
Section 1: 8-K (8-K - CREDIT FACILITY RECAST)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): May 23, 2018

VEREIT, INC. VEREIT OPERATING PARTNERSHIP, L.P.

(Exact name of Registrant as specified in its charter)

Maryland	001-35263	45-2482685
Delaware	333-197780	45-1255683
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

**2325 E. Camelback Road, Suite 1100
Phoenix, AZ 85016**

(Address of principal executive offices, including zip code)

(800) 606-3610

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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:

- 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

VEREIT, Inc.

Emerging growth company

VEREIT Operating Partnership, L.P.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or

revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

VEREIT, Inc. VEREIT Operating Partnership, L.P.

Item 1.01. Entry into a Material Agreement.

On May 23, 2018, the operating partnership of VEREIT, Inc., a Maryland corporation (the “Company”), VEREIT Operating Partnership, L.P., a Delaware limited partnership (the “Operating Partnership”), entered into a \$2.9 billion credit agreement dated as of May 23, 2018 (the “Credit Agreement”) by and among the Operating Partnership, as borrower, the Company, as guarantor, the financial institutions from time to time party thereto as lenders, Wells Fargo Bank, National Association, as the administrative agent, Wells Fargo Securities, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as joint lead arrangers and joint bookrunners, and Barclays Bank PLC, BMO Capital Markets Corp., Capital One, N.A., Citibank, N.A., JPMorgan Chase Bank, N.A. and U.S. Bank National Association, as joint lead arrangers. The Credit Agreement provides for a \$900.0 million unsecured delayed-draw term loan facility (the “Term Facility”) and a \$2.0 billion unsecured revolving credit facility (the “Revolving Facility”, together with the Term Facility, the “Credit Facilities”). The Company has guaranteed the obligations of the Operating Partnership in respect of the Credit Facilities.

Loans under the Term Facility generally bear interest at an annual rate of LIBOR plus 0.85% to 1.75% or Base Rate plus 0.00% to 0.75% (in each case, based upon the Company’s then current credit rating). Loans under the Revolving Facility generally bear interest at an annual rate of LIBOR plus 0.775% to 1.55% or Base Rate plus 0.00% to 0.55% (in each case, based upon the Company’s then current credit rating). “Base Rate” is the highest of the prime rate, the federal funds rate plus 0.50% or a floating rate based on one month LIBOR plus 1.0%, determined on a daily basis. Loans will initially be priced with an applicable margin of 1.35%, in the case of LIBOR loans under the Term Facility, and 1.20%, in the case of LIBOR loans under the Revolving Facility and 0.35%, in the case of Base Rate loans under the Term Facility, and 0.20%, in the case of Base Rate loans under the Revolving Facility. In addition, the Credit Agreement provides the flexibility for interest rate auctions, pursuant to which, at the Operating Partnership’s election, the Operating Partnership may request that lenders make competitive bids to provide revolving loans, which competitive bids may be at pricing levels that differ from the foregoing interest rates.

Interest on Base Rate loans outstanding from time to time under the Credit Facilities is payable quarterly in arrears. Interest on LIBOR loans outstanding from time to time under the Credit Facilities is payable on the last day of the applicable interest period, subject to customary exceptions in the case of LIBOR loans with an interest period of more than three months. Upon the occurrence of an event of default, at the election of the majority of the lenders (or automatically upon a bankruptcy event of default with respect to the Company or the Operating Partnership), the commitments of the lenders under the Credit Facilities will terminate, and payment of any unpaid amounts in respect of the Credit Facilities will be accelerated. The Term Facility is available through February 23, 2019 for up to four borrowings of delayed draw term loans. Any term loans outstanding under the Term Facility mature on May 23, 2023. Commitments under the Revolving Facility terminate, and any revolving loans outstanding thereunder mature, on May 23, 2022, unless extended in accordance with the terms of the Credit Agreement. The Credit Agreement provides for two six-month extension options with respect to the Revolving Facility, exercisable at the Operating Partnership’s election and subject to certain customary conditions, as well as certain customary “amend and extend” provisions.

The Credit Agreement contains various customary covenants, including, without limitation, financial maintenance covenants with respect to maximum consolidated leverage ratio, minimum fixed charge coverage ratio, maximum secured leverage ratio, maximum unencumbered leverage ratio and minimum unencumbered interest coverage ratio. The Credit Agreement also includes customary restrictions on, among others, liens, negative pledges, intercompany transfers, fundamental changes, transactions with affiliates and restricted payments. The Credit Agreement also contains customary events of default.

The foregoing description does not purport to be complete and is subject to, and qualified in its entirety by, reference to the full text of the Credit Agreement, which is filed herewith as Exhibit 10.1 and incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

On May 23, 2018, in connection with the entrance into the Credit Agreement, the Operating Partnership repaid all of the outstanding obligations under that certain Amended and Restated Credit Agreement dated as of June 30, 2014 (as amended, the “Existing Credit Agreement”) by and among the Operating Partnership, as borrower, the Company, as guarantor, the financial institutions from time to time party thereto as lenders and Wells Fargo Bank, National Association, as administrative agent, and the Existing Credit Agreement was terminated. The Existing Credit Agreement provided for a \$2.3 billion revolving credit facility and was scheduled to terminate on June 30, 2018.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of Registrant.

The information provided in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	<u>Credit Agreement dated as of May 23, 2018 by and among VEREIT Operating Partnership, L.P., VEREIT, Inc., the financial institutions from time to time party thereto as lenders and Wells Fargo Bank, National Association, as the administrative agent.</u>

SIGNATURES

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

VEREIT, INC.

By: /s/ Michael J. Bartolotta
Name: Michael J. Bartolotta
Title: Executive Vice President and Chief Financial Officer

VEREIT OPERATING PARTNERSHIP, L.P.

By: VEREIT, Inc., its sole general partner

By: /s/ Michael J. Bartolotta
Name: Michael J. Bartolotta
Title: Executive Vice President and Chief Financial Officer

Date: May 23, 2018

[\(Back To Top\)](#)

Section 2: EX-10.1 (EXHIBIT 10.1 VEREIT RECASTED CREDIT AGREEMENT)

The Wells Fargo logo, consisting of the words "WELLS" and "FARGO" stacked vertically in a yellow, serif font, set against a red square background.

EXECUTION VERSION

Loan Number: 1008843

Revolving Credit CUSIP Number: [_____]

Term Loan CUSIP Number: [_____]

CREDIT AGREEMENT

Dated as of May 23, 2018

by and among

VEREIT OPERATING PARTNERSHIP, L.P.,
as Borrower,

VEREIT, INC.,
as Parent,

THE FINANCIAL INSTITUTIONS FROM TIME TO TIME PARTY HERETO,
as Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

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

BARCLAYS BANK PLC,
BMO CAPITAL MARKETS CORP.
CAPITAL ONE, N.A.,
CITIBANK, N.A.,
JPMORGAN CHASE BANK, N.A. and
U.S. BANK NATIONAL ASSOCIATION,
as Joint Lead Arrangers,

BANK OF AMERICA, N.A.,
as Syndication Agent,

and

BARCLAYS BANK PLC, BMO HARRIS BANK N.A., CAPITAL ONE, N.A., CITIBANK, N.A., JPMORGAN CHASE
BANK, N.A., U.S. BANK NATIONAL ASSOCIATION, MIZUHO BANK, LTD., REGIONS BANK and SUMITOMO
MITSUI BANKING CORPORATION,
as Documentation Agents

TABLE OF CONTENTS

ARTICLE I.	DEFINITIONS	1
Section 1.1	Definitions	1
Section 1.2	General; References to Central Time	35
Section 1.3	Financial Attributes of Non-Wholly Owned Subsidiaries	35
ARTICLE II.	CREDIT FACILITY	36
Section 2.1	Revolving Loans	36
Section 2.2	Term Loans	37
Section 2.3	Bid Rate Loans	38
Section 2.4	Letters of Credit	41
Section 2.5	Swingline Loans	46
Section 2.6	Rates and Payment of Interest on Loans	48
Section 2.7	Number of Interest Periods	49
Section 2.8	Repayment of Loans	49
Section 2.9	Prepayments	50
Section 2.10	Continuation	50
Section 2.11	Conversion	51
Section 2.12	Notes	51
Section 2.13	Voluntary Reductions of the Revolving Commitments and Term Loan Commitments	52
Section 2.14	Extension Option	53
Section 2.15	Expiration Date of Letters of Credit Past Revolving Commitment Termination	53
Section 2.16	Amount Limitations	54
Section 2.17	Increase in Revolving Commitments; Incremental Term Loans	54
Section 2.18	Funds Transfer Disbursements	56
Section 2.19	[Intentionally Omitted]	56
Section 2.20	Judgment Currency	56
ARTICLE III.	PAYMENTS, FEES AND OTHER GENERAL PROVISIONS	56
Section 3.1	Payments	56
Section 3.2	Pro Rata Treatment	57
Section 3.3	Sharing of Payments, Etc	58
Section 3.4	Several Obligations	59
Section 3.5	Fees	59
Section 3.6	Computations	60
Section 3.7	Usury	60
Section 3.8	Statements of Account	61
Section 3.9	Defaulting Lenders	61
Section 3.10	Taxes	65
ARTICLE IV.	[INTENTIONALLY OMITTED]	68
ARTICLE V.	YIELD PROTECTION, ETC.	68
Section 5.1	Additional Costs; Capital Adequacy	68
Section 5.2	Suspension of LIBOR Loans and LIBOR Margin Loans	71
Section 5.3	Illegality	72
Section 5.4	Compensation	72

Section 5.5	Treatment of Affected Loans	73
Section 5.6	Affected Lenders	74
Section 5.7	Change of Lending Office	74
ARTICLE VI.	CONDITIONS PRECEDENT	74
Section 6.1	Initial Conditions Precedent	74
Section 6.2	Section 6.2. Conditions Precedent to All Loans and Letters of Credit	76
ARTICLE VII.	REPRESENTATIONS AND WARRANTIES	77
Section 7.1	Representations and Warranties	77
Section 7.2	Survival of Representations and Warranties, Etc	82
ARTICLE VIII.	AFFIRMATIVE COVENANTS	83
Section 8.1	Preservation of Existence and Similar Matters	83
Section 8.2	Compliance with Applicable Law	83
Section 8.3	Maintenance of Property	83
Section 8.4	Conduct of Business	83
Section 8.5	Insurance	83
Section 8.6	Payment of Taxes and Claims	84
Section 8.7	Books and Records; Inspections	84
Section 8.8	Use of Proceeds	85
Section 8.9	Environmental Matters	85
Section 8.10	[Intentionally Omitted]	85
Section 8.11	[Intentionally Omitted]	85
Section 8.12	REIT Status	85
Section 8.13	Exchange Listing	85
Section 8.14	Guarantors	86
ARTICLE IX.	INFORMATION	86
Section 9.1	Quarterly Financial Statements	86
Section 9.2	Year End Statements	86
Section 9.3	Compliance Certificate	87
Section 9.4	Other Information	87
Section 9.5	Electronic Delivery of Certain Information	89
Section 9.6	Public/Private Information	89
Section 9.7	USA Patriot Act Notice; Compliance	90
ARTICLE X.	NEGATIVE COVENANTS	90
Section 10.1	Financial Covenants	90
Section 10.2	Liens; Negative Pledge	91
Section 10.3	Restrictions on Intercompany Transfers	92
Section 10.4	Merger, Consolidation, Sales of Assets and Other Arrangements	92
Section 10.5	Plans	93
Section 10.6	Fiscal Year	93
Section 10.7	Modifications of Organizational Documents	93
Section 10.8	[Intentionally Omitted]	94
Section 10.9	Transactions with Affiliates	94
Section 10.10	[Intentionally Omitted]	94
Section 10.11	Dividends and Other Restricted Payments	94

ARTICLE XI.	DEFAULT	95
Section 11.1	Events of Default	95
Section 11.2	Remedies Upon Event of Default	98
Section 11.3	[Intentionally Omitted]	98
Section 11.4	Marshaling; Payments Set Aside	98
Section 11.5	Allocation of Proceeds	99
Section 11.6	Letter of Credit Collateral Account	100
Section 11.7	Rescission of Acceleration by Requisite Lenders	101
Section 11.8	Performance by Administrative Agent	101
Section 11.9	Rights Cumulative	101
ARTICLE XII.	THE ADMINISTRATIVE AGENT	102
Section 12.1	Appointment and Authorization	102
Section 12.2	Administrative Agent as Lender	103
Section 12.3	Approvals of Lenders	104
Section 12.4	Notice of Events of Default	104
Section 12.5	Administrative Agent's Reliance	104
Section 12.6	Indemnification of Administrative Agent	105
Section 12.7	Lender Credit Decision, Etc	106
Section 12.8	Successor Administrative Agent	106
Section 12.9	Titled Persons	107
Section 12.10	Specified Derivatives Contracts	107
Section 12.11	Rates	108
Section 12.12	Additional ERISA Matters	108
ARTICLE XIII.	MISCELLANEOUS	110
Section 13.1	Notices	110
Section 13.2	Expenses	112
Section 13.3	Setoff	113
Section 13.4	Litigation; Jurisdiction; Other Matters; Waivers	113
Section 13.5	Successors and Assigns	114
Section 13.6	Amendments and Waivers	119
Section 13.7	Nonliability of Administrative Agent and Lenders	124
Section 13.8	Confidentiality	124
Section 13.9	Indemnification	125
Section 13.10	Termination; Survival	126
Section 13.11	Severability of Provisions	127
Section 13.12	GOVERNING LAW	127
Section 13.13	Counterparts	127
Section 13.14	No Advisory or Fiduciary Relationship	127
Section 13.15	Obligations with Respect to Loan Parties and Subsidiaries	128
Section 13.16	Independence of Covenants	128
Section 13.17	Limitation of Liability	128
Section 13.18	Entire Agreement	128
Section 13.19	Construction	129
Section 13.20	Headings	129
Section 13.21	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	129
Section 13.22	Waiver of Certain Notices Under the Existing Credit Agreement.	129

SCHEDULES AND EXHIBITS

SCHEDULE I Commitments

- SCHEDULE 1.1(a) List of Loan Parties
- SCHEDULE 1.1(b) Specified Ground Leases
- SCHEDULE 1.1(c) Managed REITs
- SCHEDULE 1.1(d) Permitted Liens
- SCHEDULE 1.1(e) [Intentionally Omitted]
- SCHEDULE 1.1(f) Marketable Securities
- SCHEDULE 7.1(b) Ownership Structure
- SCHEDULE 7.1(i) Litigation
- SCHEDULE 8.14 Certain Indebtedness
- SCHEDULE 10.2 Existing Negative Pledges
- SCHEDULE 10.3 Existing Restrictions on Intercompany Transfers
- SCHEDULE 10.9 Existing Affiliate Transactions

EXHIBIT A Form of Assignment and Assumption Agreement

EXHIBIT B Form of Bid Rate Note

EXHIBIT C [Intentionally Omitted]

EXHIBIT D Form of Designation Agreement

EXHIBIT E Form of Disbursement Instruction Agreement

EXHIBIT F Form of Guaranty

EXHIBIT G Form of Notice of Borrowing

EXHIBIT H Form of Notice of Continuation

EXHIBIT I Form of Notice of Conversion

EXHIBIT J Form of Notice of Swingline Borrowing

EXHIBIT K Form of Revolving Note

EXHIBIT L Form of Swingline Note

EXHIBIT M Form of Term Note

EXHIBIT N Form of Bid Rate Quote Request

EXHIBIT O Form of Bid Rate Quote

EXHIBIT P Form of Bid Rate Quote Acceptance

EXHIBIT Q-1 Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

EXHIBIT Q-2 Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

EXHIBIT Q-3 Form of U.S. Tax Compliance Certificate (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

EXHIBIT Q-4 Form of U.S. Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

EXHIBIT R Form of Compliance Certificate

THIS CREDIT AGREEMENT (this “**Agreement**”) dated as of May 23, 2018 by and among VEREIT OPERATING PARTNERSHIP, L.P., a limited partnership formed under the laws of the State of Delaware (the “**Borrower**”), VEREIT, INC., a corporation incorporated under the laws of the State of Maryland (the “**Parent**”), each of the financial institutions from time to time party hereto, and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (the “**Administrative Agent**”), with WELLS FARGO SECURITIES, LLC and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, as Joint Lead Arrangers and Joint Bookrunners (in such capacities, the “**Arrangers**” and each, an “**Arranger**”), BARCLAYS BANK PLC, BMO CAPITAL MARKETS CORP., CAPITAL ONE, N.A., CITIBANK, N.A., JPMORGAN CHASE BANK, N.A. and U.S. BANK NATIONAL ASSOCIATION, as additional Joint Lead Arrangers, BANK OF AMERICA, N.A., as Syndication Agent (the “**Syndication Agent**”) and BARCLAYS BANK PLC, BMO HARRIS BANK N.A., CAPITAL ONE, N.A., CITIBANK, N.A., JPMORGAN CHASE BANK, N.A., U.S. BANK NATIONAL ASSOCIATION, MIZUHO BANK, LTD., REGIONS BANK and SUMITOMO MITSUI BANKING CORPORATION, as Co-Documentation Agents (the “**Documentation Agents**” and each a “**Documentation Agent**”).

WHEREAS, the Administrative Agent, the Issuing Banks, the Swingline Lenders and the Lenders desire to make available to the Borrower credit facilities in the initial amount of \$2.9 billion, which will include (a) a \$900.0 million delayed-draw term loan facility and (b) a \$2.0 billion revolving credit facility with a \$50.0 million swingline subfacility, a \$50.0 million letter of credit subfacility and a competitive bid loan subfacility, on the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

Article I. DEFINITIONS

Section 1.1. Definitions.

In addition to terms defined elsewhere herein, the following terms shall have the following meanings for the purposes of this Agreement:

“**Absolute Rate**” has the meaning given that term in Section 2.3(c)(ii)(C).

“**Absolute Rate Auction**” means a solicitation of Bid Rate Quotes setting forth Absolute Rates pursuant to Section 2.3.

“**Absolute Rate Loan**” means a Bid Rate Loan, the interest rate on which is determined on the basis of an Absolute Rate pursuant to an Absolute Rate Auction.

“**Accepting Lender**” has the meaning given that term in Section 13.6(c)(ii).

“**Accession Agreement**” means an Accession Agreement substantially in the form of Annex I to the Guaranty.

“**Acquisition**” means any transaction or series of related transactions constituting (a) an acquisition by a Person of any real property assets or other assets that are reasonably ancillary, related and complementary thereto or (b) any acquisition by any Person of all or substantially all of the Equity Interests, assets or any combination thereof of (including any merger or consolidation with and into) any other Person the core assets of which constitute real property assets or other assets that are reasonably ancillary, related and complementary thereto (including any fee-based businesses).

“**Additional Costs**” has the meaning given that term in Section 5.1(b).

“**Adjusted EBITDA**” means, for any given period, (a) the EBITDA of the Parent and its Subsidiaries determined on a consolidated basis for such period minus (b) Reserves for Replacements for such period.

“**Administrative Agent**” means Wells Fargo Bank, National Association, including its branches and affiliates, as contractual representative of the Lenders under this Agreement, or any successor Administrative Agent appointed pursuant to Section 12.8.

“**Administrative Questionnaire**” means the Administrative Questionnaire completed by each Lender and delivered to the Administrative Agent in a form supplied by the Administrative Agent to the Lenders from time to time.

“**Affected Facility**” has the meaning given that term in Section 13.6(c)(ii).

“**Affected Lender**” has the meaning given that term in Section 5.6.

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

“**Agreement**” has the meaning given that term in the preamble.

“**Agreement Date**” means the date as of which this Agreement is dated.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction applicable to the Parent or its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the Foreign Corrupt Practices Act and the UK Bribery Act (each as in effect from time to time).

“**Anti-Money Laundering Laws**” means any and all Applicable Laws related to the financing of terrorism or money laundering, including without limitation, any applicable provision of the Patriot Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“**Applicable Facility Fee**” means the percentage set forth in the table below corresponding to the Level at which the “Applicable Margin” is determined in accordance with the definition thereof:

Level	Facility Fee
1	0.10%
2	0.125%
3	0.15%
4	0.20%
5	0.25%
6	0.30%

Any change in the applicable Level at which the Applicable Margin is determined shall result in a corresponding and simultaneous change in the Applicable Facility Fee. The provisions of this definition shall be subject to Section 2.6(c).

“**Applicable Law**” means all (a) international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, (b) administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and (c) all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case of clauses (b) and (c), to the extent having the force of law.

