.

45.1.15 Time of Essence. Time is of the essence of this Lease and each provision hereof in which time of performance is established.

45.1.16 Further Assurances. The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

#### SECTION 46

46.1 Provisions Relating to Treatment of Lease. Landlord and Tenant hereby acknowledge and agree that this Lease shall be treated as an operating lease for all purposes and not as a synthetic lease, financing lease or loan, and that Landlord shall be entitled to all the benefits of ownership of the Premises, including depreciation for all federal, state and local tax purposes.

#### SECTION 47

47.1 Covenants with Respect to Operations and Fundamental Changes of Tenant. Tenant hereby represents, warrants and covenants as of the date hereof and until the expiration or earlier termination of this Lease, that Tenant:

47.1.1 will not (and will not permit any limited or general partner, member or shareholder to) amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation, bylaws, certificate of formation, limited liability company agreement, operating agreement, articles of organization, or other formation agreement or document, as applicable, in any material term or manner, or in a manner which adversely affects Tenant's existence as a single purpose entity without the prior written consent of Landlord;

47.1.2 to the full extent permitted by law, will not liquidate or dissolve (or suffer any liquidation or dissolution), or enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of, any entity without the prior written consent of Landlord;

47.1.3 has not and will not guarantee, pledge its assets for the benefit of, or otherwise become liable, on or in connection with, any obligation of any other Person without the prior written consent of Landlord;

47.1.4 will not own any asset other than (a) its leasehold interest in the applicable Premises; and (b) incidental personal property necessary for the operation of the applicable Premises without the prior written consent of Landlord;

47.1.5 is not engaged and will not engage, either directly or indirectly, in any business other than the lease, management and operation of the applicable Premises without the prior written consent of Landlord;

47.1.6 has maintained and will maintain an arm's length relationship with its Affiliates and its shareholders and any other parties furnishing services to it;

47.1.7 has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation) (other than (a) accounts payable incurred in the ordinary course of business; and (b) equipment leases not exceeding Fifty Thousand Dollars (\$50,000.00));

- 47.1.8 has not made and will not make any loans or advances to any third party (including any Affiliate);
- 47.1.9 has done or caused to be done and will do all things necessary to preserve its existence, and will observe all formalities applicable to it and will do all things necessary to maintain its identity as an entity separate and distinct from its Affiliates;
- 47.1.10 will conduct and operate its business in its own name and as presently conducted and operated;
- 47.1.11 will maintain financial statements, books and records and bank accounts separate from those of its Affiliates, including, without limitation, its general partners, shareholders or members, as applicable;
- 47.1.12 will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including, without limitation, any Affiliate or any partner, member or shareholder of Tenant);
- 47.1.13 will file its own tax returns (except to the extent it is treated as a division of another taxpayer for tax purposes) and pay any taxes so required to be paid under applicable law; provided, however, that so long as Tenant's tax liability and its income and expenses are readily determinable based on a review of Tenant's books and records, it may file consolidated tax returns (provided that Tenant shall maintain sufficient books and records to determine its separate tax obligations for any particular reporting periods);
- 47.1.14 will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- 47.1.15 will not commingle the funds and other assets of Tenant with those of any general partner, shareholder, member, Affiliate, principal or any other Person;
- 47.1.16 has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person;
- 47.1.17 does not and will not hold itself out to be responsible for the debts or obligations of any other Person;
- 47.1.18 will not hold title to Tenant's assets other than in Tenant's name;
- 47.1.19 will deposit all of its funds in checking accounts, savings accounts, time deposits or certificates of deposit in its own name or invest such funds in its own name;

47.1.20 will participate in the fair and reasonable allocation of any and all overhead expenses and other common expenses for facilities, goods or services provided to multiple entities;

47.1.21 without limiting any other provision of this Lease, has obtained and will maintain all consents, licenses, permits, approvals or authorizations from governmental authorities or third parties that are necessary for the operation of such Premises for its Primary Intended Use, including all health care licenses and permits.

[Signature pages follow]

“TENANT”

WITNESSED:

THE SURGICAL INSTITUTE OF MICHIGAN, LLC,  
a Delaware limited liability company

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness



IN WITNESS WHEREOF, the parties have caused this lease to be executed and attested by their respective officers thereunto duly authorized.