“**Applicable Margin**” means the percentage rate set forth in the table below corresponding to the level (each a “**Level**”) into which the Parent’s Credit Rating then falls. As of the Agreement Date, the Applicable Margin is determined based on Level 5. Any change in the Parent’s Credit Rating which would cause it to move to a different Level shall be effective as of the first day of the first calendar month immediately following receipt by the Administrative Agent of written notice delivered by the Parent stating that the Parent’s Credit Rating has changed; provided, however, if the Parent has not delivered such notice but the Administrative Agent becomes aware that the Parent’s Credit Rating has changed, then the Administrative Agent may, in its sole discretion, adjust the Level effective as of the first day of the first calendar month following the date the Administrative Agent becomes aware that the Parent’s Credit Rating has changed. During any period for which the Parent has received three (3) Credit Ratings which are not equivalent, the Applicable Margin will be determined by (a) the highest Credit Rating if the highest Credit Rating and the second highest Credit Rating differ by only one Level or (b) the average of the two highest Credit Ratings if they differ by two or more Levels (unless the average is not a recognized Level, in which case the Applicable Margin will be based on the Credit Rating one Level below the Level corresponding to the highest Credit Rating). During any period that the Parent has received only two (2) Credit Ratings and such Credit Ratings are not equivalent, the Applicable Margin will be determined based on the higher Credit Rating; provided that in the event that the Parent has two Credit Ratings that are two Levels apart, the Level corresponding to the midpoint shall apply, and in the event that the Credit Ratings are more than two Levels apart, the Level that is two Levels below the higher of the two Credit Ratings shall apply. During any period for which the Parent has received no Credit Rating from Fitch, if the Parent also ceases to have a Credit Rating from one of S&P or Moody’s, then the Applicable Margin shall be determined based on the remaining such Credit Rating. Notwithstanding any Credit Rating from Fitch, during any period in which neither S&P nor Moody’s has provided a Credit Rating corresponding to Level 5 or better to the Parent, the Applicable Margin shall be determined based on Level 6. During any period that the Parent has not received a Credit Rating from any Rating Agency, the Applicable Margin shall be determined based on Level 6.

Level	Parent’s Credit Rating (S&P/Moody’s/Fitch)	Applicable Margin for Revolving LIBOR Loans	Applicable Margin for Revolving Base Rate Loans	Applicable Margin for Term LIBOR Loans	Applicable Margin for Term Base Rate Loans
1	A/A2/A or better	0.775%	0.00%	0.85%	0.00%
2	A-/A3/A-	0.825%	0.00%	0.90%	0.00%
3	BBB+/Baa1/BBB+	0.875%	0.00%	0.95%	0.00%
4	BBB/Baa2/BBB	1.00%	0.00%	1.10%	0.10%
5	BBB-/Baa3/BBB-	1.20%	0.20%	1.35%	0.35%
6	BB+/Ba1/BB+ or lower	1.55%	0.55%	1.75%	0.75%

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

“Arranger” has the meaning given that term in the preamble.

“Assignment and Assumption” means an Assignment and Assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 13.5), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

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

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

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

“Bankruptcy Code” means the Bankruptcy Code of 1978.

“Base Rate” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the LIBOR Market Index Rate plus 1% (subject to the interest rate floors set forth in the definition of LIBOR); each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the LIBOR Market Index Rate (provided that clause (c) shall not be applicable during any period in which LIBOR is unavailable or unascertainable).

“Base Rate Loan” means a Revolving Loan or Term Loan (or any portion thereof) bearing interest at a rate based on the Base Rate.

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

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

“Benefit Arrangement” means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any member of the ERISA Group on behalf of employees of the Parent, the Borrower or any Subsidiary of the Parent.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan”.

“Bid Rate Borrowing” has the meaning given that term in Section 2.3(b).

“Bid Rate Loan” means a loan made by a Lender under Section 2.3(f).

“Bid Rate Note” means a promissory note of the Borrower substantially in the form of Exhibit B, payable to the order of a Lender as originally in effect and otherwise duly completed.

“Bid Rate Quote” means an offer in accordance with Section 2.3(c) by a Lender to make a Bid Rate Loan with one single specified interest rate.

“Bid Rate Quote Request” has the meaning given that term in Section 2.3(b).

“Borrower” has the meaning set forth in the introductory paragraph hereof and shall include the Borrower’s successors and permitted assigns.

“Business Day” means (a) for all purposes other than as set forth in clause (b) below, any day (other than a Saturday, Sunday or legal holiday) on which banks in New York, New York, are open for the conduct of their commercial banking business, and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any LIBOR Loan or any Base Rate Loan as to which the interest rate is determined by reference to LIBOR, any day that is a Business Day described in clause (a) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market. Unless specifically referenced in this Agreement as a Business Day, all references to “days” shall be to calendar days.

“Capitalization Rate” means 7.0%.

“Capitalized Lease Obligations” means obligations under a lease (or other arrangement conveying the right to use property) to pay rent or other amounts, in each case that are required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on a balance sheet of the applicable Person prepared in accordance with GAAP as of the applicable date.

“Cash Collateralize” means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Issuing Banks or the Lenders, as collateral for Letter of Credit Liabilities or obligations of Lenders to fund participations in respect of Letter of Credit Liabilities, cash or deposit account balances or, if the Administrative Agent and the Issuing Banks shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the Issuing Banks. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means any one or more of the following obligations or securities acquired at a purchase price of not greater than par, including those issued by the Administrative Agent, or any of its Affiliates, payable on demand or having a scheduled maturity date not later than the Business Day immediately prior to the day on which the funds are needed for payment of an obligation for which the applicable account was established, qualifying as “cash”, “cash items”, or “government securities” within the meaning of Section 856(c)(4)(A) of the Code, and meeting one of the appropriate additional standards set forth below:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to principal and interest by, the U.S. government or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States of America and have maturities not in excess of one year;

(b) investments in money market funds registered which are regulated investment companies, are subject to regulation under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. and comply

with the requirements of Rule 2a-7 thereof, which have net assets of at least \$500,000,000 and substantially all of whose assets consist of securities and other obligations of the type described in clause (a) above; and

(c) other similar customarily utilized investments of substantially similar quality (as determined in good faith by the Borrower) denominated in Foreign Currencies that have been approved in writing by REIT counsel of the Parent Guarantor, as evidenced by a written confirmation that the designation of such security, obligation or investment as an Investment not prohibited hereunder will not cause the Parent Guarantor or any Subsidiary of the Parent Guarantor taxed as a REIT to be treated as owning an asset that is treated other than as “cash”, “cash items”, or “government securities” within the meaning of Section 856(c)(4)(A) of the Code.

“**Charges**” has the meaning given that term in Section 3.7.

“**Commitment**” means, as to a Lender, such Lender’s Revolving Commitment or such Lender’s Term Loan Commitment, as the context may require.

“**Commitment Reduction Notice**” has the meaning given that term in Section 2.13(a).

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) and any successor statute.

“**Competitor**” has the meaning given that term in the definition of “Disqualified Institutions.”

“**Compliance Certificate**” has the meaning given that term in Section 9.3.

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

“**Continue**”, “**Continuation**” and “**Continued**” each refers to the continuation of a LIBOR Loan from one Interest Period to another Interest Period pursuant to Section 2.10.

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

“**Convert**”, “**Conversion**” and “**Converted**” each refers to the conversion of a Loan of one Type into a Loan of another Type pursuant to Section 2.11 or as required by Section 2.10 or 5.2.

“**Credit Event**” means any of the following: (a) the making (or deemed making in accordance with the provisions of this Agreement) of any Loan, (b) the Conversion of a Base Rate Loan into a LIBOR Loan, (c) the Continuation of a LIBOR Loan and (d) the issuance of a Letter of Credit or the amendment of a Letter of Credit that extends the maturity, or increases the Stated Amount, of such Letter of Credit.

“**Credit Rating**” means, with respect to any Person, the rating assigned by a Rating Agency to the senior, unsecured long term Indebtedness of such Person.

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

“Default” means any of the events specified in Section 11.1, whether or not there has been satisfied any requirement for the giving of notice, the lapse of time, or both.

“Defaulting Lender” means, subject to Section 3.9(f), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, any Issuing Bank or any Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.9(f)) upon delivery of written notice of such determination to the Borrower, the Issuing Banks, the Swingline Lenders and each Lender.

“Derivatives Contract” means (a) any transaction (including any master agreement, confirmation or other agreement with respect to any such transaction) now existing or hereafter entered into by the Parent, the Borrower or any of their respective Subsidiaries (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or

other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) a “swap agreement” as defined in Section 101 of the Bankruptcy Code, but excluding, in each case, for the avoidance of doubt, any conversion option embedded in any convertible debt security issued by the Parent or any Subsidiary thereof.

“**Derivatives Termination Value**” means, in respect of any one or more Derivatives Contracts, after taking into account the effect of any contractual netting agreement or provision relating thereto, (a) for any date on or after the date such Derivatives Contracts have been terminated or closed out, the termination amount or value determined in accordance therewith, and (b) for any date prior to the date such Derivatives Contracts have been terminated or closed out, the then-current mark-to-market value for such Derivatives Contracts, determined based upon one or more mid-market quotations or estimates provided by any recognized dealer in Derivatives Contracts (which may include the Administrative Agent, any Lender, any Specified Derivatives Provider or any Affiliate of any of them).

“**Designated Lender**” means a special purpose corporation which is an Affiliate of, or sponsored by, a Lender, that is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business and that issues (or the parent of which issues) commercial paper rated at least P-1 (or the then equivalent grade) by Moody’s or A-1 (or the then equivalent grade) by S&P that, in either case, (a) is organized under the laws of the United States of America or any state thereof, (b) shall have become a party to this Agreement pursuant to Section 13.5(g) and (c) is not otherwise a Lender.

“**Designating Lender**” has the meaning given that term in Section 13.5(g).

“**Designation Agreement**” means a Designation Agreement between a Lender and a Designated Lender and accepted by the Administrative Agent, substantially in the form of Exhibit D or such other form as may be agreed to by such Lender, such Designated Lender and the Administrative Agent.

“**Development Property**” means a Property currently under development that has not achieved an Occupancy Rate of 80% or more or, subject to the last sentence of this definition, on which the improvements (other than tenant improvements on unoccupied space) related to the development have not been substantially completed such that occupancy is not viable. The term “Development Property” shall include real property of the type described in the immediately preceding sentence that satisfies both of the following conditions: (i) it is to be (but has not yet been) acquired by the Parent, the Borrower, any Subsidiary or any Unconsolidated Affiliate upon completion of construction pursuant to a contract in which the seller of such real property is required to develop or renovate such real property prior to, and as a condition precedent to, such acquisition and (ii) a third party is developing such property using the proceeds of a loan that constitutes Recourse Indebtedness of the Parent, the Borrower, any Subsidiary or any Unconsolidated Affiliate. A Development Property on which all improvements (other than tenant improvements on unoccupied space) related to the development of such Property have been completed for at least one hundred eighty (180) days shall cease to constitute a Development Property notwithstanding the fact that such Property has not achieved an Occupancy Rate of at least 80%.

“**Disbursement Instruction Agreement**” means an agreement substantially in the form of Exhibit E to be executed and delivered by the Borrower pursuant to Section 6.1(a), as the same may be amended, restated or modified from time to time with the prior written approval of the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed).

“Discharged Indebtedness” means Indebtedness that has been defeased (pursuant to a contractual or legal defeasance) or discharged in accordance with the terms of the agreement or indenture governing such Indebtedness pursuant to the prepayment or deposit of all amounts sufficient to satisfy such Indebtedness as it becomes due or irrevocably called for redemption (and regardless of whether such Indebtedness constitutes a liability on the balance sheet of the obligors thereof) and the satisfaction of any other conditions to such defeasance, discharge or redemption set forth in such agreement or indenture; provided, however, that such Indebtedness shall be deemed to be Discharged Indebtedness if the payment or deposit of all amounts required for defeasance or discharge or redemption thereof have been made even if certain conditions thereto have not been satisfied, so long as such conditions are reasonably expected to be satisfied, and are so satisfied, within 91 days after such prepayment or deposit.

“Disposition” has the meaning given that term in Section 10.4.

“Disqualified Institutions” means (i) bona fide Competitors identified by the Borrower to the Administrative Agent in writing (including by email communication) on or prior to the Effective Date and as may be otherwise identified by the Borrower to the Administrative Agent in writing from time to time (but no such identification shall apply retroactively to Persons that already acquired and continue to hold (or have and remain committed to acquire, without giving retroactive effect to any such commitment) an assignment or participation interest) and (ii) any Affiliate of any person listed in clause (i) above that is either identified to the Administrative Agent in writing from time to time for distribution to the Lenders, or clearly identifiable on the basis of such Affiliate’s name. For purposes hereof, **“Competitor”** means (x) any competitor of the Parent, the Borrower or their respective Subsidiaries that is engaged in the business of owning, managing or operating retail, office or industrial properties and (y) any REIT. Neither the Administrative Agent nor any Lender shall have any liability in the event of an assignment to any Person not then actually known by the Administrative Agent or such Lender to be a Competitor.

“Documentation Agent” has the meaning given that term in the preamble.

“Dollar Amount” of any currency at any date means (i) the amount of such currency if such currency is Dollars or (ii) the Equivalent Amount thereof in Dollars if such currency is a Foreign Currency.

“Dollars” or **“\$”** means the lawful currency of the United States of America.

“EBITDA” means, with respect to a Person for any period and without duplication, the sum of (a) net income (loss) of such Person for such period determined on a consolidated basis excluding the following (but only to the extent included in determining net income (loss) for such period): (i) depreciation and amortization; (ii) interest expense; (iii) income tax expense; (iv) extraordinary or nonrecurring items, including without limitation, gains and losses from the sale of operating Properties (but not from the sale of Properties developed for the purpose of sale); (v) other non-cash charges (including non-cash compensation charges) for such period (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future); (vi) gains and losses resulting from currency exchange effects and derivative instruments; and (vii) equity in net income (loss) of its Unconsolidated Affiliates plus (b) such Person’s Ownership Share of EBITDA of its Unconsolidated Affiliates. EBITDA shall be adjusted to remove any impact from straight line rent leveling adjustments required under GAAP and amortization of intangibles pursuant to FASB ASC 805. For purposes of this definition, nonrecurring items shall be deemed to include for the applicable period, without limitation but without duplication, (u) costs, fees and expenses related to litigation outside of the ordinary course of business, (v) all commissions, guaranty fees, discounts and other fees and charges owed by such Person with respect to letters of credit and bankers’ acceptance financing and net costs of such Person under Derivatives Contracts in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP, (w) fees, expenses and charges incurred during such period directly relating to

the negotiation of and entry into (A) the Loan Documents and any amendments to the Loan Documents or any agreement entered into in connection therewith or (B) any other agreement governing any Indebtedness issued or incurred or proposed to be issued or incurred by the Parent or its Subsidiaries, (x) gains and losses on early extinguishment of Indebtedness, (y) severance and other one-time compensation charges (including retention bonuses, but excluding other bonuses) and other restructuring charges and (z) transaction costs of acquisitions (whether or not consummated) not permitted to be capitalized pursuant to GAAP.

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

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

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

“Effective Date” means the later of (a) the Agreement Date and (b) the date on which all of the conditions precedent set forth in Section 6.1 shall have been satisfied or waived by all of the Lenders.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund and (d) any other Person (other than a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) and such other parties whose consent is required under Section 13.5(b)(iii). No Disqualified Institution shall be an Eligible Assignee.

“Eligible Property” means a Property which satisfies all of the following requirements: (a) such Property is a retail, restaurant, office or industrial Property; (b) such Property is wholly owned in fee simple, or leased under a Ground Lease, by the Borrower or a Wholly Owned Subsidiary; (c) such Property is located in a State or territory of the United States of America, in the District of Columbia or in Canada; (d) regardless of whether such Property is owned by the Borrower or a Subsidiary, the Borrower has the right directly, or indirectly through a Subsidiary, to take the following actions without the need to obtain the consent of any Person: (i) to create Liens on such Property as security for Indebtedness of the Borrower or such Subsidiary, as applicable, and (ii) to sell, transfer or otherwise dispose of such Property (other than, solely with respect to leased Properties (whether or not leased under a Ground Lease), pursuant to reasonable and customary restrictions on transfer in beneficial ownership arising under leases and Ground Leases entered into in the ordinary course of business that result in a change of control or that trigger a right of first offer or right of first refusal arising under such leases, in each case, that limit, but do not prohibit, sale or mortgage transactions); (e) neither such Property, nor if such Property is owned by a Subsidiary, any of the Borrower’s direct or indirect ownership interest in such Subsidiary, is subject to (i) any Lien other than Permitted Liens (but not Permitted Liens described in clause (l) of the definition of that term) or (ii) any Negative Pledge; (f) such Property is not a Development Property; (g) such Property is, to the Borrower’s knowledge, free of all structural defects or major architectural deficiencies, title defects, environmental conditions or other adverse matters except for defects, deficiencies, conditions or other matters individually or collectively which are not material to the profitable operation of such Property; (h) the Occupancy Rate of such Property equals or exceeds 80% and (i) none of the direct or indirect owners of such Property (for the avoidance of doubt,

other than the direct or indirect shareholders of the Parent) are subject to an insolvency, bankruptcy or judgment event of the types described in Sections 11.1(e), (f) and (h) (whether or not such Person is a Borrower, a Guarantor or any other Material Subsidiary).

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to human health (with respect to exposure to Hazardous Materials) or the environment.

“Environmental Laws” means any Applicable Law relating to environmental protection or the manufacture, storage, remediation, disposal or clean-up of Hazardous Materials including, without limitation, the following: Clean Air Act, 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; National Environmental Policy Act, 42 U.S.C. § 4321 et seq., regulations of the Environmental Protection Agency; any applicable rule of common law and any judicial interpretation thereof relating primarily to the environment or Hazardous Materials, and any analogous or comparable state or local laws, regulations or ordinances that concern Hazardous Materials or protection of the environment.

“Equity Interest” means, with respect to any Person, any share of capital stock of (or other ownership or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership or profit interests in) such Person, whether or not certificated, any security convertible into or exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit interest in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination.

“Equivalent Amount” of any currency with respect to any amount of Dollars at any date shall mean the equivalent in such currency of such amount of Dollars, calculated on the basis of the Exchange Rate for such other currency at 11:00 a.m., London time, on the date on or as of which such amount is to be determined.

“ERISA” means the Employee Retirement Income Security Act of 1974, as in effect from time to time.

“ERISA Event” means, with respect to the ERISA Group, (a) any “reportable event” as defined in Section 4043 of ERISA with respect to a Plan (other than an event for which the thirty (30) day notice period is waived); (b) the withdrawal of a member of the ERISA Group from a Plan subject to Section 4063 of ERISA during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by a member of the ERISA Group of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (d) the incurrence by any member of the ERISA Group of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the

institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC; (f) the failure by any member of the ERISA Group to make when due required contributions to a Multiemployer Plan or Plan unless such failure is cured within thirty (30) days or the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard; (g) any other event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan or the imposition of liability on any member of the ERISA Group under Section 4069 or 4212(c) of ERISA; (h) the receipt by any member of the ERISA Group of any notice or the receipt by any Multiemployer Plan from any member of the ERISA Group of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is reasonably expected to be, insolvent (within the meaning of Section 4245 of ERISA), in reorganization (within the meaning of Section 4241 of ERISA), or in “critical” status (within the meaning of Section 432 of the Internal Revenue Code or Section 305 of ERISA); (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any member of the ERISA Group or the imposition of any Lien upon any member of the ERISA Group in favor of the PBGC under Title IV of ERISA; or (j) a determination that a Plan is, or is reasonably expected to be, in “at risk” status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA).

“**ERISA Group**” means the Parent, the Borrower, any Subsidiary of the Parent and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control, which, together with the Parent, the Borrower or any Subsidiary of the Parent, are treated as a single employer under Section 414 of the Internal Revenue Code.

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

“**Eurodollar Reserve Percentage**” means, for any day, the percentage which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“**Event of Default**” means any of the events specified in Section 11.1, provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“**Exchange Act**” has the meaning given that term in Section 11.1(l)(i).

“**Exchange Rate**” means, on any day, with respect to any Foreign Currency, the rate at which such Foreign Currency may be exchanged into Dollars, as set forth at approximately 11:00 a.m., Local Time, on such date on the Reuters World Currency Page for such Foreign Currency. In the event that such rate does not appear on any Reuters World Currency Page, the Exchange Rate with respect to such Foreign Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Administrative Agent or, in the event no such service is selected, such Exchange Rate shall instead be calculated on the basis of the arithmetical mean of the buy and sell spot rates of exchange of the Administrative Agent for such Foreign Currency on the London market at 11:00 a.m., Local Time, on such date for the purchase of Dollars with such Foreign Currency, for delivery two (2) Business Days later; provided, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Loan Party for or the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Loan Party, including under any applicable provision of the Guaranty). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or Lien is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to an Applicable Law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 5.6) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.10, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.10(g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Amended and Restated Credit Agreement, dated as of June 30, 2014, by and among the Borrower, the other Loan Parties party thereto, the lenders party thereto and Wells Fargo Bank, National Association, as administrative agent, as the same has been amended, supplemented or otherwise modified prior to the Agreement Date.

“Extended Letter of Credit” has the meaning given that term in Section 2.4(b).

“Extension Request” has the meaning given that term in Section 2.14.

“Fair Market Value” means, (a) with respect to a security listed on a national securities exchange or the NASDAQ National Market, the price of such security as reported on such exchange or market by any widely recognized reporting method customarily relied upon by financial institutions and (b) with respect to any other property, the price which could be negotiated in an arm’s-length free market transaction, for cash, between a willing seller and a willing buyer, neither of which is under pressure or compulsion to complete the transaction. Except as otherwise provided herein, Fair Market Value shall be determined by the Board of Directors of the Parent (or an authorized committee thereof) acting in good faith conclusively evidenced by a board resolution thereof delivered to the Administrative Agent or, with respect to any asset valued at no more than \$5,000,000, such determination may be made by the chief financial officer of the Parent evidenced by an officer’s certificate delivered to the Administrative Agent.

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

“**FATCA**” means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, and any applicable intergovernmental agreements and local implementing laws, regulations and official guidance to the extent implementing the foregoing.

“**Federal Funds Rate**” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent. If the Federal Funds Rate determined as provided above would be less than zero, the Federal Funds Rate shall be deemed to be zero.

“**Fee Letter**” means that certain fee letter dated as of April 16, 2018, by and among the Borrower, the Administrative Agent, the Syndication Agent and the Arrangers.

“**Fees**” means the fees and commissions provided for or referred to in Section 3.5 and any other fees payable by the Borrower hereunder or under any other Loan Document.

“**Fitch**” means Fitch Ratings, Ltd. and its successors.

“**Fixed Charges**” means, with respect to a Person and for a given period, the sum of (a) the Interest Expense of such Person for such period (excluding any make-whole premium, prepayment premium or penalty or other similar amount paid in connection with the prepayment, retirement or defeasance of Indebtedness), plus (b) the aggregate of all regularly scheduled principal payments on Indebtedness payable by such Person during such period (excluding, without duplication, (i) balloon, bullet or similar payments of principal due upon the stated maturity of Indebtedness, (ii) any voluntary full or partial prepayments prior to stated maturity thereof, and (iii) any payments with respect to Discharged Indebtedness), plus (c) the aggregate amount of all Preferred Dividends paid in cash by such Person during such period, but excluding, without duplication, redemption payments or repurchases or charges in connection with the final redemption or repurchase in whole of any class of preferred stock or preferred operating partnership units. The Parent’s Ownership Share of the Fixed Charges of its Unconsolidated Affiliates will be included in when determining the Fixed Charges of the Parent.

“**Foreign Currencies**” means any currency other than Dollars.

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender that is a Revolving Lender, (a) with respect to an Issuing Bank, such Defaulting Lender’s Revolving Commitment Percentage of the outstanding Letter of Credit Liabilities with respect to Letters of Credit issued by such Issuing Bank other than Letter of Credit Liabilities as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to a Swingline Lender, such Defaulting Lender’s Revolving Commitment Percentage of

outstanding Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders.

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

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (including Statement of Financial Accounting Standards No. 168, "The FASB Accounting Standards Codification") or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied; provided that any obligation of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP as in effect on the Effective Date shall not be required to be treated as a capital lease as a result of the adoption of future changes, if any, in GAAP.

"Governmental Approvals" means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and reports required by Applicable Law to, all Governmental Authorities.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative power or functions or pertaining to government (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority, and any supranational bodies such as the European Union or the European Central Bank) or, with respect to any specified Person, any arbitrator or any quasi-governmental authority, body or agency with authority to bind such specified Person at law.

"Ground Lease" means (a) a ground lease containing the following terms and conditions: (i) (A) a remaining term (inclusive of any unexercised extension options) of 30 years or more from the Effective Date or (B) a de minimis purchase option available as of the end of the term; (ii) the right of the lessee to mortgage and encumber its interest in the leased property without the consent of the lessor; (iii) the obligation of the lessor to give the holder of any mortgage Lien on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so; (iv) reasonable transferability of the lessee's interest under such lease, including ability to sublease; and (v) such other rights customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease; and (b) certain other ground leases set forth on Schedule 1.1(b).

"Guaranteed Obligations" means, collectively, (a) the Obligations (b) all existing or future payment and other obligations owing by any Loan Party under any Specified Derivatives Contract (other than any Excluded Swap Obligation) and (c) all other obligations guaranteed under the Guaranty.

"Guarantor" means any Parent Guarantor and any Subsidiary Guarantor.

"Guaranty", **"Guaranteed"** or to **"Guarantee"** as applied to any obligation means and includes: (a) a guaranty (other than by endorsement of negotiable instruments for collection in the ordinary course of

business), directly or indirectly, in any manner, of any part or all of such obligation, or (b) an agreement, direct or indirect, contingent or otherwise, and whether or not constituting a guaranty, the practical effect of which is to assure the payment or performance (or payment of damages in the event of nonperformance) of any part or all of such obligation whether by: (i) the purchase of securities or obligations, (ii) the purchase, sale or lease (as lessee or lessor) of property or the purchase or sale of services primarily for the purpose of enabling the obligor with respect to such obligation to make any payment or performance (or payment of damages in the event of nonperformance) of or on account of any part or all of such obligation, or to assure the owner of such obligation against loss, (iii) the supplying of funds to or in any other manner investing in the obligor with respect to such obligation, (iv) repayment of amounts drawn down by beneficiaries of letters of credit (including Letters of Credit), or (v) the supplying of funds to or investing in a Person on account of all or any part of such Person's obligation under a guaranty of any obligation or indemnifying or holding harmless, in any way, such Person against any part or all of such obligation. As the context requires, "Guaranty" shall also mean a guaranty executed and delivered pursuant to Section 6.1 or 8.14 and substantially in the form of Exhibit F.

"Hazardous Materials" means all or any of the following: (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable Environmental Laws as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, "TCLP" toxicity, or "EP toxicity"; (b) oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (c) any flammable substances or explosives or any radioactive materials; (d) asbestos in any form; (e) toxic mold; and (f) electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

"Incremental Term Loan" has the meaning given that term in Section 2.17.

"Incremental Term Loan Amendment" has the meaning given that term in Section 2.17.

"Indebtedness" means, with respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed; (b) all obligations for the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, either (i) not past due for more than one hundred and eighty (180) days or (ii) being contested in good faith by appropriate proceedings diligently conducted); (c) all obligations of such Person (other than trade accounts payable), whether or not for money borrowed (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or for services rendered; (d) Capitalized Lease Obligations of such Person; (e) all reimbursement obligations (contingent or otherwise) of such Person under or in respect of any letters of credit or acceptances (whether or not the same have been presented for payment); (f) all Off-Balance Sheet Obligations of such Person; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatorily Redeemable Stock issued by such Person, valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (h) to the extent required by GAAP, all obligations of such Person in respect of any purchase obligation, repurchase obligation, takeout commitment or forward equity commitment, in each case evidenced by a binding agreement (excluding any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatorily Redeemable Stock)); (i) net obligations under any Derivatives Contract (which shall be deemed

to have an amount equal to the Derivatives Termination Value thereof at such time but in no event shall be less than zero); and (j) all Indebtedness of the type referred to in clauses (a) through (i) of other Persons which such Person has Guaranteed or otherwise constitutes Recourse Indebtedness to such Person or (k) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation, limited to the lesser of (i) the Fair Market Value of the property or assets subject to such Lien and (ii) the aggregate amount of the Indebtedness so secured; and (l) such Person's Ownership Share of the Indebtedness of any Unconsolidated Affiliate of such Person. Indebtedness of any Person shall include Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer to the extent of such Person's Ownership Share of such partnership or joint venture (except if such Indebtedness, or portion thereof, constitutes Recourse Indebtedness of such Person, in which case the greater of such Person's Ownership Share of such Indebtedness or the amount of the portion of such Indebtedness that constitutes Recourse Indebtedness, shall be included as Indebtedness of such Person).

"Indemnifiable Amounts" has the meaning given that term in Section 12.6.

"Indemnified Party" has the meaning given that term in Section 13.9(a).

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

"Indemnity Proceeding" has the meaning given that term in Section 13.9(a).

"Information" has the meaning given that term in Section 13.8.

"Information Materials" has the meaning given that term in Section 9.6.

"Intellectual Property" has the meaning given that term in Section 7.1(r).

"Interest Expense" means, for any period, without duplication, (a) total interest expense of the Parent, including capitalized interest not funded under a construction loan interest reserve account (but excluding non-cash amortization or write-off of debt issuance costs and commissions), determined on a consolidated basis in accordance with GAAP for such period, plus (b) the Parent's Ownership Share of Interest Expense of Unconsolidated Affiliates for such period; provided, further, that Interest Expense shall not include any Interest Expense resulting from Discharged Indebtedness.

"Interest Period" means, with respect to each LIBOR Loan, each period commencing on the date such LIBOR Loan is made, or in the case of the Continuation of a LIBOR Loan, the last day of the preceding Interest Period for such Loan, and ending on the numerically corresponding day in the first, third or sixth calendar month thereafter, as the Borrower may select in a Notice of Borrowing, Notice of Continuation or Notice of Conversion, as the case may be, except that each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month. In addition to the foregoing periods, the Borrower may request Interest Periods for LIBOR Loans denominated in Dollars having durations of at least seven (7), but not more than thirty (30), days no more than five times during any 12-month period beginning during the term of this Agreement but only in anticipation of (i) the Borrower's prepayment of such LIBOR Loans under Section 2.9, (ii) Continuation of such LIBOR Loans

under Section 2.10 or (iii) changes in the amount of the Lenders' Commitments associated with Section 2.17 or any other modification of this Agreement. Notwithstanding the foregoing: (a) if any Interest Period for Revolving Loans would otherwise end after the Revolving Termination Date or for Term Loans would end after the Term Loan Maturity Date, as applicable, such Interest Period shall end on the Revolving Termination Date or Term Loan Maturity Date, as applicable, and (b) each Interest Period that would otherwise end on a day which is not a Business Day shall end on the immediately following Business Day (or, if such immediately following Business Day falls in the next calendar month, on the immediately preceding Business Day).

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

"Investment" means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, Guaranty of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person or (d) an Acquisition. Any unconditional commitment to make an Investment in any other Person, as well as any unconditional option of another Person to require an Investment in such Person, shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in the Loan Documents, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Investment Grade Rating" means a Credit Rating of (a) BBB- or higher from S&P, (b) Baa3 or higher from Moody's or (c) BBB- or higher from Fitch.

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

"Issuing Bank" means each of Wells Fargo and Bank of America, each in its capacity as an issuer of Letters of Credit pursuant to Section 2.4.

"L/C Commitment Amount" has the meaning given to that term in Section 2.4(a).

"L/C Disbursement" has the meaning given to that term in Section 3.9(b).

"Lender" means each financial institution from time to time party hereto as a "Lender" or a "Designated Lender," together with its respective successors and permitted assigns, and, as the context requires, includes each Swingline Lender; provided, however, that the term "Lender" (i) shall exclude each Designated Lender when used in reference to any Loan other than a Bid Rate Loan, the Commitments or terms relating to any Loan other than a Bid Rate Loan and shall further exclude each Designated Lender for all other purposes under the Loan Documents except that any Designated Lender which funds a Bid Rate Loan shall, subject to Section 13.5(d), have only the rights (including the rights given to a Lender contained in Sections 13.2 and 13.9) and obligations of a Lender associated with holding such Bid Rate Loan and (ii) except as otherwise expressly provided herein, shall exclude any Lender (or its Affiliates) in its capacity as a Specified Derivatives Provider.

“Lender Parties” means, collectively, the Administrative Agent, the Lenders, the Issuing Banks, the Specified Derivatives Providers, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 11.5, any other holder from time to time of any of any Guaranteed Obligations and, in each case, their respective successors and permitted assigns.

“Lending Office” means, for each Lender and for each Type of Loan, the office of such Lender specified in such Lender’s Administrative Questionnaire or in the applicable Assignment and Assumption, or such other office of such Lender as such Lender may notify the Administrative Agent in writing from time to time.

“Letter of Credit” has the meaning given that term in Section 2.4(a).

“Letter of Credit Collateral Account” means a special deposit account maintained by the Administrative Agent, for the benefit of the Administrative Agent, the Issuing Banks and the Lenders, and under the sole dominion and control of the Administrative Agent.

“Letter of Credit Documents” means, with respect to any Letter of Credit, collectively, any application therefor, any certificate or other document presented in connection with a drawing under such Letter of Credit and any other agreement, instrument or other document governing or providing for (a) the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations.

“Letter of Credit Liabilities” means, without duplication, at any time and in respect of any Letter of Credit (a) the Stated Amount of such Letter of Credit plus (b) the aggregate unpaid principal amount of all Reimbursement Obligations of the Borrower at such time due and payable in respect of all drawings made under such Letter of Credit. For purposes of this Agreement, (i) a Lender (other than a Lender that is the Issuing Bank for the applicable Letter of Credit) shall be deemed to hold a Letter of Credit Liability in an amount equal to its participation interest under Section 2.4 in the related Letter of Credit, and the Lender that is the Issuing Bank for such Letter of Credit shall be deemed to hold a Letter of Credit Liability in an amount equal to its retained interest in the related Letter of Credit after giving effect to the acquisition by the other Lenders of their participation interests under such Section and (ii) if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Level” has the meaning given that term in the definition of the term “Applicable Margin.”

“LIBOR” means, subject to the implementation of a Replacement Rate in accordance with Section 5.2(b), with respect to any LIBOR Loan for any Interest Period, the rate of interest obtained by dividing (i) the rate of interest per annum determined on the basis of the rate as set by the ICE Benchmark Administration (or a comparable or successor quoting service approved by the Administrative Agent) for deposits in Dollars for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period by (ii) a percentage equal to 1 minus the Eurodollar Reserve Percentage. If, for any reason, the rate referred to in the preceding clause (i) does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page), then the rate to be used for such clause (i) shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period. Any change in the

Eurodollar Reserve Percentage shall result in a change in LIBOR on the date on which such change in such Eurodollar Reserve Percentage becomes effective. If LIBOR determined as provided above (including, without limitation, any Replacement Rate with respect thereto) would be less than zero, LIBOR shall be deemed to be zero. Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error. To the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith (with the consent of the Borrower, which shall not be unreasonably withheld, conditioned or delayed), the approved rate shall be applied to the then applicable Interest Period in a manner consistent with market practice as reasonably determined by the Administrative Agent; provided that if such market practice is reasonably determined by the Administrative Agent not to be administratively feasible, such approved rate shall be applied in a manner reasonably determined by the Administrative Agent (with the consent of the Borrower, which shall not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 5.2(b), in the event that a Replacement Rate with respect to LIBOR is implemented, then all references herein to LIBOR shall be deemed to be references to such Replacement Rate.

“**LIBOR Auction**” means a solicitation of Bid Rate Quotes setting forth LIBOR Margin Loans based on LIBOR pursuant to Section 2.3.

“**LIBOR Loan**” means a Revolving Loan or Term Loan (or any portion thereof) (other than a Base Rate Loan) bearing interest at a rate based on LIBOR.

“**LIBOR Margin**” has the meaning given that term in Section 2.3(c)(ii)(D).

“**LIBOR Margin Loan**” means a Bid Rate Loan the interest rate on which is determined on the basis of LIBOR in Dollars pursuant to a LIBOR Auction.

“**LIBOR Market Index Rate**” means, for any day, LIBOR as of that day that would be applicable for a LIBOR Loan denominated in Dollars and having a one-month Interest Period determined at approximately 10:00 a.m. Central time for such day (rather than 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Interest Period as otherwise provided in the definition of “LIBOR”), or if such day is not a Business Day, the immediately preceding Business Day. The LIBOR Market Index Rate shall be determined on a daily basis.

“**Lien**” as applied to the property of any Person means any security interest, encumbrance, mortgage, deed to secure debt, deed of trust, assignment of leases and rents, pledge, lien, hypothecation, assignment, charge or lease constituting a Capitalized Lease Obligation, conditional sale or other title retention agreement, or other security title or encumbrance of any kind in respect of any property of such Person, or upon the income, rents or profits therefrom.

“**Loan**” means a Revolving Loan, a Term Loan, a Bid Rate Loan or a Swingline Loan.

“**Loan Document**” means this Agreement, each Note, the Guaranty, each Letter of Credit Document (other than a certificate or other Letter of Credit Document presented by a Person other than a Loan Party or any agreement with respect to Letters of Credit to which neither the Borrower nor any Loan Party is a party or bound), the Fee Letter and each other document or instrument now or hereafter executed and delivered by a Loan Party in connection with, pursuant to or relating to this Agreement (other than any Specified Derivatives Contract).

“**Loan Modification Offer**” has the meaning given that term in Section 13.6(c)(ii).

“**Loan Party**” means each of the Borrower and the Guarantors. Schedule 1.1(a) sets forth the Loan Parties in addition to the Borrower as of the Agreement Date.

“**Local Time**” means local time in the case of a Foreign Currency; provided, that unless otherwise notified by the Administrative Agent, local time shall mean London time.

“**Managed REIT**” means a REIT managed or advised by the Parent or a Subsidiary of the Parent or to which the Parent or a Subsidiary of the Parent provides services and listed on Schedule 1.1(c) (as the same may be updated from time to time by the Parent or the Borrower in writing to the Administrative Agent).

“**Management Contract**” means a management contract or advisory agreement under which the Parent or one of its Subsidiaries provides management, advisory or other comparable services to a third party, including, without limitation, services consisting of management of properties or provision of advisory services on property acquisition and dispositions, equity and debt placements and related transactional matters.

“**Management EBITDA**” means, for any period, an amount equal to (a) the aggregate sum of revenues for such period earned by the Parent and its Subsidiaries from Private Capital Management Business, including asset management revenue, performance revenue, structuring revenue, advisor’s participation in cash flow (if any), interest income, advisory and dealer manager fees and compensation or any revenue earned as stipulated in a Management Contract and booked for financial reporting purposes, together with appropriate adjustments for minority interests and excluding revenue related to reimbursed costs but including distributions received for such period related to the ownership of shares in managed funds and Managed REITs, minus (b) operating expenses and other costs of the Parent and its Subsidiaries (including, without limitation, all general and administrative expenses, but excluding costs incurred on behalf of the Parent to the extent such costs have been reimbursed) arising from the Private Capital Management Business for such period.

“**Mandatorily Redeemable Stock**” means, with respect to any Person, any Equity Interest of such Person which by the terms of such Equity Interest (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than an Equity Interest to the extent redeemable in exchange for common stock or other “qualified” Equity Interests at the option of the issuer of such Equity Interest), (b) is convertible into or exchangeable or exercisable for Indebtedness or Mandatorily Redeemable Stock, or (c) is redeemable at the option of the holder thereof, in whole or in part (other than an Equity Interest which is redeemable solely in exchange for common stock or other “qualified” Equity Interests); in each case, on or prior to the later of the Revolving Termination Date and the Term Loan Maturity Date.

“**Material Adverse Effect**” means (a) a material adverse change in, or a material adverse effect upon, the business, assets, operations, or financial condition of the Parent and its Subsidiaries, taken as a whole; (b) a material impairment of the ability of the Borrower and the Guarantors, taken as a whole, to perform their material obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect, or enforceability against the Borrower or any Guarantor of any Loan Document to which it is a party.

“**Material Indebtedness**” has the meaning given that term in Section 11.1(d)(i).

“**Material Subsidiary**” means any Subsidiary of the Parent to which more than 5% of Total Asset Value is attributable.

“**Maximum Rate**” has the meaning given that term in Section 3.7.

“**MNPI**” has the meaning given that term in Section 9.6.

“**Moody’s**” means Moody’s Investors Service, Inc. and its successors.