“LANDLORD”

WITNESSED:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**  
**LIST OF LANDLORD'S PERSONAL PROPERTY**

All machinery, equipment, furniture, furnishings, moveable walls or partitions, computers or trade fixtures or other tangible personal property that is owned by Landlord and is used or useful in Tenant's business on the Premises, excluding items, if any, included within the definition of Fixtures, but specifically including those items described in Exhibit C- 1 hereto.

**EXHIBIT B-1**  
**ITEMIZATION OF LANDLORD'S PERSONAL PROPERTY**

[To be mutually agreed upon by Landlord and Tenant prior to the Commencement Date. When agreed upon, the same shall be initialed by each of Landlord and Tenant and attached hereto as Exhibit C-1, and will thereafter form a part of this Lease. Failure of either Landlord or Tenant to prepare and/or initial such Exhibit C-1 shall not affect the definition of or what personal property constitutes Landlord's Personal Property in accordance with Exhibit C.]

**EXHIBIT C**  
**SUPPLEMENTAL COLLATERAL DESCRIPTION**

The following terms shall have the following meanings:

“ CHAMPUS ” means the Civilian Health and Medical Program of the Uniformed Service, a program of medical benefits covering retirees and dependents of members or former members of a uniformed service, provided, financed and supervised by the United States Department of Defense and established by 10 U.S.C. § 1071 et seq.

“ CHAMPUS Receivable ” means any account that arises from the provision of health care services (and any services or sales ancillary thereto) and that is payable pursuant to CHAMPUS.

“ CHAMPUS Regulations ” means collectively (a) all federal statutes (whether set forth in 10 U.S.C. § 1071 et seq. or elsewhere) affecting CHAMPUS and (b) all applicable provisions of all rules, regulations (including, but not limited to, 32 C.F.R. 199), manuals, orders and administrative, reimbursement and other guidelines of any governmental or regulatory authority promulgated pursuant to or in connection with any of such federal statutes, in each case as such statutes, rules, regulations, manuals, orders and guidelines may be supplemented, amended or otherwise modified from time to time.

“ Medicaid ” means the medical assistance program established by Title XIX of the Social Security Act, as amended.

“ Medicaid Receivable ” means any account that arises from the provision of health care services (and any services or sales ancillary thereto) and that is payable pursuant to an agreement entered into between a health care facility and a federal or state agency or other Person administering Medicaid, pursuant to which the health care facility agrees to provide services or merchandise for patients under Medicaid in accordance with the terms of such agreement and the Medicaid Regulations.

“ Medicaid Regulations ” means collectively (a) all federal statutes (whether set forth in Title XIX of the Social Security Act, as amended, or elsewhere) affecting Medicaid, (b) all applicable provisions of all rules, regulations, manuals, orders and administrative, reimbursement and other guidelines of any governmental or regulatory authority promulgated pursuant to or in connection with any of such federal statutes, (c) all state statutes and plans for medical assistance enacted in connection with any such federal statutes, rules, regulations, manuals, orders and guidelines, and (d) all applicable provisions of all rules, regulations, manuals, orders and administrative, reimbursement and other guidelines of any governmental or regulatory authority promulgated pursuant to or in connection with any of such state statutes, in each case as such statutes, rules, regulations, manuals, orders and guidelines may be supplemented, amended or otherwise modified from time to time.

“ Medicare ” means the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act, as amended.

“Medicare Receivable” means any account that arises from the provision of health care services (and any services or sales ancillary thereto) and that is payable pursuant to an agreement entered into between a health care facility and a federal or state agency or other Person administering Medicare, pursuant to which the health care facility agrees to provide services or merchandise for patients under Medicare in accordance with the terms of such agreement and the Medicare Regulations.

“Medicare Regulations” means collectively (a) all federal statutes (whether set forth in Title XVIII of the Social Security Act, as amended, or elsewhere) affecting Medicare and (b) all applicable provisions of all rules, regulations, manuals, orders and administrative, reimbursement and other guidelines of any governmental or regulatory authority promulgated pursuant to or in connection with any of such federal statutes, in each case as such statutes, rules, regulations, manuals, orders and guidelines may be supplemented, amended or otherwise modified from time to time.