“**Mortgage**” means a mortgage, deed of trust, deed to secure debt or similar security instrument made by a Person owning an interest in real estate granting a Lien on such interest in real estate as security for the payment of Indebtedness.

“**Mortgage Receivable**” means a promissory note secured by a Mortgage of which the Parent, the Borrower or a Subsidiary of the Parent is the holder and retains the rights of collection of all payments thereunder.

“**Multiemployer Plan**” means at any time a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding six plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such six-year period, but in the case of any such plan maintained or contributed to by a Person that has ceased to be a member of the ERISA Group (and not by any Person that is a current member of the ERISA Group), only if a current member of the ERISA Group could reasonably be expected to have any material liability with respect to such plan.

“**Negative Pledge**” means, with respect to a given asset, any provision of a document, instrument or agreement (other than any Loan Document) which prohibits or purports to prohibit the creation of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that an agreement that conditions a Person’s ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person’s ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets, shall not constitute a Negative Pledge.

“**Net Operating Income**” or “**NOI**” means, for any Property and for a given period, the sum of the following (without duplication): (a) rents and other revenues received in the ordinary course from such Property (including proceeds of rent loss or business interruption insurance but excluding pre-paid rents and revenues and security deposits except to the extent applied in satisfaction of tenants’ obligations for rent) minus (b) all expenses paid (excluding interest, debt service charges, income taxes and acquisition costs for consummated acquisitions but including an appropriate accrual for property taxes and insurance) related to the ownership, operation or maintenance of such Property, including but not limited to property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses (but specifically excluding general overhead expenses of the Parent and its Subsidiaries and any property management fees).

“**Non-Consenting Lender**” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders, all Lenders of a facility or all affected Lenders in accordance with the terms of Section 13.6 and (b) has been approved by the Requisite Lenders, the Requisite Term Loan Lenders and/or Requisite Revolving Lenders, as applicable.

“**Non-Defaulting Lender**” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Nonrecourse Indebtedness” means, with respect to a Person, Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, prohibited transfers, voluntary bankruptcy, collusive involuntary bankruptcy and other similar customary exceptions to nonrecourse liability) is contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness.

“Note” means a Revolving Note, Term Note, a Bid Rate Note or a Swingline Note.

“Notice of Borrowing” means a notice substantially in the form of Exhibit G (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.1(b) evidencing the Borrower’s request for a borrowing of Revolving Loans or Term Loans.

“Notice of Continuation” means a notice substantially in the form of Exhibit H (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.10 evidencing the Borrower’s request for the Continuation of a LIBOR Loan.

“Notice of Conversion” means a notice substantially in the form of Exhibit I (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.11 evidencing the Borrower’s request for the Conversion of a Loan from one Type to another Type.

“Notice of Swingline Borrowing” means a notice substantially in the form of Exhibit J (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to a Swingline Lender pursuant to Section 2.5(b) evidencing the Borrower’s request for a Swingline Loan from such Swingline Lender.

“Obligations” means, individually and collectively: (a) the aggregate principal balance of, and all accrued and unpaid interest on, all Loans; (b) all Reimbursement Obligations and all other Letter of Credit Liabilities; and (c) all other indebtedness, liabilities, obligations, covenants and duties of the Borrower and the other Loan Parties owing to the Administrative Agent, any Issuing Bank or any Lender of every kind, nature and description, under this Agreement or any of the other Loan Documents or in respect of any Loan, Letter of Credit Reimbursement Obligation or other Letter of Credit Liabilities, including, without limitation, the Fees and indemnification obligations, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any promissory note. For the avoidance of doubt, “Obligations” shall not include any indebtedness, liabilities, obligations, covenants or duties in respect of Specified Derivatives Contracts.

“Occupancy Rate” means, with respect to a Property at any time, the ratio, expressed as a percentage, of (a) the net rentable square footage of such Property actually occupied by tenants and upon which rent is paid, pursuant to binding leases as to which no monetary default has occurred and has continued unremedied for sixty (60) or more days to (b) the aggregate net rentable square footage of such Property.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Off-Balance Sheet Obligations” means liabilities and obligations of the Parent, any Subsidiary or any other Person in respect of “off-balance sheet arrangements” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act) which the Parent would be required to disclose in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of the

Parent's report on Form 10-Q or Form 10-K (or their equivalents) which the Parent is required to file with the SEC (or any Governmental Authority substituted therefor).

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

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.6).

"Ownership Share" means, with respect to any Subsidiary of a Person (other than a Wholly Owned Subsidiary) or any Unconsolidated Affiliate of a Person, the greater of (a) such Person's relative nominal direct and indirect ownership interest (expressed as a percentage) in such Subsidiary or Unconsolidated Affiliate or (b) such Person's relative direct and indirect economic interest (calculated as a percentage) in such Subsidiary or Unconsolidated Affiliate determined in accordance with the applicable provisions of the declaration of trust, articles or certificate of incorporation, articles of organization, partnership agreement, joint venture agreement or other applicable organizational document of such Subsidiary or Unconsolidated Affiliate.

"Parent" means VEREIT, Inc., a Maryland corporation.

"Parent Guarantor" means the Parent and any Subsidiary of the Parent owning any direct or indirect interest in the Borrower that is party to the Guaranty as a "Guarantor".

"Participant" has the meaning given that term in Section 13.5(d).

"Participant Register" has the meaning given that term in Section 13.5(d).

"Patriot Act" means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation and any successor agency.

"PDF" has the meaning given that term in Section 13.13.

"Permitted Additional Extension Amendments" means, from and after the initial Revolving Termination Date and Term Loan Maturity Date hereunder, with respect to any Affected Facility, an extension of the final maturity date of the applicable Loans and/or Commitments of the Accepting Lenders thereof on customary terms (provided that such extensions may not result in having more than two maturity dates at any time with respect to either revolving loans or term loans without the consent of the Administrative Agent) and, in connection therewith, a change in the Pro Rata Share with respect to the applicable Loans and/or Commitments of the Accepting Lenders thereof and the payment of additional fees to such Accepting Lenders.

“Permitted Liens” means, with respect to any asset or property of a Person, (a) Liens securing taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA or pursuant to any Environmental Laws) which are not at the time required to be paid or discharged under Section 8.6 or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person; (b) the claims of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which, in each case, are not at the time required to be paid or discharged under the applicable provisions of Section 8.6; (c) easements, rights-of-way, restrictions, restrictive covenants, encroachments, protrusions and other similar encumbrances affecting real property assets which do not materially detract from the value of the property subject thereto or materially impair the intended use thereof in the business of such Person, (d) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers’ compensation, unemployment insurance or similar Applicable Laws; (e) the rights of tenants under leases and subleases which do not materially impair the intended use thereof in the business of such Person; (f) Liens in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties; (g) the interests of lessees and lessors under leases or subleases of, and the interest of managers or operators under management agreements with respect to, real or personal property made in the ordinary course of business and not interfering with the ordinary conduct of business of such Person; (h) Liens securing assessments or charges payable to a property owner association or similar entity, which assessments are not yet due and payable or are being contested in good faith by appropriate proceedings diligently conducted, and for which adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person; (i) Liens on property of such Person that are insured against by title insurance; provided that such Lien would not reasonably be expected to impair the ability to place mortgage financing on the property encumbered by such Lien, which mortgage financing includes title insurance coverage against such Lien; (j) Liens securing assessment bonds so long as such Person is not in default under the terms thereof; (k) Liens securing judgments to the extent not resulting in an Event of Default pursuant to Section 11.1(h) and (l) Liens listed on Schedule 1.1(d).

“Person” means any natural person, corporation, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or any other nongovernmental entity, or any Governmental Authority.

“Plan” means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (a) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (b) has at any time within the preceding six years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group, but in the case of any such plan maintained or contributed to by a Person that has ceased to be a member of the ERISA Group (and not by any Person that is a current member of the ERISA Group), only if a current member of the ERISA Group could reasonably be expected to have any material liability with respect to such plan.

“Post-Default Rate” means, in respect of any principal of any Loan or any Reimbursement Obligation, the rate otherwise applicable plus an additional two percent (2.0%) per annum and with respect to any other Obligation, a rate per annum equal to the Base Rate as in effect from time to time plus the Applicable Margin for Base Rate Loans plus two percent (2.0%).

“Preferred Dividends” means, for any period and without duplication, all Restricted Payments paid during such period on Preferred Equity Interests issued by the Parent, the Borrower or any Subsidiary. Preferred Dividends shall not include dividends or distributions (a) paid or payable solely in Equity Interests (other than Mandatorily Redeemable Stock) payable to holders of such class of Equity Interests, (b) paid or payable to the Parent, the Borrower or a Subsidiary, or (c) constituting or resulting in the redemption of Preferred Equity Interests, other than scheduled redemptions not constituting balloon, bullet or similar redemptions in full.

“Preferred Equity Interests” means, with respect to any Person, Equity Interests in such Person which are entitled to preference or priority over any other Equity Interest in such Person in respect of the payment of dividends or distribution of assets upon liquidation or both.

“Prime Rate” means, at any time, the rate of interest per annum publicly announced from time to time by the Lender then acting as the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Lender acting as the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“Principal Office” means the office of the Administrative Agent located at 600 South 4th St., 9th Floor, Minneapolis, Minnesota 55415, or any other subsequent office that the Administrative Agent shall have specified as the Principal Office by written notice to the Borrower and the Lenders.

“Private Capital Management Business” means the provision of management, advisory or other comparable services under Management Contracts.

“Pro Rata Share” means, as to each Lender as of any date of determination, the ratio, expressed as a percentage of (a) (i) the aggregate amount of such Lender’s Revolving Commitments plus (ii) the amount of such Lender’s unused Term Loan Commitment plus (iii) the amount of such Lender’s outstanding Term Loans to (b) (i) the aggregate amount of all Revolving Commitments of all Lenders plus (ii) the aggregate amount of the unused Term Loan Commitments of all Lenders plus (iii) the aggregate amount of all outstanding Term Loans of all Lenders; provided, however, that if at the time of determination the Revolving Commitments have terminated or been reduced to zero, the portion of “Pro Rata Share” attributable to Revolving Commitments shall be computed based on the unpaid principal amount of all outstanding Revolving Loans, Bid Rate Loans, Swingline Loans and Letter of Credit Liabilities as of such date. If at the time of determination all Revolving Commitments have been terminated or reduced to zero and there are no outstanding Revolving Loans, Swingline Loans, Bid Rate Loans or Letter of Credit Liabilities, then the portion of “Pro Rata Share” attributable to Revolving Commitments shall be determined as of the most recent date on which Revolving Commitments were in effect or Revolving Loans, Swingline Loans, Bid Rate Loans or Letters of Credit Liabilities were outstanding. For purposes of this definition, a Revolving Lender shall be deemed to hold a Swingline Loan or a Letter of Credit Liability to the extent such Revolving Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

“Property” or **“Properties”** means a parcel (or group of related parcels) of real property, together with any building, facility, structure, equipment or other asset located on such parcel of real property, owned by the Parent, the Borrower, any Subsidiary or any Unconsolidated Affiliate.

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

“Qualified Plan” means a Benefit Arrangement that is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code.

“Rating Agency” means S&P, Moody’s or Fitch.

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

“Recourse Indebtedness” means Indebtedness that is not Nonrecourse Indebtedness.

“Register” has the meaning given that term in Section 13.5(c).

“Regulatory Change” means, with respect to any Lender, any change effective after the Agreement Date in Applicable Law (including without limitation, Regulation D of the Board of Governors of the Federal Reserve System) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks, including such Lender, of or under any Applicable Law (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any Governmental Authority or monetary authority charged with the interpretation or administration thereof or compliance by any Lender with any request or directive regarding capital adequacy or liquidity. Notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Regulatory Change”, regardless of the date enacted, implemented, adopted or issued.

“Reimbursement Obligation” means the absolute, unconditional and irrevocable obligation of the Borrower to reimburse an Issuing Bank for any drawing honored by such Issuing Bank under a Letter of Credit issued by such Issuing Bank.

“REIT” means a Person qualifying for treatment as a “real estate investment trust” within the meaning of Section 856 of the Internal Revenue Code.

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

“Replacement Rate” has the meaning given that term in Section 5.2(b).

“Requisite Lenders” means, as of any date, Lenders having more than 50% of the sum of (a) the aggregate Revolving Commitments (or if all Revolving Commitments have been terminated or reduced to zero, the principal amount of the aggregate outstanding Revolving Loans, Swingline Loans, Bid Rate Loans and Letter of Credit Liabilities), plus (b) the aggregate unused Term Loan Commitments plus (c) the aggregate outstanding principal amount of Term Loans; provided that (i) in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded, and (ii) at all times when there are two or more Lenders (excluding Defaulting Lenders), the term “Requisite Lenders” shall in no event mean less than two Lenders. For purposes of this definition, a Lender shall be deemed to hold a Swingline Loan or a Letter of Credit Liability to the extent such Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

“Requisite Revolving Lenders” means, as of any date, (a) Revolving Lenders having more than 50% of the aggregate amount of the Revolving Commitments of all Revolving Lenders, or (b) if the Revolving Commitments have been terminated or reduced to zero, the Revolving Lenders holding more than 50% of the principal amount of the aggregate outstanding Revolving Loans, Bid Rate Loans and Swingline Loans and Letter of Credit Liabilities; provided that (i) in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded, and (ii) at all times when two or more Revolving Lenders (excluding Defaulting Lenders) are party to this Agreement, the term “Requisite Revolving Lenders” shall in no event mean less than two Revolving Lenders. For purposes of this definition, a Revolving Lender (other than the applicable Swingline Lender) shall be deemed to hold a Swingline Loan and a Revolving Lender (other than the applicable Issuing Bank) shall be deemed to hold a Letter of Credit Liability, in each case, to the extent such Revolving Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

“Requisite Term Loan Lenders” means, as of any date, Term Loan Lenders having more than 50% of the sum of (a) the aggregate amount of the unused Term Loan Commitments plus (b) the aggregate outstanding principal amount of the Term Loans; provided that (i) in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded, and (ii) at all times when two or more Term Loan Lenders (excluding Defaulting Lenders) are party to this Agreement, the term “Requisite Term Loan Lenders” shall in no event mean less than two Term Loan Lenders.

“Reserves for Replacements” means, for any period and with respect to any Property, an amount equal to (a) the aggregate square footage of all gross leasable space of such Property times (b) \$0.10 times (c) the number of days in such period divided by (d) 365. If the term Reserves for Replacements is used without reference to any specific Property, then it shall be determined on an aggregate basis with respect to all Properties and the applicable Ownership Shares of all Properties of all Unconsolidated Affiliates.

“Resigning Lender” has the meaning given that term in Section 12.8.

“Responsible Officer” means with respect to the Parent, the Borrower or any Subsidiary, the chief executive officer, president, the chief financial officer, chief accounting officer, treasurer, assistant treasurer and controller of the Parent, the Borrower or such Subsidiary.

“Restricted Payment” means: (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of the Parent or any of its Subsidiaries now or hereafter outstanding; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of the Parent or any of its Subsidiaries now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of the Parent or any of its Subsidiaries now or hereafter outstanding, in each case, except for a dividend or distribution payable or other payment made solely in (i) shares of that class of Equity Interests, (ii) shares in any other class of Equity Interests not constituting Mandatorily Redeemable Stock, with terms that are not materially more favorable, taken as a whole and in the good faith determination of Borrower, than the Equity Interests with respect to which such dividend, distribution or other payment was made or (iii) shares of any class of common Equity Interests.

“Revolving Commitment” means, as to each Revolving Lender, such Lender’s obligation to make Revolving Loans pursuant to Section 2.1, to issue (in the case of an Issuing Bank) and to participate (in the case of the other Lenders) in Letters of Credit pursuant to Section 2.4(i), and to participate in Swingline Loans pursuant to Section 2.5(e), in an amount up to, but not exceeding the amount set forth for such Lender on Schedule I as such Lender’s “Revolving Commitment Amount” or as set forth in any applicable Assignment and Assumption, or agreement executed by a Person becoming a Lender in accordance with

Section 2.17, as the same may be reduced from time to time pursuant to Section 2.13 or increased or reduced as appropriate to reflect any assignments to or by such Lender effected in accordance with Section 13.5 or increased as appropriate to reflect any increase effected in accordance with Section 2.17.

“Revolving Commitment Percentage” means the percentage equal to a fraction the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the aggregate Revolving Commitments of all Revolving Lenders (if the Revolving Commitments have terminated or expired, the Revolving Commitment Percentages shall be determined based upon the Revolving Commitments most recently in effect, giving effect to any assignments); provided that in the case of Section 3.9 when a Defaulting Lender shall exist, any such Defaulting Lender’s Revolving Commitment shall be disregarded in the calculation.

“Revolving Credit Exposure” means, as to any Revolving Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Revolving Lender’s participation in Letter of Credit Liabilities and Swingline Loans at such time.

“Revolving Lender” means a Lender having a Revolving Commitment or Revolving Credit Exposure.

“Revolving Loan” means a Loan made by a Revolving Lender pursuant to Section 2.1(a). Each Revolving Loan shall be a LIBOR Loan or a Base Rate Loan.

“Revolving Note” means a promissory note of the Borrower substantially in the form of Exhibit K, payable to a Revolving Lender in a principal amount equal to the amount of such Lender’s Revolving Commitment.

“Revolving Termination Date” means May 23, 2022, or such later date to which the Revolving Termination Date may be extended pursuant to Section 2.14.

“Sanctioned Country” means, at any time, a country, territory or region which is, or whose government is, the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by any Governmental Authority of the United States of America, including without limitation, OFAC or the U.S. Department of State, or by the United Nations Security Council, Her Majesty’s Treasury, the European Union or any other Governmental Authority, (b) any Person located, operating, organized or resident in a Sanctioned Country, (c) an agency of the government of a Sanctioned Country or (d) any Person Controlled by any Person or agency described in any of the preceding clauses (a) through (c).

“Sanctions” means any sanctions or trade embargoes imposed, administered or enforced by any Governmental Authority of the United States of America, including without limitation, OFAC or the U.S. Department of State, or by the United Nations Security Council, Her Majesty’s Treasury, the European Union or any other Governmental Authority.

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

“Secured Indebtedness” means, with respect to a Person as of a given date, the aggregate principal amount of all Indebtedness of such Person outstanding on such date that is secured in any manner by any

Lien on any property, and in the case of the Parent, shall include (without duplication), the Parent's Ownership Share of the Secured Indebtedness of its Unconsolidated Affiliates; provided, however, that any Indebtedness that is secured only by a pledge of Equity Interests shall be deemed to be Unsecured Indebtedness; provided, further, that in no event shall the Obligations hereunder constitute "Secured Indebtedness" as a result of any security interest granted to the Administrative Agent or the Issuing Banks solely in the Letter of Credit Collateral Account; provided, further, that Secured Indebtedness shall not include any Discharged Indebtedness.

"Securities Act" means the Securities Act of 1933, together with all rules and regulations issued thereunder.

"Solvent" means, when used with respect to any Person, and, to the extent applicable, such Person's Subsidiaries on a consolidated basis, that (a) the fair value and the fair salable value of its assets (but, in the case of the Parent and its Subsidiaries, excluding any Indebtedness due to the Parent or any of its Subsidiaries), on a consolidated basis, are each in excess of the fair valuation of its total liabilities (including all contingent liabilities computed at the amount which, in light of all facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual and matured liability but, in the case of the Parent and its Subsidiaries, excluding any Indebtedness due to the Parent or any of its Subsidiaries; (b) such Person and, to the extent applicable, such person's Subsidiaries, on a consolidated basis, are able to pay their respective debts or other obligations in the ordinary course as they mature; and (c) such Person and, to the extent applicable, such Person's Subsidiaries, on a consolidated basis have capital not unreasonably small to carry on their respective businesses taken as a whole.

"S&P" means Standard & Poor's Global Ratings, a Standard & Poor's Financial Services LLC business, and its successors.

"specified currency" has the meaning given that term in Section 2.20.

"Specified Derivatives Contract" means any Derivatives Contract that is made or entered into at any time, or in effect at any time now or hereafter, whether as a result of an assignment or transfer or otherwise, between or among any Loan Party and any Specified Derivatives Provider, and which was not prohibited by any of the Loan Documents when made or entered into.

"Specified Derivatives Provider" means any Person that (a) at the time it enters into a Specified Derivatives Contract with a Loan Party, is a Lender or an Affiliate of a Lender or (b) at the time it (or its Affiliate) becomes a Lender or the Administrative Agent (including on the Effective Date), is a party to a Specified Derivatives Contract with a Loan Party, in each case in its capacity as a party to such Specified Derivatives Contract.

"Stated Amount" means the amount available to be drawn by a beneficiary under a Letter of Credit from time to time, as such amount may be increased or reduced from time to time in accordance with the terms of such Letter of Credit.

"Subsidiary" means, for any Person, any corporation, partnership, limited liability company, trust or other entity of which at least a majority of the Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, trustees or other individuals performing similar functions of such corporation, partnership, limited liability company, trust or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person,

and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP.

“Subsidiary Guarantor” means any Subsidiary of the Parent that is not otherwise required to be a Parent Guarantor and Guarantees Indebtedness of the Borrower or any Guarantor, and that is party to the Guaranty as a “Guarantor”.

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

“Swingline Availability” has the meaning given that term in Section 2.5(a).

“Swingline Commitment” means each Swingline Lender’s obligation to make Swingline Loans pursuant to Section 2.5 in an amount up to, but not exceeding the amount set forth in the first sentence of Section 2.5(a), as such amount may be reduced from time to time in accordance with the terms hereof.

“Swingline Lender” means each of Wells Fargo and Bank of America, each in its capacity as a Lender of Swingline Loans pursuant to Section 2.5, together with their respective successors and assigns.

“Swingline Loan” means a loan made by a Swingline Lender to the Borrower pursuant to Section 2.5.

“Swingline Maturity Date” means the date which is seven (7) Business Days prior to the Revolving Termination Date.

“Swingline Note” means a promissory note of the Borrower substantially in the form of Exhibit L, payable to a Swingline Lender in a principal amount equal to the amount of such Swingline Lender’s Swingline Commitment as originally in effect and otherwise duly completed.

“Swingline Sublimit” has the meaning given that term in Section 2.5(a).

“Syndication Agent” has the meaning given that term in the preamble.

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

“Term Loan” means a loan made by a Term Loan Lender to the Borrower pursuant to Section 2.2.

“Term Loan Availability Period” means the period commencing on the Effective Date and ending on February 23, 2019.

“Term Loan Commitment” means, as to each Term Loan Lender, such Lender’s obligation to make Term Loans pursuant to Section 2.2, in an amount up to, but not exceeding, the amount set forth for such Lender on Schedule I as such Lender’s “Term Loan Commitment Amount”.

“Term Loan Commitment Percentage” means, as to each Lender with a Term Loan Commitment, the ratio, expressed as a percentage, of (a) the amount of such Lender’s Term Loan Commitment to (b) the aggregate amount of the Term Loan Commitments of all Term Loan Lenders.

“**Term Loan Lender**” means a Lender having a Term Loan Commitment and/or holding a Term Loan.

“**Term Loan Maturity Date**” means May 23, 2023.

“**Term Note**” means a promissory note of the Borrower substantially in the form of Exhibit M, payable to a Term Loan Lender in a principal amount equal to the amount of such Term Loan Lender’s Term Loans.

“**Termination Date**” means the date that all Extended Letters of Credit have been Cash Collateralized, all other Obligations hereunder (excluding contingent indemnification obligations to the extent no unsatisfied claim giving rise thereto has been asserted) have been paid and satisfied in full and all Commitments have been terminated.

“**Titled Person**” has the meaning given that term in Section 12.9.

“**Total Asset Value**” means, at a given time, the sum (without duplication) of all of the following: (a) calculated on a consolidated basis for the Parent and its Subsidiaries (i) cash and Cash Equivalents (other than tenant deposits and other cash and Cash Equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted in any way); plus (ii) with respect to all Properties (other than Properties with NOI that is less than or equal to zero) owned (or leased pursuant to a Ground Lease) by the Borrower or any Subsidiary for the 6-month period ending on such date of determination, the quotient of (A) Net Operating Income of the Parent and its Subsidiaries for the fiscal quarter most recently ended multiplied by four (4), divided by (B) the Capitalization Rate; plus (iii) unless the Borrower shall have irrevocably elected to have such Property included in the calculation under clause (ii) above, with respect to any Property acquired during the 6-month period ending on such date of determination, the acquisition price paid for all such Properties; plus (iv) the undepreciated GAAP book value of all Development Properties; plus (v) the acquisition price of Unimproved Land, less any GAAP impairment charges specific to any such asset; plus (vi) the acquisition price of all mortgage notes receivable and mezzanine loans, less any GAAP impairment charges specific to any such asset; plus (vii) the GAAP book value of certain marketable securities of the Parent and its Subsidiaries identified on Schedule 1.1(f) (as the same may be updated from time to time by the Parent or the Borrower in writing to the Administrative Agent); plus (viii) any asset value associated with amounts then constituting Indebtedness pursuant to clauses (b) and (h) of the definition of Indebtedness (which asset value shall not exceed the corresponding amount of any such Indebtedness), plus (b) Management EBITDA for the immediately preceding period of four consecutive fiscal quarters multiplied by five (5). The Borrower’s Ownership Share of assets held by Unconsolidated Affiliates (excluding assets of the type described in the immediately preceding clause (i)) will be included in the calculation of Total Asset Value consistent with the above described treatment for wholly owned assets. Net Operating Income attributable to (x) Properties acquired or disposed of during the fiscal quarter ending immediately prior to any date of determination of Total Asset Value or (y) Properties that were Development Properties at the end of such fiscal quarter, shall not be included in the calculation of Total Asset Value. Notwithstanding the foregoing, for purposes of determining Total Asset Value, the amount of Total Asset Value attributable to the following excess amounts shall be excluded:

- (A) Properties leased under Ground Leases in excess of 15% of Total Asset Value;
- (B) Properties that are restaurant properties in excess of 30% of Total Asset Value;
- (C) the Borrower’s Ownership Share of assets held by Unconsolidated Affiliates in excess of 20% of Total Asset Value;

(D) the amount under clause (b) above in excess of 2.5% of Total Asset Value;

(E) Investments in (or ownership of) Mortgage Receivables (valued based on aggregate book value) in excess of 5% of Total Asset Value;

(F) Investments in (or ownership of) construction in excess of 5% of Total Asset Value (it being understood that (1) construction shall be measured based on book value and (2) if a Development Property is owned by an Unconsolidated Affiliate, the amount shall be equal to the product of (X) the book value for such Property and (Y) the applicable Ownership Share);

(G) Investments in (or ownership of) unimproved land in excess of 5% of Total Asset Value;

(H) Investments in (or ownership of) equity investments in REITs in excess of 5% of Total Asset Value; and

(I) the sum of all Investments or ownership interests of the type described in the immediately preceding (E), (F), (G) and (H) in excess of 20% of Total Asset Value.

“**Total Indebtedness**” means all Indebtedness of the Parent and its Ownership Share of all Indebtedness of all Subsidiaries of the Parent; provided that Total Indebtedness shall not include any Discharged Indebtedness.

“**Tranche**” means a category of Commitments and the related extensions of credit thereunder. For purposes hereof, each of the following comprises a separate Tranche: (a) Revolving Commitments, Revolving Loans, Letters of Credit, Swingline Loans and Bid Rate Loans, and (b) Term Loan Commitments and Term Loans.

“**Type**” with respect to any Revolving Loan or Term Loan, refers to whether such Loan or portion thereof is a LIBOR Loan or a Base Rate Loan.

“**Unconsolidated Affiliate**” means, with respect to any Person, any Affiliate in whom such Person holds an Investment, which Investment is accounted for in the financial statements of such Person on an equity basis of accounting and whose financial results would not be consolidated under GAAP with the financial results of such Person on the consolidated financial statements of such Person.

“**Unencumbered Adjusted NOI**” means, for any period, (a) NOI from all Eligible Properties, minus (b) with respect to each Eligible Property, the greater of (i) the actual property management fee paid during such period with respect to such Eligible Property and (ii) an imputed management fee in the amount of 1% of the NOI from such Eligible Property for such period.

“**Unencumbered Asset Value**” means, as of any date of determination, the sum, without duplication, of (a)(i) with respect to all Eligible Properties owned (or leased pursuant to a Ground Lease) by the Borrower or any Subsidiary for the 6-month period ending on such date of determination, the quotient of (x) the Unencumbered Adjusted NOI (excluding NOI that is less than or equal to zero or attributable to Development Properties) for the fiscal quarter most recently ended multiplied by four (4), divided by (y) the Capitalization Rate, plus (ii) unless the Borrower shall have irrevocably elected to have such Eligible Property included in the calculation under clause (a)(i) above, with respect to any Eligible Property acquired during the 6-month period ending on such date of determination, the acquisition price paid for all such Eligible Properties which Eligible Properties are not subject to any Lien (other than Permitted Liens described in clauses (a) through

(f) of the definition thereof) or any Negative Pledge, plus (b) calculated on a consolidated basis for the Parent and its Subsidiaries, cash and Cash Equivalents (other than tenant deposits and other cash and Cash Equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted in any way), plus (c) Unencumbered Management EBITDA for the immediately preceding period of four consecutive fiscal quarters multiplied by five (5). Notwithstanding the foregoing, for purposes of determining Unencumbered Asset Value, to the extent the amount of Unencumbered Asset Value attributable to (A) Properties leased under Ground Leases would exceed 15% of Unencumbered Asset Value, such excess shall be excluded, (B) the amount under clause (c) above would exceed 2.5% of Unencumbered Asset Value, such excess shall be excluded, (C) the amount under clause (b) above would exceed, without duplication, the sum of (i) 2.5% of Unencumbered Asset Value plus (ii) up to \$1.0 billion of cash and Cash Equivalents of the type described in clause (b) above solely to the extent the Borrower has reasonably designated such cash and Cash Equivalents as purchase price consideration for a proposed acquisition of an Eligible Property that is the subject of a binding purchase agreement, such excess shall be excluded and (D) Properties that are restaurant properties would exceed 30% of Unencumbered Asset Value, such excess shall be excluded.

“**Unencumbered Management EBITDA**” means, for any period, Management EBITDA for such period generated by Persons whose assets and equity interests are not subject to any Lien other than Permitted Liens described in clauses (a) through (j) of the definition thereof and buy sell rights with respect to Unconsolidated Affiliates on customary terms and conditions.

“**Unimproved Land**” means land on which no development (other than improvements that are not material and are temporary in nature) has occurred and for which no development is currently scheduled or in process.

“**Unsecured Indebtedness**” means, with respect to a Person, Indebtedness of such Person that is not Secured Indebtedness; provided, however, that any Indebtedness that is secured only by a pledge of Equity Interests shall be deemed to be Unsecured Indebtedness; provided, further, that Unsecured Indebtedness shall not include any Discharged Indebtedness.

“**Unsecured Interest Expense**” means, with respect to a Person and for any period, all Interest Expense of such Person for such period attributable to Unsecured Indebtedness of such Person.

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

“**U.S. Tax Compliance Certificate**” has the meaning assigned to such term in Section 3.10(g)(ii)(B)(III).

“**Wells Fargo**” means Wells Fargo Bank, National Association, and its successors and assigns.

“**Wholly Owned Subsidiary**” means any Subsidiary of a Person in respect of which all of the Equity Interests (other than, in the case of a corporation, directors’ qualifying shares) are at the time directly or indirectly owned or controlled by such Person or one or more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries of such Person.

“**Withdrawal Liability**” means any liability as a result of a complete or partial withdrawal from a Multiemployer Plan as such terms are defined in Part 1 of Subtitle E of Title IV of ERISA.

“**Withholding Agent**” means (a) the Borrower, (b) any other Loan Party and (c) the Administrative Agent, as applicable.

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

Section 1.2. General; References to Central Time.

Unless otherwise indicated, all accounting terms, ratios and measurements shall be interpreted or determined in accordance with GAAP from time to time; provided that, if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Requisite Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the appropriate Lenders pursuant to Section 13.6); provided further that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) upon the reasonable request of the Administrative Agent, the Parent shall provide to the Administrative Agent and the Lenders financial statements and other documents setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the preceding sentence, the calculation of liabilities shall not include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB standards allowing entities to elect fair value option for financial liabilities. References in this Agreement to “Sections”, “Articles”, “Exhibits” and “Schedules” are to sections, articles, exhibits and schedules herein and hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) except as expressly provided otherwise in any Loan Document, shall include all documents, instruments or agreements issued or executed in replacement thereof, to the extent not prohibited hereby and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not otherwise stated herein or prohibited hereby and in effect at any given time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Unless explicitly set forth to the contrary, a reference to “Subsidiary” means a Subsidiary of the Parent or a Subsidiary of such Subsidiary and a reference to an “Affiliate” means a reference to an Affiliate of the Parent. Except as expressly provided otherwise in any Loan Document, (i) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time and (ii) any reference to any Person shall be construed to include such Person’s permitted successors and permitted assigns. Titles and captions of Articles, Sections, subsections and clauses in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement. Unless otherwise indicated, all references to time are references to Central time daylight or standard, as applicable.

Section 1.3. Financial Attributes of Non-Wholly Owned Subsidiaries.

When determining compliance by the Parent or the Borrower with any covenant in Section 10.1 or any other financial covenant contained in any of the Loan Documents, (a) only the Ownership Share of the Parent or the Borrower, as applicable, of the financial attributes of a Subsidiary that is not a Wholly Owned Subsidiary shall be included, (b) the Parent’s Ownership Share of the Borrower shall be deemed to be 100.0% and the Borrower shall be deemed to be a Wholly Owned Subsidiary of the Parent and (c) unsecured

intercompany Indebtedness owed by the Parent or any of its consolidated Subsidiaries, on the one hand, to the Parent or any of its consolidated Subsidiaries, on the other hand, shall be excluded.

ARTICLE II. CREDIT FACILITY

Section 2.1. Revolving Loans.

(a) Making of Revolving Loans. Subject to the terms and conditions set forth in this Agreement, including without limitation, Section 2.16, each Revolving Lender (severally and not jointly) agrees to continue to make Revolving Loans to the Borrower in Dollars during the period from and including the Effective Date to but excluding the Revolving Termination Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, such Lender's Revolving Commitment. Each borrowing of Revolving Loans that are to be (i) Base Rate Loans, shall be in an aggregate minimum amount of \$250,000 and integral multiples of \$50,000 in excess thereof and (ii) LIBOR Loans shall be in an aggregate minimum amount of \$2,500,000 and integral multiples of \$500,000 in excess thereof. Notwithstanding the immediately preceding sentence but subject to Section 2.16, a borrowing of Revolving Loans may be in the aggregate amount of the unused Revolving Commitments. Within the foregoing limits and subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Revolving Loans.

(b) Requests for Revolving Loans. Not later than 11:00 a.m. Central time on the proposed date of a borrowing of Revolving Loans that are to be Base Rate Loans and not later than 11:00 a.m. Central time at least three (3) Business Days prior to a borrowing of Revolving Loans that are to be LIBOR Loans, the Borrower shall notify the Administrative Agent of such requested borrowing by hand delivery or teletype, electronic mail or other similar form of communication of a Notice of Borrowing or by telephone (which, in the case of notification by telephone, shall be confirmed promptly by hand delivery or teletype, electronic mail or other similar form of communication to the Administrative Agent of a Notice of Borrowing). Each Notice of Borrowing, whether telephonic or written, shall specify the aggregate principal amount of the Revolving Loans to be borrowed, the date such Revolving Loans are to be borrowed (which must be a Business Day), the Type of the requested Revolving Loans and if such Revolving Loans are to be LIBOR Loans, the initial Interest Period for such Revolving Loans. Each Notice of Borrowing, whether telephonic or written, shall be irrevocable once given and binding on the Borrower. Prior to delivering a Notice of Borrowing, the Borrower may (without specifying the Type of Loan) request that the Administrative Agent provide the Borrower with the most recent LIBOR available to the Administrative Agent. The Administrative Agent shall provide such quoted rate to the Borrower on the date of such request. If no Interest Period is specified with respect to any requested LIBOR Loan, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(c) Funding of Revolving Loans. Promptly after receipt of a Notice of Borrowing under the immediately preceding subsection (b), the Administrative Agent shall notify each Revolving Lender of the proposed borrowing. Each Revolving Lender shall deposit an amount equal to the Revolving Loan to be made by such Lender to the Borrower with the Administrative Agent at the Principal Office, in immediately available funds not later than 1:00 p.m. Central time on the date of such proposed Revolving Loans that are to be Base Rate Loans and not later than 11:00 a.m. Central time on the date of such proposed Revolving Loans that are to be LIBOR Loans. Subject to fulfillment of all applicable conditions set forth in Sections 6.1 and 6.2 (in the case of any borrowing on the Effective Date) and Section 6.2 (in the case of any borrowing after the Effective Date), the Administrative Agent shall make available to the Borrower in the account specified in the Disbursement Instruction Agreement, not later than 2:00 p.m. Central time on the date of the requested borrowing of Revolving Loans, the proceeds of such amounts received by the Administrative Agent.

(d) Assumptions Regarding Funding by Revolving Lenders. Unless the Administrative Agent shall have been notified by any Revolving Lender that such Lender will not make available to the Administrative Agent a Revolving Loan to be made by such Lender in connection with any borrowing, the Administrative Agent may assume that such Lender will make the proceeds of such Revolving Loan available to the Administrative Agent in accordance with the foregoing provisions of this Section 2.1, and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrower the amount of such Revolving Loan to be provided by such Lender. In such event, if such Lender does not make available to the Administrative Agent the proceeds of such Revolving Loan, then such Lender and the Borrower severally agree to pay to the Administrative Agent on demand the amount of such Revolving Loan with interest thereon, for each day from and including the date such Revolving Loan is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay the amount of such interest to the Administrative Agent for the same or overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays to the Administrative Agent the amount of such Revolving Loan, the amount so paid shall constitute such Lender's Revolving Loan included in the borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Revolving Lender that shall have failed to make available the proceeds of a Revolving Loan to be made by such Lender.

Section 2.2. Term Loans.

(a) Making of Term Loans. Subject to the terms and conditions hereof, each Term Loan Lender severally and not jointly agrees to make Term Loans to the Borrower in up to four (4) installments during the Term Loan Availability Period in an aggregate principal amount for all such Term Loan Lenders and Term Loans not to exceed \$900,000,000 and, with respect to each Term Loan Lender, in a principal amount equal to such Lender's Term Loan Commitment Percentage of the aggregate principal amount of the additional Term Loans being requested by the Borrower; provided, that after giving effect thereto, the aggregate amount of all Term Loans made by each Term Loan Lender shall not exceed such Term Loan Lender's Term Loan Commitment. Upon a Lender's funding of all or any portion of its Term Loan Commitment, the Term Loan Commitment of such Lender shall terminate by the amount so funded. Any undrawn portion of the Term Loan Commitments shall be reduced to zero at the expiration of the Term Loan Availability Period.

(b) Requests for Term Loans. With respect to Term Loans made by the Term Loan Lenders after the Effective Date, not later than 11:00 a.m. Central time at least one (1) Business Day prior to a borrowing of Term Loans that are to be Base Rate Loans and not later than 11:00 a.m. Central time at least three (3) Business Days prior to a borrowing of Term Loans that are to be LIBOR Loans, the Borrower shall notify the Administrative Agent of such requested borrowing by hand delivery or telecopy, electronic mail or other similar form of communication of a Notice of Borrowing or by telephone (which, in the case of notification by telephone, shall be confirmed promptly by hand delivery or telecopy, electronic mail or other similar form of communication to the Administrative Agent of a Notice of Borrowing). Each such Notice of Borrowing, whether telephonic or written, shall specify the aggregate principal amount of the Term Loans to be borrowed, the date such Term Loans are to be borrowed (which must be a Business Day), the Type of the requested Term Loans, and if such Term Loans are to be LIBOR Loans, the initial Interest Period for such Term Loans. Each Notice of Borrowing, whether telephonic or written, shall be irrevocable once given and binding on the Borrower. Prior to delivering a Notice of Borrowing, the Borrower may (without specifying whether a Term Loan will be a Base Rate Loan or a LIBOR Loan) request that the Administrative

Agent provide the Borrower with the most recent LIBOR available to the Administrative Agent. The Administrative Agent shall provide such quoted rate to the Borrower on the date of such request.

(c) Funding of Term Loans. Each Term Loan Lender shall deposit an amount equal to the Term Loan to be made or made available by such Term Loan Lender to the Borrower with the Administrative Agent at the Principal Office, in immediately available funds by 11:00 a.m. Central time on the date specified by the Borrower in any Notice of Borrowing. Subject to fulfillment of all applicable conditions set forth in Section 6.2, the Administrative Agent shall make available to the Borrower in the account specified by the Borrower in the Disbursement Instruction Agreement, not later than 2:00 p.m. Central time on each such date specified by the Borrower in any Notice of Borrowing, the proceeds of such amounts received by the Administrative Agent. The Borrower may not reborrow any portion of the Term Loans once repaid.