Without limiting the provisions of Section 16.7 of the Lease, the “Collateral” includes, and Tenant hereby grants to Landlord a security interest in and to, all of Tenant’s right, title and interest in the following described property and property rights (and types of property) that are located on, attached to or under or used or useful in connection with all or any part of the Land and/or any of the Facilities located or to be located thereon, both presently existing and hereafter acquired or arising, wherever located, and all replacements and additions thereto:

(1) All inventory in all of its forms, including, but not limited to, all central supplies, linen, housekeeping and other supplies (collectively, the “Inventory”).

(2) All accounts, accounts receivable (regardless of source payment), notes, drafts, acceptances, instruments, chattel paper, choses in action, documents, deposit accounts, general intangibles, intangible personal property, things in action, contract rights and other rights to receive the payment of money and other consideration of any kind, however evidenced or designated, whether now or hereafter existing and whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any of the foregoing (collectively, the “Receivables”); without limiting the foregoing, the term “Receivables” shall include CHAMPUS Receivables, Medicaid Receivables and Medicare Receivables.

(3) All beds, linens, towels, televisions, carpeting, draperies and blinds, telephones, computers, lamps, medical and rehabilitation equipment, wheel chairs, laboratory equipment, diagnostic equipment, furniture, furnishings, food service equipment, restaurant and kitchen equipment, medical equipment, heating and air conditioning equipment, fixtures, other equipment, machinery and tangible personal property of every description and kind, and all replacements or substitutions thereto owned by Tenant, and all parts thereof and all accessions thereto; provided, however, that with respect to any items that are leased and not owned by Tenant, the Equipment shall include the leasehold interest only of Tenant together with any options to purchase any of said items and any additional or greater rights with respect to such items that Tenant may hereafter acquire (collectively the “Equipment”).

(4) To the full extent transferable, all Certificates of Need, licenses, permits, registrations, certificates, consents, accreditations, approvals and franchises owned by Tenant and necessary to operate the Facilities, subject only to necessary governmental approval.

(5) All plans and surveys, including, without limitation, all “as built” plans, plans relating to utilities, easements and roads, plats, specifications, engineers’ drawings, architectural renderings and similar items owned by Tenant.

(6) Investment Property as defined in the Uniform Commercial Code as adopted in the State of Virginia (the “Code”).

(7) All ledger sheets, records (including but not limited to **[patient and resident records]** ), files, data, printouts, data bases, programs and books of account relating to any of the foregoing items, whether in the form of writings, photographs, microfilm, microfiche or electronic media, together with all computer software necessary to access, use, create, maintain or process the foregoing on electronic media (collectively the “Documentation”).

(8) All proceeds of any and all of the foregoing items, including proceeds that constitute property of the types described as Collateral, and, to the extent not otherwise included, all (a) payments under insurance (whether or not Landlord is the loss payee thereof), or any indemnity, warranty or guaranty payable by reason of loss to or otherwise with respect to any of the foregoing items and (b) cash;

**EXHIBIT D**  
**LETTER OF CREDIT FORM**

IRREVOCABLE STANDBY LETTER OF CREDIT

LETTER OF CREDIT NO.: \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_

ISSUING BANK: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

FACSIMILE NO.: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_, 20\_\_, AT OUR COUNTERS

AMOUNT: \_\_\_\_\_ US DOLLARS (\$ \_\_\_\_\_)

BENEFICIARY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

FACSIMILE NO.: \_\_\_\_\_

WE HEREBY ESTABLISH IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ IN THE AMOUNT OF \_\_\_\_\_ US DOLLARS (\$ \_\_\_\_\_) FOR THE ACCOUNT OF [TENANT]. DRAW(S) UP TO THE MAXIMUM AGGREGATE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT, ARE PAYABLE BY US WITHIN TWO BUSINESS DAYS AFTER OUR RECEIPT ON OR PRIOR TO OUR CLOSE OF BUSINESS ON THE EXPIRATION DATE, OF ONE OR MORE DRAW STATEMENTS PURPORTEDLY SIGNED BY YOUR AUTHORIZED OFFICER OR REPRESENTATIVE OR, IF THIS LETTER OF CREDIT IS TRANSFERRED, BY AN AUTHORIZED OFFICER OR REPRESENTATIVE OF ANY TRANSFEREE BENEFICIARY. EACH DRAW STATEMENT SHOULD BE ADDRESSED TO US, REFERENCE THIS LETTER OF CREDIT BY NUMBER, SPECIFY THE AMOUNT OF THE DRAW REQUEST, SET FORTH WIRE TRANSFER INSTRUCTIONS AND CONTAIN, IN SUBSTANCE, THE FOLLOWING STATEMENT (WITH THE AMOUNT OF THE DRAW REQUEST AND WIRE TRANSFER INSTRUCTIONS COMPLETED): "BENEFICIARY HEREBY DRAWS ON LETTER OF CREDIT NO. \_\_\_\_\_ IN THE AMOUNT OF \$ \_\_\_\_\_. FUNDS IN RESPECT OF THIS DRAW REQUEST SHOULD BE WIRE TRANSFERRED TO \_\_\_\_\_ BANK, ROUTING NO. \_\_\_\_\_, ACCOUNT NO. \_\_\_\_\_ FOR CREDIT TO THE ACCOUNT OF \_\_\_\_\_." NO FURTHER INFORMATION SHALL BE REQUIRED ON SUCH DEMAND.



THIS LETTER OF CREDIT SHALL INITIALLY EXPIRE ON \_\_\_\_\_, 20\_\_\_\_. SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT NOTICE OR AMENDMENT FOR PERIODS OF ONE (1) YEAR, BUT IN NO EVENT LATER THAN \_\_\_\_\_, 20\_\_\_\_, UNLESS AT LEAST SIXTY (60) DAYS BEFORE ANY EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE AT YOUR ADDRESS ABOVE (OR ANY OTHER ADDRESS OF WHICH YOU PROVIDE US NOTICE AT OUR ADDRESS SET FORTH ABOVE), THAT THIS LETTER OF CREDIT IS NOT EXTENDED BEYOND THE CURRENT EXPIRATION DATE. UPON RECEIPT BY YOU OF SUCH NOTIFICATION, YOU MAY DRAW ON THIS LETTER OF CREDIT AS SET FORTH ABOVE, PROVIDED THAT THE AMOUNT OF YOUR DRAW SHALL NOT EXCEED THE TOTAL AMOUNT AVAILABLE FOR PAYMENT HEREUNDER.

DRAW REQUESTS NEED NOT BE PRESENTED AS ORIGINALS AND MAY BE SUBMITTED IN PERSON, BY COURIER, BY MAIL OR BY FACSIMILE TO OUR ADDRESS OR FACSIMILE NUMBER STATED ABOVE.

THIS LETTER OF CREDIT IS TRANSFERABLE ONE OR MORE TIMES IN WHOLE BUT NOT IN PART UPON OUR RECEIPT OF A TRANSFER REQUEST IN THE FORM ATTACHED AS EXHIBIT A, SIGNED BY THE THEN CURRENT BENEFICIARY. THE CHARGE FOR EACH TRANSFER IS LIMITED TO \$100.

THIS LETTER OF CREDIT IS GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES 1998 (ICC PUBLICATION NO. 590), EXCEPT TO THE EXTENT THE SAME WOULD BE INCONSISTENT WITH THE EXPRESS PROVISIONS HEREOF. WE HEREBY WAIVE AND DISCLAIM RIGHTS OF SUBROGATION IN RESPECT OF ANY DRAW MADE BY YOU, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR OTHERWISE.

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AUTHORIZED OFFICER

EXHIBIT A

Transfer Form

**EXHIBIT E**  
**INTENTIONALLY OMITTED**

**LEASE GUARANTY**

THIS GUARANTY OF LEASE is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by SURGICAL MANAGEMENT PROFESSIONALS, LLC, a South Dakota limited liability company (the "Guarantor"), in favor of [ **AFFILIATE OF GLOBAL MEDICAL REIT, INC.**], a Delaware limited liability company (the "Landlord").

WITNESSETH:

WHEREAS, the Guarantor desires to induce Landlord to enter into a lease with THE SURGICAL INSTITUTE OF MICHIGAN, LLC, a Delaware limited liability company (the "Tenant"), with respect to certain premises, consisting of \_\_\_\_\_ feet located at \_\_\_\_\_ (the "Lease"), such Lease being of even date herewith; and

WHEREAS, the entering into of the Lease by Landlord and Tenant will be of direct pecuniary advantage to Guarantor;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) paid by Landlord to Guarantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby covenants and agrees with the Landlord, as follows:

1. The Guarantor, as primary obligor, hereby (a) unconditionally guarantees the prompt, punctual and full payment of the rent and all other sums due under the Lease in accordance with the terms and tenor thereof as completely and effectually as if such guarantee had been made by Guarantor on the face of the Lease; (b) unconditionally guarantees the prompt, punctual and full performance by Tenant of any and all of the agreements, covenants, terms and conditions agreed to be performed by Tenant under the Lease; and (c) covenants and agrees that in the event of default in payments or any default in the performance of any of the terms, covenants or conditions thereof, the Guarantor will promptly make or cause such payment to be made or will perform or cause to be performed all such terms, covenants and conditions, irrespective of any invalidity therein, the unenforceability thereof or the insufficiency, invalidity or unenforceability of any security therefor.