Section 2.3. Bid Rate Loans.

(a) Bid Rate Loans. At any time during the period from the Effective Date to but excluding the Revolving Termination Date, and so long as the Parent continues to maintain an Investment Grade Rating from at least two of Moody's, S&P and Fitch, the Borrower may, as set forth in this Section, request the Revolving Lenders to make offers to make Bid Rate Loans to the Borrower in Dollars. The Revolving Lenders may, but shall have no obligation to, make such offers and the Borrower may, but shall have no obligation to, accept any such offers in the manner set forth in this Section.

(b) Requests for Bid Rate Loans. When the Borrower wishes to request from the Revolving Lenders offers to make Bid Rate Loans, it shall give the Administrative Agent notice (a "**Bid Rate Quote Request**") so as to be received no later than 11:00 a.m. Central time on (x) the Business Day immediately preceding the date of borrowing proposed therein, in the case of an Absolute Rate Auction and (y) the date four (4) Business Days prior to the proposed date of borrowing, in the case of a LIBOR Auction. The Administrative Agent shall deliver to each Revolving Lender a copy of each Bid Rate Quote Request promptly upon receipt thereof by the Administrative Agent. The Borrower may request offers to make Bid Rate Loans for up to three (3) different Interest Periods in any one Bid Rate Quote Request; provided that if granted each separate Interest Period shall be deemed to be a separate borrowing (a "**Bid Rate Borrowing**"). Each Bid Rate Quote Request shall be substantially in the form of Exhibit N and shall specify as to each Bid Rate Borrowing all of the following:

- (i) the proposed date of such Bid Rate Borrowing, which shall be a Business Day;
- (ii) the aggregate amount of such Bid Rate Borrowing which shall be in a minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess thereof which shall not cause any of the limits specified in Section 2.16 to be violated;
- (iii) whether the Bid Rate Quote Request is for LIBOR Margin Loans or Absolute Rate Loans; and
- (iv) the duration of the Interest Period applicable thereto, which shall not extend beyond the Revolving Termination Date.

The Borrower shall not deliver any Bid Rate Quote Request within five (5) Business Days of the giving of any other Bid Rate Quote Request and the Borrower shall not deliver more than three (3) Bid Rate Quote Requests in any calendar month.

(c) Bid Rate Quotes.

(i) Each Revolving Lender may submit one or more Bid Rate Quotes, each containing an offer to make a Bid Rate Loan in response to any Bid Rate Quote Request; provided that, if the Borrower's request under Section 2.3(b) specified more than one Interest Period, such Revolving Lender may make a single submission containing only one Bid Rate Quote for each such Interest Period. Each Bid Rate Quote must be submitted to the Administrative Agent not later than 10:30 a.m. Central time (x) on the proposed date of borrowing, in the case of an Absolute Rate Auction and (y) on the date three (3) Business Days prior to the proposed date of borrowing, in the case of a LIBOR Auction, and in either case the Administrative Agent shall disregard any Bid Rate Quote received after such time; provided that the Revolving Lender then acting as the Administrative Agent may submit a Bid Rate Quote only if it notifies the Borrower of the terms of the offer contained therein not later than 30 minutes prior to the latest time by which the Revolving Lenders must submit applicable Bid Rate Quotes. Any Bid Rate Quote so made shall be irrevocable except with the consent of the Administrative Agent given at the request of the Borrower. Such Bid Rate Loans may be funded by a Revolving Lender's Designated Lender (if any) as provided in Section 13.5(h); however, such Revolving Lender shall not be required to specify in its Bid Rate Quote whether such Bid Rate Loan will be funded by such Designated Lender.

(ii) Each Bid Rate Quote shall be substantially in the form of Exhibit O and shall specify:

(A) the proposed date of borrowing and the Interest Period therefor;

(B) the principal amount of the Bid Rate Loan for which each such offer is being made; provided that the aggregate principal amount of all Bid Rate Loans for which a Revolving Lender submits Bid Rate Quotes (x) may be greater or less than the Revolving Commitment of such Revolving Lender but (y) shall not exceed the principal amount of the Bid Rate Borrowing for a particular Interest Period for which offers were requested; provided further that any Bid Rate Quote shall be in a minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess thereof;

(C) in the case of an Absolute Rate Auction, the rate of interest per annum (rounded upwards, if necessary, to the nearest one-hundredth of one percent (0.01%)) offered for each such Absolute Rate Loan (the "**Absolute Rate**");

(D) in the case of a LIBOR Auction, the margin above or below applicable LIBOR (the "**LIBOR Margin**") offered for each such LIBOR Margin Loan, expressed as a percentage (rounded upwards, if necessary, to the nearest one-hundredth of one percent (0.01%)) to be added to (or subtracted from) the applicable LIBOR; and

(E) the identity of the quoting Revolving Lender.

Unless otherwise agreed by the Administrative Agent and the Borrower, no Bid Rate Quote shall contain qualifying, conditional or similar language or propose terms other than or in addition to those set forth in the applicable Bid Rate Quote Request and, in particular, no Bid Rate Quote may be conditioned upon acceptance by the Borrower of all (or some specified minimum) of the principal amount of the Bid Rate Loan for which such Bid Rate Quote is being made.

(d) Notification by Administrative Agent. The Administrative Agent shall, as promptly as practicable after the Bid Rate Quotes are submitted (but in any event not later than 11:30 a.m. Central time (x) on the proposed date of borrowing, in the case of an Absolute Rate Auction or (y) on the date three (3) Business Days prior to the proposed date of borrowing, in the case of a LIBOR Auction), notify the Borrower of the terms (i) of any Bid Rate Quote submitted by a Revolving Lender that is in accordance with Section 2.3(c) and (ii) of any Bid Rate Quote that amends, modifies or is otherwise inconsistent with a previous Bid Rate Quote submitted by such Revolving Lender with respect to the same Bid Rate Quote Request. Any such subsequent Bid Rate Quote shall be disregarded by the Administrative Agent unless such subsequent Bid Rate Quote is submitted solely to correct a manifest error in such former Bid Rate Quote. The Administrative Agent's notice to the Borrower shall specify (A) the aggregate principal amount of the Bid Rate Borrowing for which offers have been received and (B) the principal amounts and Absolute Rates or LIBOR Margins, as applicable, so offered by each Revolving Lender (identifying the Revolving Lender that made such Bid Rate Quote).

(e) Acceptance by Borrower.

(i) Not later than 12:30 p.m. Central time (x) on the proposed date of borrowing, in the case of an Absolute Rate Auction and (y) on the date three (3) Business Days prior to the proposed date of borrowing, in the case of a LIBOR Auction, the Borrower shall notify the Administrative Agent of its acceptance or nonacceptance of the Bid Rate Quotes so notified to it pursuant to Section 2.3(d) which notice shall be in the form of Exhibit P. In the case of acceptance, such notice shall specify the aggregate principal amount of Bid Rate Quotes for each Interest Period that are accepted. The failure of the Borrower to give such notice by such time shall constitute nonacceptance. The Borrower may accept any Bid Rate Quote in whole or in part; provided that:

(A) the aggregate principal amount of each Bid Rate Borrowing may not exceed the applicable amount set forth in the related Bid Rate Quote Request;

(B) the aggregate principal amount of each Bid Rate Borrowing shall comply with the provisions of Section 2.3(b)(ii) and together with all other Bid Rate Loans then outstanding shall not cause the limits specified in Section 2.16 to be violated;

(C) acceptance of Bid Rate Quotes may be made only in ascending order of Absolute Rates or LIBOR Margins, as applicable, in each case beginning with the lowest rate so offered;

(D) any acceptance in part by the Borrower shall be in a minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess thereof; and

(E) the Borrower may not accept any Bid Rate Quote that fails to comply with Section 2.3(c) or otherwise fails to comply with the requirements of this Agreement.

(ii) If Bid Rate Quotes are made by two or more Revolving Lenders with the same Absolute Rates or LIBOR Margins, as applicable, for a greater aggregate principal amount than the amount in respect of which Bid Rate Quotes are permitted to be accepted for the related Interest Period, the principal amount of Bid Rate Loans in respect of which such Bid Rate Quotes are accepted shall be allocated by the Administrative Agent among such Revolving Lenders in proportion to the aggregate principal amount of such Bid Rate Quotes. Determinations by the Administrative Agent of the amounts of Bid Rate Loans shall be conclusive in the absence of manifest error.

(f) Obligation to Make Bid Rate Loans. The Administrative Agent shall promptly (and in any event not later than (x) 1:30 p.m. Central time on the proposed date of borrowing of Absolute Rate Loans and (y) on the date three (3) Business Days prior to the proposed date of borrowing of LIBOR Margin Loans) notify each Revolving Lender as to whose Bid Rate Quote has been accepted and the amount and rate thereof. A Revolving Lender who is notified that it has been selected to make a Bid Rate Loan may designate its Designated Lender (if any) to fund such Bid Rate Loan on its behalf, as described in Section 13.5(d). Any Designated Lender which funds a Bid Rate Loan shall on and after the time of such funding become the obligee in respect of such Bid Rate Loan and be entitled to receive payment thereof when due. No Revolving Lender shall be relieved of its obligation to fund a Bid Rate Loan, and no Designated Lender shall assume such obligation, prior to the time the applicable Bid Rate Loan is funded. Any Revolving Lender whose offer to make any Bid Rate Loan has been accepted shall, not later than 2:30 p.m. Central time on the date specified for the making of such Loan, make the amount of such Loan available to the Administrative Agent at its Principal Office in immediately available funds, for the account of the Borrower. The amount so received by the Administrative Agent shall, subject to the terms and conditions of this Agreement, be made available to the Borrower not later than 3:30 p.m. Central time on such date by depositing the same, in immediately available funds, in an account of the Borrower designated by the Borrower.

(g) No Effect on Revolving Commitment. Except for the purpose and to the extent expressly stated in Section 2.13 and 2.16, the amount of any Bid Rate Loan made by any Revolving Lender shall not constitute a utilization of such Revolving Lender's Revolving Commitment.

Section 2.4. Letters of Credit.

(a) Letters of Credit. Subject to the terms and conditions of this Agreement, including without limitation, Section 2.16, the Issuing Banks, on behalf of the Revolving Lenders, agrees to issue for the account of the Borrower during the period from and including the Effective Date to, but excluding, the date five (5) days prior to the Revolving Termination Date, one or more standby letters of credit denominated in Dollars (each a "**Letter of Credit**") up to a maximum aggregate Stated Amount at any one time outstanding not to exceed \$50,000,000 as such amount may be reduced from time to time in accordance with the terms hereof (the "**L/C Commitment Amount**"); provided, however, that an Issuing Bank shall not be obligated to issue any Letter of Credit if after giving effect to such issuance, the aggregate Stated Amount of Letters of Credit issued by such Issuing Bank and then outstanding would exceed the lesser of (i) one-half of the L/C Commitment Amount and (ii) an amount equal to (x) the Revolving Commitment of such Issuing Bank in its capacity as a Revolving Lender minus (y) the aggregate outstanding principal amount of Revolving Loans (including Swingline Loans) and Letter of Credit Liabilities made by such Issuing Bank in its capacity as a Revolving Lender; provided, further, however, that the Borrower and any Issuing Bank may agree (with notice to the Administrative Agent) to increase or decrease the amount set forth in the immediately preceding clause (i) with respect to such Issuing Bank.

(b) Terms of Letters of Credit. At the time of issuance, the amount, form, terms and conditions of each Letter of Credit, and of any drafts or acceptances thereunder, shall be subject to the approval of the applicable Issuing Bank and the Borrower (such approval not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, in no event may (i) the expiration date of any Letter of Credit extend beyond the date that is five (5) days prior to the Revolving Termination Date, or (ii) any Letter of Credit have an initial duration in excess of one year; provided, however, a Letter of Credit may contain a provision providing for the automatic extension of the expiration date in the absence of a notice of non-renewal from the applicable Issuing Bank but in no event shall any such provision permit the extension of the expiration date of such Letter of Credit beyond the date that is five (5) days prior to the Revolving Termination Date. Notwithstanding the foregoing, a Letter of Credit may, as a result of its express terms or as the result of the effect of an automatic extension provision, have an expiration date of not more than one

year beyond the Revolving Termination Date (any such Letter of Credit being referred to as an “**Extended Letter of Credit**”), so long as the Borrower delivers to the Administrative Agent for its benefit and the benefit of the applicable Issuing Bank and the Revolving Lenders no later than thirty (30) days prior to the Revolving Termination Date, either (a) Cash Collateral for such Letter of Credit for deposit into the Letter of Credit Collateral Account in an amount equal to the Stated Amount of such Letter of Credit or (b) a backstop letter of credit on terms acceptable to the applicable Issuing Bank; provided, that the obligations of the Borrower under this Section in respect of such Extended Letters of Credit shall survive the termination of this Agreement and shall remain in effect until no such Extended Letters of Credit remain outstanding. If the Borrower fails to provide Cash Collateral or a backstop letter of credit with respect to any Extended Letter of Credit by the date thirty (30) days prior to the Revolving Termination Date, such failure shall be treated as a drawing under such Extended Letter of Credit (in an amount equal to the maximum Stated Amount of such Letter of Credit), which shall be reimbursed (or participations therein funded) by the Revolving Lenders in accordance with the immediately following subsections (i) and (j), with the proceeds being utilized to provide Cash Collateral for such Letter of Credit. The initial Stated Amount of each Letter of Credit shall be at least \$10,000 (or such lesser amount as may be acceptable to the applicable Issuing Bank, the Administrative Agent and the Borrower).

(c) Requests for Issuance of Letters of Credit. The Borrower shall give the Issuing Bank it desires to issue a Letter of Credit and the Administrative Agent written notice at least five (5) Business Days (or such later date acceptable to such Issuing Bank in its sole discretion) prior to the requested date of issuance of a Letter of Credit, such notice to describe in reasonable detail the proposed terms of such Letter of Credit and the nature of the transactions or obligations proposed to be supported by such Letter of Credit, and in any event shall set forth with respect to such Letter of Credit the proposed (i) initial Stated Amount, (ii) beneficiary, and (iii) expiration date. The Borrower shall also execute and deliver such customary applications and agreements for standby letters of credit, and other customary forms as requested from time to time by the applicable Issuing Bank. Provided the Borrower has given the notice prescribed by the first sentence of this subsection and delivered such applications and agreements referred to in the preceding sentence, subject to the other terms and conditions of this Agreement, including the satisfaction of any applicable conditions precedent set forth in Section 6.2, the applicable Issuing Bank shall issue the requested Letter of Credit on the requested date of issuance for the benefit of the stipulated beneficiary; provided, that in no event shall any Issuing Bank be obligated to issue such Letter of Credit prior to the date five (5) Business Days following the date after which such Issuing Bank has received all of the items required to be delivered to it under this subsection. An Issuing Bank shall not at any time be obligated to issue any Letter of Credit if such issuance would conflict with, or cause such Issuing Bank or any Revolving Lender to exceed any limits imposed by, any Applicable Law. References herein to “issue” and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires. Upon the written request of the Borrower, an Issuing Bank shall deliver to the Borrower a copy of each Letter of Credit issued by such Issuing Bank within a reasonable time after the date of issuance thereof. To the extent any term of a Letter of Credit Document (excluding any certificate or other document presented by a beneficiary in connection with a drawing under such Letter of Credit) is inconsistent with a term of any Loan Document, the term of such Loan Document shall control. The Borrower shall examine the copy of any Letter of Credit or any amendment to a Letter of Credit that is delivered to it by the applicable Issuing Bank and, in the event of any claim of noncompliance with the Borrower’s instructions or other irregularity, the Borrower will promptly (but in any event, within five (5) Business Days after the later of (x) receipt by the beneficiary of such Letter of Credit of the original of, or amendment to, such Letter of Credit, as applicable and (y) receipt by the Borrower of a copy of such Letter of Credit or amendment, as applicable) notify such Issuing Bank. The Borrower shall be conclusively deemed to have waived any such claim against the applicable Issuing Bank and its correspondents unless such notice is given as aforesaid.

(d) Reimbursement Obligations. Upon receipt by an Issuing Bank from the beneficiary of a Letter of Credit issued by such Issuing Bank of any demand for payment under such Letter of Credit and such Issuing Bank's determination that such demand for payment complies with the requirements of such Letter of Credit, such Issuing Bank shall promptly notify the Borrower and the Administrative Agent of the amount to be paid by such Issuing Bank as a result of such demand and the date on which payment is to be made by such Issuing Bank to such beneficiary in respect of such demand; provided, however, that an Issuing Bank's failure to give, or delay in giving, such notice shall not discharge the Borrower in any respect from the applicable Reimbursement Obligation. The Borrower hereby absolutely, unconditionally and irrevocably agrees to pay and reimburse each Issuing Bank for the amount of each demand for payment under each Letter of Credit issued by such Issuing Bank at or prior to the date on which payment is to be made by such Issuing Bank to the beneficiary thereunder, without presentment, demand, protest or other formalities of any kind. Upon receipt by an Issuing Bank of any payment in respect of any Reimbursement Obligation owing with respect to a Letter of Credit issued by such Issuing Bank, such Issuing Bank shall promptly pay to the Administrative Agent for the account of each Revolving Lender that has funded its participation therein under subsection (i) such Lender's Revolving Commitment Percentage of such payment.

(e) Manner of Reimbursement. Upon its receipt of a notice referred to in the immediately preceding subsection (d), the Borrower shall advise the Administrative Agent and the applicable Issuing Bank whether or not the Borrower intends to borrow hereunder to finance its obligation to reimburse such Issuing Bank for the amount of the related demand for payment and, if it does, the Borrower shall submit a timely request for such borrowing as provided in the applicable provisions of this Agreement. If the Borrower fails to so advise the Administrative Agent and the applicable Issuing Bank, or if the Borrower fails to reimburse the applicable Issuing Bank for a demand for payment under a Letter of Credit by the date of such payment, the failure of which the applicable Issuing Bank shall promptly notify the Administrative Agent, then (i) if the applicable conditions contained in Article VI would permit the making of Revolving Loans, the Borrower shall be deemed to have requested a borrowing of Revolving Loans from the Revolving Lenders (which shall be Base Rate Loans) in an amount equal to the unpaid Reimbursement Obligation and the Administrative Agent shall give each Revolving Lender prompt notice of the amount of the Revolving Loan to be made available to the Administrative Agent not later than 12:00 noon Central time and (ii) if such conditions would not permit the making of Revolving Loans, the provisions of subsection (j) of this Section shall apply. The limitations set forth in the second sentence of Section 2.1(a) shall not apply to any borrowing of Base Rate Loans under this subsection.

(f) Effect of Letters of Credit on Revolving Commitments. Upon the issuance by an Issuing Bank of any Letter of Credit and until such Letter of Credit shall have expired or been cancelled, the Revolving Commitment of each Revolving Lender shall be deemed to be utilized for all purposes of this Agreement in an amount equal to the product of (i) such Lender's Revolving Commitment Percentage and (ii) (A) the Stated Amount of such Letter of Credit plus (B) any related Reimbursement Obligations then outstanding.