2. The Guarantor does hereby further agree that Guarantor's liability hereunder as Guarantor shall not be prejudiced, impaired or affected by any of the following, whether with or without its knowledge or consent: (a) any renewal or extension of the time of payment of the rent or other sums due under the Lease or of the time for performance by any party obligated under the Lease; (b) by any forbearance or delay in enforcing the payment of the rent or other sums due under the Lease or enforcing the obligations of any party to the Lease; (c) by any modification, addition or alteration of the terms, tenor or provisions of the Lease or (d) by the release of any other collateral Landlord may hold for the obligations of Tenant.

3. On or before the 15th day of each calendar quarter during the term hereof, Guarantor shall submit to Landlord a current financial statement in form and content satisfactory to Landlord indicating Guarantor's current net worth. Guarantor shall submit substantiating documentation to Landlord upon request. In addition, within thirty (30) days following the expiration of Guarantor's fiscal year, and no less frequently than once every twelve (12) calendar months, Guarantor shall submit to Landlord an annual audited financial statement prepared in accordance with generally accepted accounting principles consistently applied and certified as true and correct by Guarantor's chief financial officer. Guarantor acknowledges that Landlord may require Tenant to post additional collateral for its obligations under the Lease in the event of a decline in the financial condition of Guarantor and that it shall be a default under the Lease entitling Landlord to call upon this Guaranty if Tenant shall fail to post such additional collateral or if Guarantor files a petition in bankruptcy, is adjudged a bankrupt, has a receiver appointed for its assets, makes an assignment for the benefit of creditors, or otherwise takes advantage of any debtor relief proceedings available under federal, state or local law.

4. This Guaranty is and shall be construed to be an irrevocable, absolute, unlimited and continuing guaranty of payment and performance, and the liability of Guarantor hereunder and Landlord's right to pursue Guarantor shall not be affected, delayed, limited, impaired or discharged, in whole or in part, by reason of an extension or discharge that may be granted to the Tenant by any court in proceedings under the Bankruptcy Code, or any amendments thereof, or under any other state or other federal statutes. The Guarantor expressly waives the benefits of any extension or discharge granted to Tenant. This Guaranty shall survive notwithstanding the expiration or termination of the Lease with respect to any sums previously received from Tenant or from Guarantor that Landlord may be required to repay in such proceeding.

5. The Landlord shall have the right to proceed against Guarantor immediately upon any default by the Tenant in payment or performance of any obligation under the Lease, and Landlord shall not be required to take any action or proceedings of any kind against the Tenant or any other party liable for the Tenant's debts or obligations or to look to any other collateral Landlord may have for the obligations of Tenant under the Lease. Should Landlord desire to proceed against Guarantor and Tenant in the same action, Guarantor agrees that Guarantor may be joined in any such action against Tenant and that recovery may be had against Guarantor to the extent of Guarantor's liability in such action.

6. If Landlord calls upon Guarantor to honor, pay or perform all or part of any obligation of the Tenant, and Guarantor fails to honor such demand, the debt or obligation owed the Landlord pursuant to this Guaranty shall bear interest at the Interest Rate set forth in the Lease. In case Guarantor fails or refuses to honor this Guaranty, the Landlord is hereby authorized to utilize such legal means as Landlord deems proper to enforce this Guaranty, through the efforts of its employees, agents, or attorneys, and Guarantor shall pay all costs of enforcement and collection, including but not limited to court costs, reasonable attorneys' fees, depositions and expert witnesses.

7. If a corporation, partnership, limited liability company or other entity is executing this Guaranty, the Guarantor and the individual executing this Guaranty on behalf of the Guarantor personally warrant that execution and delivery hereof and the assumption of liability hereunder have been in all respects authorized and approved by proper action on the part of the Guarantor, that the Guarantor has full authority and power to execute this Guaranty, that the Guarantor is duly formed and in good standing in the state of its formation and that the Guarantor is authorized to do business in the state in which the premises subject to the Lease are located.