(g) Issuing Banks' Duties Regarding Letters of Credit; Unconditional Nature of Reimbursement Obligations. In examining documents presented in connection with drawings under Letters of Credit and making payments under Letters of Credit issued by an Issuing Bank against such documents, such Issuing Bank shall only be required to use the same standard of care as it uses in connection with examining documents presented in connection with drawings under letters of credit in which it has not sold participations and making payments under such letters of credit. The Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, none of the Administrative Agent, any of the Issuing Banks or any of the Lenders shall be responsible for, and the Borrower's obligations in respect of Letters of Credit shall not be affected in any manner by, (i) the form, validity, sufficiency, accuracy, genuineness or legal effects of any

document submitted by any party in connection with the application for and issuance of or any drawing honored under any Letter of Credit even if such document should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit, or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any Letter of Credit to comply fully with conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telecopy, electronic mail or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit, or of the proceeds thereof; (vii) the misapplication by the beneficiary of any Letter of Credit, or of the proceeds of any drawing under any Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Banks, the Administrative Agent or the Lenders. None of the above shall affect, impair or prevent the vesting of any Issuing Bank's, the Administrative Agent's or any Lender's rights or powers hereunder. Any action taken or omitted to be taken by an Issuing Bank under or in connection with any Letter of Credit issued by such Issuing Bank, if taken or omitted in the absence of gross negligence, bad faith or willful misconduct (as determined by a court of competent jurisdiction in a final, non-appealable judgment), shall not create against such Issuing Bank any liability to the Borrower, the Administrative Agent or any Lender. In this connection, the obligation of the Borrower to reimburse an Issuing Bank for any drawing made under any Letter of Credit issued by such Issuing Bank, and to repay any Revolving Loan made pursuant to the second sentence of the immediately preceding subsection (e), shall be absolute, unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement and any other applicable Letter of Credit Document under all circumstances whatsoever, including without limitation, the following circumstances: (A) any lack of validity or enforceability of any Letter of Credit Document or any term or provisions therein; (B) any amendment or waiver of or any consent to departure from all or any of the Letter of Credit Documents; (C) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against such Issuing Bank, any other Issuing Bank, the Administrative Agent, any Lender, any beneficiary of a Letter of Credit or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or in the Letter of Credit Documents or any unrelated transaction; (D) any breach of contract or dispute between or among the Borrower, any Issuing Bank, the Administrative Agent, any Lender or any other Person; (E) any demand, statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein or made in connection therewith being untrue or inaccurate in any respect whatsoever; (F) any non application or misapplication by the beneficiary of a Letter of Credit or of the proceeds of any drawing under such Letter of Credit; (G) payment by such Issuing Bank under any Letter of Credit against presentation of a draft or certificate which does not strictly comply with the terms of such Letter of Credit; and (H) any other act, omission to act, delay or circumstance whatsoever that might, but for the provisions of this Section, constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, the Borrower's Reimbursement Obligations. Notwithstanding anything to the contrary contained in this Section or Section 13.9, but not in limitation of the Borrower's unconditional obligation to reimburse an Issuing Bank for any drawing made under a Letter of Credit as provided in this Section and to repay any Revolving Loan made pursuant to the second sentence of the immediately preceding subsection (e), the Borrower shall have no obligation to indemnify the Administrative Agent, any Issuing Bank or any Lender in respect of any liability incurred by the Administrative Agent, such Issuing Bank or such Lender arising solely out of the gross negligence, bad faith or willful misconduct of the Administrative Agent, such Issuing Bank or such Lender in respect of a Letter of Credit as determined by a court of competent jurisdiction in a final, non-appealable judgment. Except as otherwise provided in this Section, nothing in this Section shall affect any rights the Borrower may have with respect to the gross negligence, bad faith or willful misconduct of the Administrative Agent, any Issuing Bank or any Lender with respect to any Letter of Credit.

(h) Amendments, Etc. The issuance by an Issuing Bank of any amendment, supplement or other modification to any Letter of Credit issued by such Issuing Bank shall be subject to the same conditions applicable under this Agreement to the issuance of new Letters of Credit (including, without limitation, that the request therefor be made through the applicable Issuing Bank and the Administrative Agent), and no such amendment, supplement or other modification shall be issued unless either (i) the respective Letter of Credit affected thereby would have complied with such conditions had it originally been issued hereunder in such amended, supplemented or modified form or (ii) the Administrative Agent and the Revolving Lenders, if any, required by Section 13.6 shall have consented thereto. In connection with any such amendment, supplement or other modification, the Borrower shall pay the fees, if any, payable under the last sentence of Section 3.5(c).

(i) Revolving Lenders' Participation in Letters of Credit. Immediately upon the issuance by an Issuing Bank of any Letter of Credit each Revolving Lender shall be deemed to have absolutely, irrevocably and unconditionally purchased and received from such Issuing Bank, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Revolving Commitment Percentage of the liability of such Issuing Bank with respect to such Letter of Credit and each Revolving Lender thereby shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and shall be unconditionally obligated to such Issuing Bank to pay and discharge when due, such Lender's Revolving Commitment Percentage of such Issuing Bank's liability under such Letter of Credit for which such Issuing Bank is not reimbursed in full by the Borrower through a Base Rate Loan or otherwise in accordance with the terms of this Agreement. In addition, upon the making of each payment by a Revolving Lender to the Administrative Agent for the account of an Issuing Bank in respect of any Letter of Credit issued by it pursuant to the immediately following subsection (j), such Lender shall, automatically and without any further action on the part of such Issuing Bank, the Administrative Agent or such Lender, acquire (i) a participation in an amount equal to such payment in the Reimbursement Obligation owing to such Issuing Bank by the Borrower in respect of such Letter of Credit and (ii) a participation in a percentage equal to such Lender's Revolving Commitment Percentage in any interest or other amounts payable by the Borrower in respect of such Reimbursement Obligation (other than the Fees payable to such Issuing Bank pursuant to the second and the last sentences of Section 3.5(c)). Upon receipt by the applicable Issuing Bank of any payment in respect of any Reimbursement Obligation, such Issuing Bank shall promptly pay to each Revolving Lender that has funded its participation therein under the second sentence of this subsection (i), such Revolving Lender's Revolving Commitment Percentage of such payment.

(j) Payment Obligation of Revolving Lenders. Each Revolving Lender severally agrees to pay to the Administrative Agent, for the account of an Issuing Bank, on demand or upon notice in accordance with subsection (e) above in immediately available funds in Dollars the amount of such Lender's Revolving Commitment Percentage of each drawing paid by such Issuing Bank under each Letter of Credit issued by it to the extent such amount is not reimbursed by the Borrower pursuant to subsection (d) of this Section 2.4; provided, however, that in respect of any drawing under any Letter of Credit, the maximum amount that any Revolving Lender shall be required to fund, whether as a Revolving Loan or as a participation, shall not exceed such Lender's Revolving Commitment Percentage of such drawing except as otherwise provided in Section 3.9(d). If the notice referenced in the second sentence of Section 2.4(e) is received by a Revolving Lender not later than 11:00 a.m. Central time, then such Lender shall make such payment available to the Administrative Agent not later than 2:00 p.m. Central time on the date of demand therefor; otherwise, such payment shall be made available to the Administrative Agent not later than 1:00 p.m. Central time on the next succeeding Business Day. Each Revolving Lender's obligation to make such payments to the Administrative Agent under this subsection, whether as a Base Rate Loan or as a participation, and the Administrative Agent's right to receive the same for the account of the applicable Issuing Bank, shall be absolute, irrevocable and unconditional and shall not be affected in any way by any circumstance whatsoever,

including without limitation, (i) the failure of any other Revolving Lender to make its payment under this subsection, (ii) the financial condition of the Borrower or any other Loan Party, (iii) the existence of any Default or Event of Default, including any Event of Default described in Section 11.1(e) or (f), (iv) the termination of the Revolving Commitments or (v) the delivery of Cash Collateral in respect of any Extended Letter of Credit. Each such payment to the Administrative Agent for the account of the applicable Issuing Bank shall be made without any offset, abatement, withholding or deduction whatsoever.

(k) Information to Lenders. Promptly following any change in Letters of Credit outstanding issued by an Issuing Bank, such Issuing Bank shall deliver to the Administrative Agent, which shall promptly deliver the same to each Revolving Lender and the Borrower, a notice describing the aggregate amount of all Letters of Credit issued by such Issuing Bank outstanding at such time. Upon the request of the Administrative Agent from time to time, an Issuing Bank shall deliver any other information reasonably requested by the Administrative Agent (or a Lender through the Administrative Agent) with respect to such Letter of Credit that is the subject of the request. Other than as set forth in this subsection, the Issuing Banks and the Administrative Agent shall have no duty to notify the Lenders regarding the issuance or other matters regarding Letters of Credit issued hereunder. The failure of any Issuing Bank or the Administrative Agent to perform its requirements under this subsection shall not relieve any Revolving Lender from its obligations under the immediately preceding subsection (j).

(l) Extended Letters of Credit. Each Revolving Lender confirms that its obligations under the immediately preceding subsections (i) and (j) shall be reinstated in full and apply if the delivery of any Cash Collateral in respect of an Extended Letter of Credit is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise.

Section 2.5. Swingline Loans.

(a) Swingline Loans. Subject to the terms and conditions hereof, including, without limitation, Section 2.16, each Swingline Lender severally and not jointly agrees to make Swingline Loans denominated in Dollars to the Borrower, during the period from the Effective Date to but excluding the Swingline Maturity Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, \$50,000,000 (the “**Swingline Sublimit**”), as such amount may be reduced from time to time in accordance with the terms hereof; provided that no Swingline Lender shall be obligated to make Swingline Loans in an aggregate outstanding principal amount in excess of the lesser of (i) one-half of the Swingline Sublimit and (ii) an amount equal to (x) the Revolving Commitment of such Swingline Lender in its capacity as a Revolving Lender minus (y) the aggregate outstanding principal amount of Revolving Loans (including Swingline Loans) and Letter of Credit Liabilities made by such Swingline Lender in its capacity as a Revolving Lender (such lesser amount being such Swingline Lender’s “**Swingline Availability**”). If at any time the aggregate principal amount of the Swingline Loans outstanding at such time exceeds the Swingline Commitments in effect at such time or the aggregate principal amount of Swingline Loans made by any Swingline Lender shall exceed such Swingline Lender’s Swingline Availability, the Borrower shall immediately pay the Administrative Agent for the account of the applicable Swingline Lender the amount of such excess. Subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Swingline Loans hereunder. Outstanding Swingline Loans shall reduce availability under the Revolving Commitments on a dollar-for-dollar basis.

(b) Procedure for Borrowing Swingline Loans. The Borrower shall give the Administrative Agent and the applicable Swingline Lender notice pursuant to a Notice of Swingline Borrowing or telephonic notice of each borrowing of a Swingline Loan. Each Notice of Swingline Borrowing shall be delivered to such Swingline Lender and the Administrative Agent no later than 11:00 a.m. Central time on the proposed

date of such borrowing. Any telephonic notice shall include all information to be specified in a written Notice of Swingline Borrowing and shall be promptly confirmed in writing by the Borrower pursuant to a Notice of Swingline Borrowing sent to such Swingline Lender and the Administrative Agent by telecopy, electronic mail or other similar form of communication on the same day of the giving of such telephonic notice. Not later than 1:00 p.m. Central time on the date of the requested Swingline Loan, the applicable Swingline Lender will make the proceeds of such Swingline Loan available to the Administrative Agent at its Principal Office in Dollars, in immediately available funds, for the account of the Borrower. The Administrative Agent shall, subject to satisfaction of the applicable conditions set forth in Section 6.2 for such borrowing, make the amount so received available to the Borrower on such date by depositing the same in Dollars in immediately available funds, in an account of the Borrower designated by the Borrower in its Disbursement Instruction Agreement.

(c) Interest. Swingline Loans shall bear interest at a per annum rate equal to the Base Rate as in effect from time to time plus the Applicable Margin for Revolving Loans accruing interest at the Base Rate or at such other rate or rates as the Borrower and the applicable Swingline Lender may agree from time to time in writing. Interest on Swingline Loans is solely for the account of the applicable Swingline Lender (except to the extent a Revolving Lender acquires a participating interest in a Swingline Loan pursuant to subsection (e) of this Section 2.5). All accrued and unpaid interest on Swingline Loans shall be payable on the dates and in the manner provided in Section 2.6 with respect to interest on Base Rate Loans (except as the applicable Swingline Lender and the Borrower may otherwise agree in writing in connection with any particular Swingline Loan made by such Swingline Lender).

(d) Swingline Loan Amounts, Etc. Each Swingline Loan shall be in the minimum amount of \$500,000 and integral multiples of \$100,000 in excess thereof, or such other minimum amounts agreed to by the applicable Swingline Lender and the Borrower. Any voluntary prepayment of a Swingline Loan must be in integral multiples of \$100,000 or the aggregate principal amount of all outstanding Swingline Loans comprising a single Swingline Loan (or such other minimum amounts upon which the applicable Swingline Lender and the Borrower may agree) and in connection with any such prepayment, the Borrower must give such Swingline Lender and the Administrative Agent prior written notice thereof no later than 12:00 noon Central time on the day prior to the date of such prepayment.

(e) Repayment and Participations of Swingline Loans. The Borrower agrees to repay each Swingline Loan within one (1) Business Day of demand therefor by the applicable Swingline Lender and, in any event, within five (5) Business Days after the date such Swingline Loan was made (or, if earlier, the date following the making of such Swingline Loan on which any Revolving Loan shall be made pursuant to Section 2.1); provided, that the proceeds of a Swingline Loan may not be used to pay a Swingline Loan. Any Swingline Lender making demand for repayment of a Swingline Loan made by such Swingline Lender shall notify the Administrative Agent of such demand on the date such demand is made. Notwithstanding the foregoing, the Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, the Swingline Loans on the Swingline Maturity Date (or such earlier date as the Swingline Lenders and the Borrower may agree in writing). In lieu of demanding repayment of any outstanding Swingline Loan from the Borrower, the applicable Swingline Lender may, on behalf of the Borrower (which hereby irrevocably directs the applicable Swingline Lender to act on its behalf), request a borrowing of Revolving Loans that are Base Rate Loans from the Revolving Lenders in an amount equal to the principal balance of such Swingline Loan. The amount limitations contained in the second sentence of Section 2.1(a) shall not apply to any borrowing of such Revolving Loans made pursuant to this subsection. Such Swingline Lender shall give notice to the Administrative Agent of any such borrowing of Revolving Loans not later than 11:00 a.m. Central time at least one (1) Business Day prior to the proposed date of such borrowing. Promptly after receipt of such notice of borrowing of Revolving Loans from such Swingline Lender under

the immediately preceding sentence, the Administrative Agent shall notify each Revolving Lender of the proposed borrowing. Not later than 11:00 a.m. Central time on the proposed date of such borrowing, each Revolving Lender will make available to the Administrative Agent at the Principal Office for the account of such Swingline Lender, in immediately available funds, the proceeds of the Revolving Loan to be made by such Lender. The Administrative Agent shall pay the proceeds of such Revolving Loans to such Swingline Lender, which shall apply such proceeds to repay such Swingline Loan. If the Revolving Lenders are prohibited from making Revolving Loans required to be made under this subsection for any reason whatsoever, including without limitation, the existence of any of the Defaults or Events of Default described in Sections 11.1(e) or (f), each Revolving Lender shall purchase from the applicable Swingline Lender, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Revolving Commitment Percentage of such Swingline Loan, by directly purchasing a participation in such Swingline Loan in such amount and paying the proceeds thereof to the Administrative Agent for the account of such Swingline Lender in Dollars and in immediately available funds. A Revolving Lender's obligation to purchase such a participation in a Swingline Loan shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including without limitation, (i) any claim of setoff, counterclaim, recoupment, defense or other right which such Lender or any other Person may have or claim against the Administrative Agent, any Swingline Lender or any other Person whatsoever, (ii) the existence of a Default or Event of Default (including without limitation, any of the Defaults or Events of Default described in Sections 11.1 (e) or (f)), or the termination of any Revolving Lender's Revolving Commitment, (iii) the existence (or alleged existence) of an event or condition which has had or could reasonably be expected to have a Material Adverse Effect, (iv) any breach of any Loan Document by the Administrative Agent, any Lender, the Borrower or any other Loan Party, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If such amount is not in fact made available to such Swingline Lender by any Revolving Lender, such Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with accrued interest thereon for each day from the date of demand thereof, at the Federal Funds Rate. If such Lender does not pay such amount forthwith upon such Swingline Lender's demand therefor, and until such time as such Lender makes the required payment, such Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of such unpaid participation obligation for all purposes of the Loan Documents (other than those provisions requiring the other Revolving Lenders to purchase a participation therein). Further, such Lender shall be deemed to have assigned any and all payments made of principal and interest on its Revolving Loans, and any other amounts due it hereunder, to such Swingline Lender to fund Swingline Loans in the amount of the participation in Swingline Loans that such Lender failed to purchase pursuant to this Section until such amount has been purchased (as a result of such assignment or otherwise).

Section 2.6. Rates and Payment of Interest on Loans.

(a) Rates. The Borrower promises to pay to the Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made by such Lender (subject to Sections 2.10 and 5.2) for the period from and including the date of the making of such Loan to but excluding the date such Loan shall be paid in full, at the following per annum rates:

(i) during such periods as such Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Base Rate Loans with respect to such Loan;

(ii) during such periods as such Loan is a LIBOR Loan, at LIBOR for such Loan for the Interest Period therefor, plus the Applicable Margin for LIBOR Loans with respect to such Loan;

(iii) [intentionally omitted];

(iv) if such Loan is an Absolute Rate Loan, at the Absolute Rate for such Loan for the Interest Period therefor quoted by the Lender making such Loan in accordance with Section 2.3; and

(v) if such Loan is a LIBOR Margin Loan, at LIBOR for such Loan for the Interest Period therefor plus the LIBOR Margin quoted by the Lender making such Loan in accordance with Section 2.3.

Notwithstanding the foregoing, (x) automatically upon any Event of Default under Section 11.1(a), (e) or (f) or (y) at the option of the Requisite Lenders (by notice to the Borrower) while any other Event of Default exists, the Borrower shall pay to the Administrative Agent for the account of each Lender and each Issuing Bank, as the case may be, interest at the Post-Default Rate on the outstanding principal amount of any Loan made by such Lender, on all Reimbursement Obligations and on any other amount payable by the Borrower hereunder or under the Notes held by such Lender (if any) to or for the account of such Lender (including without limitation, accrued but unpaid interest to the extent permitted under Applicable Law).

(b) **Payment of Interest.** All accrued and unpaid interest on the outstanding principal amount of each Loan shall be payable (i) with respect to any Base Rate Loan, quarterly in arrears on the first Business Day of each of January, April, July and October, commencing with the first such date occurring after the Effective Date, (ii) with respect to any LIBOR Loan, on the last day of the Interest Period applicable thereto and, in the case of any LIBOR Loan with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at three months' duration after the first day of such Interest Period and (iii) on any date on which the principal balance of such Loan is due and payable in full (whether at maturity, due to acceleration or otherwise). Interest payable at the Post-Default Rate shall be payable from time to time on demand. All determinations by the Administrative Agent of an interest rate hereunder shall be conclusive and binding on the Lenders and the Borrower for all purposes, absent manifest error.

Section 2.7. Number of Interest Periods.

There may be no more than fifteen (15) different Interest Periods for LIBOR Loans and Bid Rate Loans collectively outstanding at the same time.

Section 2.8. Repayment of Loans.

(a) **Revolving Loans.** The Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, the Revolving Loans on the Revolving Termination Date.

(b) **Term Loans.** The Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, the Term Loans on the Term Loan Maturity Date.

(c) **Bid Rate Loans.** The Borrower shall repay the entire outstanding principal amount of, and all accrued interest on, each Bid Rate Loan on the last day of the Interest Period of such Bid Rate Loan; it being acknowledged that the Borrower may repay any Bid Rate Loans with the proceeds of Revolving Loans or Swingline Loans.

Section 2.9. Prepayments.

(a) Optional. Subject to Section 5.4, the Borrower may prepay any Loan (other than a Bid Rate Loan) at any time without premium or penalty. A Bid Rate Loan may only be prepaid (i) with the prior written consent of the Lender holding such Bid Rate Loan, (ii) to the extent the Borrower has expressly stated in the Bid Rate Quote Request for such Bid Rate Loans that such Bid Rate Loans are subject to prepayment at the option of the Borrower or (iii) on the Termination Date. The Borrower shall give the Administrative Agent at least three (3) Business Days' prior written notice of the prepayment, in the case of any LIBOR Loan in Dollars, and one (1) Business Day's prior written notice of the prepayment, in the case of any Base Rate Loan. Each voluntary prepayment of Loans shall be in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess thereof. Any notice of prepayment may be conditioned upon the consummation of any financing or acquisition or similar transaction and, to the extent such condition is not satisfied by the date of prepayment specified therein, such notice of prepayment may be revoked or the date of prepayment specified therein may be delayed.

(b) Mandatory.

(i) Revolving Commitment Overadvance. If at any time the aggregate principal amount of all outstanding Revolving Loans, Swingline Loans and Bid Rate Loans, together with the aggregate amount of all Letter of Credit Liabilities, exceeds the aggregate amount of the Revolving Commitments, the Borrower shall, within one (1) Business Day of demand, pay to the Administrative Agent for the account of the Revolving Lenders, the amount of such excess.

(ii) [Intentionally Omitted].

(iii) Bid Rate Facility Overadvance. If at any time the aggregate principal amount of all outstanding Bid Rate Loans exceeds one half of the aggregate amount of all Revolving Commitments at such time, then the Borrower shall immediately pay to the Administrative Agent for the accounts of the applicable Lenders the amount of such excess.