8. The Guaranty shall be binding upon and inure to the benefit of the heirs, personal and legal representatives, successors and assigns of Guarantor and the Landlord. The Landlord shall have the right to assign and transfer this Guaranty to any assignee of the Lease, and this Guaranty shall be deemed to run with the Lease. The Landlord's successors and assigns shall have the rights, elections, remedies, and privileges, discretions and powers granted hereunder to the Landlord and shall have the right to rely upon this Guaranty and to enter into and continue other and additional transactions with the Tenant in reliance hereon, in the same manner and with the same force and effect as if they were specifically named as the Landlord herein.

9. This Guaranty shall constitute a Michigan contract, and be governed by the laws of the State of Michigan. The undersigned hereby voluntarily submits to the jurisdiction of any court in the State of Michigan having jurisdiction over the subject matter of this instrument, and hereby constitutes the Secretary of State of the State of Michigan as its agent for service of process in connection with any suit or proceeding arising hereunder.

10. Failure of the Landlord to insist in any one or more instances upon strict performance of any one or more of the provisions of this Guaranty or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

11. The Landlord shall have the right, without affecting Guarantor's obligations hereunder, and without demand or notice, to collect first from the Tenant, and to exercise its rights of setoff against any asset of the Tenant, and to otherwise pursue and collect from the Tenant any other indebtedness of the Tenant to the Landlord not covered by this Guaranty, and any sums received from the Tenant, whether by voluntary payment, offset, or collection efforts, may be applied by the Landlord as it sees fit, including the application of all such amounts to other debts not guaranteed by Guarantor. Subrogation rights or any other rights of any kind of Guarantor against the Tenant, if any, shall not become available until all indebtednesses and obligations of the Tenant to the Landlord are paid in full. This Guaranty shall survive the expiration or termination of the Lease to the extent the obligations of the Tenant thereunder likewise survive.

12. Landlord may proceed against any collateral securing the obligations of Tenant and against parties liable therefor in such order as it may elect, and Guarantor shall not be entitled to require Landlord to marshal assets. The benefit of any rule of law or equity to the contrary is hereby expressly waived.

13. Landlord may, in its sole discretion and with or without consideration, release any collateral securing the obligations of Tenant or release any party liable therefor. The defenses of impairment of collateral and impairment of recourse and any requirement of diligence on Landlord's part in perfecting or enforcing any lien granted in the Lease or in collecting the obligations under the Lease are hereby waived.

14. Within ten (10) days after request therefor by Landlord, or in the event of any sale, assignment or hypothecation of the property of which the premises leased by Tenant are a part, Guarantor agrees to deliver in recordable form, an estoppel certificate to any proposed ground lessor, mortgagee or purchaser, or to Landlord, signed by Guarantor certifying that this Guaranty is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), that there are no defenses or offsets thereto (or stating those claimed by Guarantor), and such other matters as may be requested. If Guarantor fails to deliver such certificate as required herein, Guarantor shall be deemed to have conclusively agreed to and be bound by all matters set forth in the certificate as submitted by the requesting party.

15. Guarantor hereby waives any requirement of presentment, protest, notice of dishonor, notice of default, demand, and all other actions or notices that may be required on Landlord's part in connection with the obligations guaranteed hereby.

16. GUARANTOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY ACTION, PROCEEDING OR COUNTERCLAIM WITH RESPECT TO THIS GUARANTY.

17. In the event any portion of this Guaranty shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Guaranty, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Guaranty.

18. If there is more than one Guarantor, the obligations of each Guarantor under this Guaranty are and will be joint and several. Landlord may release any one or more Guarantors at any time without notice to or consent by the remaining Guarantors and without affecting the continuing liability of the remaining Guarantors. Landlord shall not be required to pursue any remedy against any other person or party which shall have executed any agreement of guaranty with Landlord. Landlord may elect, in its sole and absolute discretion, to seek to recover from any one or more of such persons or parties and no such election shall constitute any defense or any other bar or limitation to the enforcement of Guarantors' obligations set forth herein.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first set forth above.

**WITNESS:**

**GUARANTOR:**

SURGICAL MANAGEMENT PROFESSIONALS, LLC, a South Dakota  
limited liability company

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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_