(iv) Application of Mandatory Prepayments. Amounts paid under the preceding subsection (b)(i) shall be applied first, to outstanding Reimbursement Obligations, if any, second, to outstanding Swingline Loans, if any, third, to outstanding Revolving Loans, if any, fourth, to outstanding Bid Rate Loans, if any, pro rata in accordance with Section 3.2 and if any Letters of Credit are outstanding at such time, the remainder, if any, shall be deposited into the Letter of Credit Collateral Account for application to any Reimbursement Obligations. Amounts paid under the preceding subsection (b)(iii) shall be applied in accordance with Section 3.2(g). If the Borrower is required to pay any outstanding LIBOR Loans or LIBOR Margin Loans by reason of this Section prior to the end of the applicable Interest Period therefor, the Borrower shall pay all amounts due under Section 5.4.

(c) No Effect on Derivatives Contracts. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the Borrower's obligations under any Derivatives Contracts entered into with respect to the Loans.

Section 2.10. Continuation.

So long as no Default or Event of Default exists, the Borrower may on any Business Day, with respect to any LIBOR Loan, elect to maintain such Loan or any portion thereof as a LIBOR Loan by selecting a new Interest Period for such Loan. Each Continuation of a LIBOR Loan shall be in an aggregate minimum

amount of \$2,500,000 and integral multiples of \$500,000 in excess of that amount, and each new Interest Period selected under this Section shall commence on the last day of the immediately preceding Interest Period. Each selection of a new Interest Period shall be made by the Borrower giving to the Administrative Agent a Notice of Continuation not later than 11:00 a.m. Central time on the third (3rd) Business Day prior to the date of any such Continuation. Any notice by the Borrower of a Continuation shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Continuation, specifying (a) the proposed date of such Continuation, (b) the LIBOR Loans or portions thereof subject to such Continuation and (c) the duration of the selected Interest Period, all of which shall be specified in such manner as is necessary to comply with all limitations on Loans outstanding hereunder. Each Notice of Continuation shall be irrevocable by and binding on the Borrower once given. Promptly after receipt of a Notice of Continuation, the Administrative Agent shall notify each Lender of the proposed Continuation. If the Borrower shall fail to select in a timely manner a new Interest Period for any LIBOR Loan in accordance with this Section, such Loan will automatically, on the last day of the current Interest Period therefor, continue as a LIBOR Loan with an Interest Period of one month; provided, however that if a Default or Event of Default exists, unless repaid such Loan will automatically, on the last day of the current Interest Period therefor and notwithstanding the first sentence of Section 2.11 or the Borrower's failure to comply with any of the terms of such Section 2.11, Convert into a Base Rate Loan.

Section 2.11. Conversion.

The Borrower may on any Business Day, upon the Borrower's giving of a Notice of Conversion to the Administrative Agent by telecopy, electronic mail or other similar form of communication, Convert all or a portion of a Loan of one Type into a Loan of another Type; provided, however, that a Base Rate Loan may not be Converted into a LIBOR Loan if a Default or Event of Default exists. Each Conversion of Base Rate Loans into LIBOR Loans shall be in an aggregate minimum amount of \$2,500,000 and integral multiples of \$500,000 in excess of that amount. Each such Notice of Conversion shall be given not later than 11:00 a.m. Central time three (3) Business Days prior to the date of any proposed Conversion. Promptly after receipt of a Notice of Conversion, the Administrative Agent shall notify each Lender of the proposed Conversion. Subject to the restrictions specified above, each Notice of Conversion shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Conversion specifying (a) the requested date of such Conversion, (b) the Type of Loan to be Converted, (c) the portion of such Type of Loan to be Converted, (d) the Type of Loan such Loan is to be Converted into and (e) if such Conversion is into a LIBOR Loan, the requested duration of the Interest Period of such Loan. If the Borrower shall elect a conversion to LIBOR Loans but fail to select an Interest Period for any LIBOR Loan in accordance with this Section, the Borrower shall be deemed to have selected an Interest Period of one month. Each Notice of Conversion shall be irrevocable by and binding on the Borrower once given.

Section 2.12. Notes.

(a) Notes. In the case of each Revolving Lender that has notified the Administrative Agent in writing that it elects to receive a Revolving Note, the Revolving Loans made by such Revolving Lender shall, in addition to this Agreement, also be evidenced by a Revolving Note, payable to the order of such Revolving Lender in a principal amount equal to the amount of its Revolving Commitment as originally in effect and otherwise duly completed. To the extent requested by any Revolving Lender making a Bid Rate Loan, the Bid Rate Loans made by a Revolving Lender to the Borrower shall, in addition to this Agreement, also be evidenced by a Bid Rate Note payable to the order of such Revolving Lender. The Swingline Loans made by any Swingline Lender to the Borrower shall, in addition to this Agreement, also be evidenced at the request of such Swingline Lender by a Swingline Note payable to the order of such Swingline Lender. To the extent requested by any Term Loan Lender, the Term Loan made by a Term Loan Lender shall, in

addition to this Agreement, also be evidenced by a Term Note, payable to the order of such Term Loan Lender in a principal amount equal to the amount of its Term Loan and otherwise duly completed.

(b) Records. The date, amount, interest rate, Type and duration of Interest Periods (if applicable) of each Loan made by each Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by such Lender on its books and such entries shall be binding on the Borrower absent manifest error; provided, however, that (i) the failure of a Lender to make any such record shall not affect the obligations of the Borrower under any of the Loan Documents and (ii) if there is a discrepancy between such records of a Lender and the statements of accounts maintained by the Administrative Agent pursuant to Section 3.8, in the absence of manifest error, the statements of account maintained by the Administrative Agent pursuant to Section 3.8 shall be controlling.

(c) Lost, Stolen, Destroyed or Mutilated Notes. Upon receipt by the Borrower of (i) written notice from a Lender that a Note of such Lender has been lost, stolen, destroyed or mutilated, and (ii)(A) in the case of loss, theft or destruction, an agreement of indemnity from such Lender in form reasonably satisfactory to the Borrower, which agreement of indemnity shall be unsecured but shall not impair any right of set-off the Borrower may have against such Lender in connection with any loss incurred by the Borrower as a result of such lost note, or (B) in the case of mutilation, upon surrender and cancellation of such Note, the Borrower shall at its own expense execute and deliver to such Lender a new Note dated the date of such lost, stolen, destroyed or mutilated Note.

Section 2.13. Voluntary Reductions of the Revolving Commitments and Term Loan Commitments.

(a) The Borrower shall have the right to terminate or reduce the aggregate unused amount of the Revolving Commitments (for which purposes of calculating use of the Revolving Commitments shall be deemed to include the aggregate amount of all Letter of Credit Liabilities and the aggregate principal amount of all outstanding Bid Rate Loans and Swingline Loans) at any time and from time to time without penalty or premium upon not less than three (3) Business Days' prior written notice to the Administrative Agent of each such termination or reduction (or, in the case of any termination in full of the Revolving Commitments, such later notice as is reasonably acceptable to the Administrative Agent), which notice shall specify the effective date thereof and the amount of any such reduction (which in the case of any partial reduction of the Revolving Commitments shall not be less than \$25,000,000 and integral multiples of \$5,000,000 in excess of that amount in the aggregate) and shall be irrevocable once given and effective only upon receipt by the Administrative Agent (any notice satisfying such requirements, including as it relates to other Tranches as provided below in this Section 2.13, a "**Commitment Reduction Notice**").

(b) [Intentionally Omitted].

(c) Notwithstanding the foregoing clause (a), the Borrower may not reduce the aggregate amount of the Revolving Commitments below \$100,000,000 unless the Borrower is terminating the Revolving Commitments in full. Any notice of termination may be conditioned upon the consummation of any financing or acquisition or similar transaction and, to the extent such condition is not satisfied by the effective date specified therein, such notice of termination may be revoked or the effective date specified therein may be delayed. Promptly after receipt of a Commitment Reduction Notice the Administrative Agent shall notify each Revolving Lender of the proposed termination or Revolving Commitment reduction. The Revolving Commitments, once reduced or terminated pursuant to this Section, may not be increased or reinstated. The Borrower shall pay fees and, to the extent any Revolving Loans are required to be repaid in connection with such reduction or termination, interest, on such Revolving Loans accrued to the date of such reduction or termination of the Revolving Commitments to the Administrative Agent for the account of the applicable

Revolving Lenders, including but not limited to any applicable compensation due to such Revolving Lender in accordance with Section 5.4.

(d) The Borrower shall have the right to terminate or reduce the aggregate unused amount of the undrawn Term Loan Commitments at any time and from time to time without penalty or premium upon delivery of a Commitment Reduction Notice to the Administrative Agent not less than three (3) Business Days prior to the date of such termination or reduction in the Term Loan Commitments. Any notice of termination may be conditioned upon the consummation of any financing or acquisition or similar transaction and, to the extent such condition is not satisfied by the effective date specified therein, such notice of termination may be revoked or the effective date specified therein may be delayed. Promptly after receipt of a Commitment Reduction Notice the Administrative Agent shall notify each Term Loan Lender of the proposed termination or Term Loan Commitment reduction. The Term Loan Commitments, once reduced or terminated pursuant to this Section, may not be increased or reinstated. The Borrower shall pay all fees on the Term Loan Commitments subject to such termination or reduction accrued to the date of such reduction or termination of the Term Loan Commitments to the Administrative Agent for the account of the Term Loan Lenders.

Section 2.14. Extension Option.

The Borrower shall have the right, exercisable two times, to request that the Administrative Agent and the Revolving Lenders extend the Revolving Termination Date for an additional period of six (6) months. The Borrower may exercise each such right only by executing and delivering to the Administrative Agent at least thirty (30) days but not more than one hundred eighty (180) days prior to the then-current Revolving Termination Date a written request for such extension (an “**Extension Request**”). The Administrative Agent shall notify the Revolving Lenders if it receives an Extension Request promptly upon receipt thereof. Subject to satisfaction of the following conditions, the Revolving Termination Date shall be extended for six (6) months from the then-current Revolving Termination Date, effective upon receipt by the Administrative Agent of the Extension Request and payment of the fee referred to in the following clause (y): (x) immediately prior to such extension and immediately after giving effect thereto, (A) no Default or Event of Default shall exist and (B) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such extension with the same force and effect as if made on and as of such date except to the extent that such representations and warranties relate to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and (y) the Borrower shall have paid the Fees payable under Section 3.5(e). At any time prior to the effectiveness of any such extension, upon the Administrative Agent’s request, the Borrower shall deliver to the Administrative Agent a certificate from the chief executive officer or chief financial officer certifying the matters referred to in the immediately preceding clauses (x)(A) and (x)(B). The Administrative Agent shall promptly notify the Borrower once the foregoing conditions have been satisfied and of the new Revolving Termination Date.

Section 2.15. Expiration Date of Letters of Credit Past Revolving Commitment Termination.

If on the date the Revolving Commitments are terminated or reduced to zero (whether voluntarily, by reason of the occurrence of an Event of Default or otherwise) there are any Letters of Credit outstanding hereunder and the aggregate Stated Amount of such Letters of Credit exceeds the balance of available funds on deposit in the Letter of Credit Collateral Account, then the Borrower shall, on such date, provide additional

Cash Collateral to the Administrative Agent, for its benefit and the benefit of the Revolving Lenders and the Issuing Banks, for deposit into the Letter of Credit Collateral Account, in an amount equal to the amount of such excess.

Section 2.16. Amount Limitations.

Notwithstanding any other term of this Agreement or any other Loan Document, no Revolving Lender shall be required to make a Revolving Loan or Bid Rate Loan, no Issuing Bank shall be required to issue a Letter of Credit and no reduction of the Revolving Commitments pursuant to Section 2.13 shall take effect, if immediately after the making of such Revolving Loan, the issuance of such Letter of Credit or such reduction in the Revolving Commitments (after giving effect to any substantially concurrent prepayments or repayments):

(i) the aggregate principal amount of all outstanding Revolving Loans, Bid Rate Loans and Swingline Loans, together with the aggregate amount of all Letter of Credit Liabilities, would exceed the aggregate amount of the Revolving Commitments at such time; or

(ii) the aggregate principal amount of all outstanding Bid Rate Loans would exceed 50.0% of the aggregate amount of the Revolving Commitments at such time.

Section 2.17. Increase in Revolving Commitments; Incremental Term Loans.

The Borrower shall have the right to request increases in the aggregate amount of the Revolving Commitments or enter into one or more Tranches of term loans denominated in Dollars (each an “**Incremental Term Loan**”) by providing written notice to the Administrative Agent, which notice shall be irrevocable once given; provided, however, that any such increases and all such Incremental Term Loans shall not exceed an aggregate amount of \$600,000,000. Each such increase in the Revolving Commitments or issuance of Incremental Term Loans must be an aggregate minimum amount of \$25,000,000 and integral multiples of \$25,000,000 (or such other amount as may be acceptable to each Issuing Bank, the Administrative Agent and the Borrower) in excess thereof. The Administrative Agent, in consultation with the Borrower, shall manage all aspects of the syndication of such increase in the Revolving Commitments or issuance of Incremental Term Loans, including decisions as to the selection of the existing Lenders and/or other banks, financial institutions and other institutional lenders to be approached with respect to such increase and the allocations of the increase in the Revolving Commitments or issuance of Incremental Term Loans among such existing Lenders and/or other banks, financial institutions and other institutional lenders. No Lender shall be obligated in any way whatsoever to increase its Revolving Commitment, provide a new Revolving Commitment or participate in such Incremental Term Loans, and any new Lender becoming a party to this Agreement in connection with any such requested increase must be an Eligible Assignee consented to by the Borrower, the Administrative Agent and, in the case of an increase in the Revolving Commitment, each Issuing Bank and each Swingline Lender (in each case, such consent not to be unreasonably withheld, conditioned or delayed). If a new Revolving Lender becomes a party to this Agreement, or if any existing Revolving Lender is increasing its Revolving Commitment, such Lender shall on the date it becomes a Lender hereunder (or in the case of an existing Lender, increases its Revolving Commitment) (and as a condition thereto) purchase from the other Revolving Lenders its Revolving Commitment Percentage (determined with respect to the Lenders’ respective Revolving Commitments and after giving effect to the increase of Revolving Commitments) of any outstanding Revolving Loans, by making available to the Administrative Agent for the account of such other Revolving Lenders, in same day funds, an amount equal to (A) the portion of the outstanding principal amount of such Revolving Loans to be purchased by such Lender, plus (B) the aggregate amount of payments previously made by the other Revolving Lenders under Section 2.4(j) that have not been repaid, plus (C) interest accrued and unpaid to and as of such date on such

portion of the outstanding principal amount of such Revolving Loans. The Borrower shall pay to the Revolving Lenders amounts payable, if any, to such Revolving Lenders under Section 5.4 as a result of the prepayment of any such Revolving Loans. Revolving Loans made pursuant to any increased Revolving Commitment shall rank pari passu in right of payment with the Revolving Loans and the Term Loans and shall be treated substantially the same as (and in any event no more favorably than) the Revolving Loans. The Incremental Term Loans (a) shall rank pari passu in right of payment with the Revolving Loans and the Term Loans, (b) shall have the weighted average life to maturity no shorter than the remaining weighted average life to maturity of the then-existing Term Loans, (c) shall be subject to Applicable Margins that may deviate from the pricing of the Revolving Loans and the existing Term Loans as may be agreed by the Borrower and the Lenders providing such Incremental Term Loans and (d) the terms and provisions thereof shall be as agreed by the Borrower and the Lenders providing such Incremental Term Loans and, taken as a whole, shall not be materially more restrictive, taken as a whole, than the terms set forth herein and in the other Loan Documents, except for (i) the terms and provisions applicable to any Tranche of Incremental Term Loans maturing after the Term Loan Maturity Date and (ii) terms and conditions that are made applicable to the then-existing Term Loans and Revolving Loans (it being agreed that such terms and conditions may be made applicable to the then-existing Term Loans and the Revolving Loans in the sole discretion of the Borrower and without requiring the consent of the Administrative Agent or any Lender). Incremental Term Loans may be made hereunder pursuant to an amendment or an amendment and restatement (an “**Incremental Term Loan Amendment**”) of this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender participating in such Tranche and the Administrative Agent. The Incremental Term Loan Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.17. Effecting the increase of the Revolving Commitments or issuance of Incremental Term Loans under this Section is subject to the following conditions precedent: (w) the approval of any new Lender (other than an Eligible Assignee) by the Administrative Agent and, solely with respect to any new Revolving Lender, each Swingline Lender and each Issuing Bank, (x) no Default or Event of Default shall be in existence on the effective date of such increase, (y) the representations and warranties made or deemed made by the Borrower and any other Loan Party in any Loan Document to which such Loan Party is a party shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on the effective date of such increase except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date), and (z) the Administrative Agent shall have received each of the following, in form and substance reasonably satisfactory to the Administrative Agent: (i) if not previously delivered to the Administrative Agent, copies certified by the Secretary or Assistant Secretary of (A) resolutions adopted by the general partner of the Borrower authorizing such increase and (B) resolutions adopted by the board of directors, general partner, managers, members or other appropriate governing body of each Guarantor authorizing the guaranty of such increase; and (ii) customary opinion of counsel to the Borrower and the Guarantors, and addressed to the Administrative Agent and the Lenders covering such customary matters as reasonably requested by the Administrative Agent; and (iii) new Revolving Notes or Term Notes executed by the Borrower, payable to any new Lenders and replacement Revolving Notes or Term Notes executed by the Borrower, payable to any existing Lenders increasing their Revolving Commitments or participating in the issuance of the Incremental Term Loans, in the amount of such Revolving Lender’s Revolving Commitment at the time of the effectiveness of the applicable increase in the aggregate amount of the Revolving Commitments or such Term Loan Lender’s Term Loan Commitment at the time of the effectiveness of such Incremental Term Loans, in each case, to the extent requested by such Lender at least two (2) Business

Days prior to the proposed effective date of such increase in Revolving Commitment Incremental Term Loans . In connection with any increase in the aggregate amount of the Revolving Commitments or issuance of Incremental Term Loans pursuant to this Section 2.17 any Lender becoming a party hereto shall (1) execute such documents and agreements as the Administrative Agent may reasonably request and (2) in the case of any Lender that is organized under the laws of a jurisdiction outside of the United States of America, provide to the Administrative Agent, its name, address, tax identification number and/or such other information as shall be necessary for the Administrative Agent to comply with “know your customer” and Anti-Money Laundering Laws, including, without limitation, the Patriot Act.

Section 2.18. Funds Transfer Disbursements.

The Borrower hereby authorizes the Administrative Agent to disburse the proceeds of any Loan made by the Lenders or any of their Affiliates pursuant to the Loan Documents as requested by an authorized representative of the Borrower to any of the accounts designated in the Disbursement Instruction Agreement.

Section 2.19. [Intentionally Omitted].

Section 2.20. Judgment Currency.

If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from the Borrower hereunder in the currency expressed to be payable herein (the “**specified currency**”) into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent’s main office on the Business Day preceding that on which final, non appealable judgment is given. The obligations of the Borrower in respect of any sum due to any Lender or the Administrative Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Administrative Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or the Administrative Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Lender or the Administrative Agent, as the case may be, in the specified currency, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Administrative Agent, as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Lender or the Administrative Agent, as the case may be, in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under Section 3.1, such Lender or the Administrative Agent, as the case may be, agrees to remit such excess to the Borrower.

ARTICLE III. PAYMENTS, FEES AND OTHER GENERAL PROVISIONS

Section 3.1. Payments.

(a) Payments by Borrower. All payments of principal, interest, Fees and other amounts to be made by the Borrower under this Agreement, the Notes or any other Loan Document shall be made in Dollars, in immediately available funds, without setoff, deduction or counterclaim (excluding Taxes required to be withheld pursuant to Section 3.10), to the Administrative Agent at the Principal Office, not later than 2:00 p.m. Central time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day) or, in the case

of any optional prepayment of all outstanding Obligations on the Termination Date, at such later time on such Termination Date as is reasonably acceptable to the Administrative Agent. Subject to Section 11.5, the Borrower shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Administrative Agent the amounts payable by the Borrower hereunder to which such payment is to be applied. Each payment received by the Administrative Agent for the account of a Lender under this Agreement or any Note shall be paid to such Lender by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Lender to the Administrative Agent from time to time, for the account of such Lender at the applicable Lending Office of such Lender. Each payment received by the Administrative Agent for the account of an Issuing Bank under this Agreement shall be paid to such Issuing Bank by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Issuing Bank to the Administrative Agent from time to time, for the account of such Issuing Bank. In the event the Administrative Agent fails to pay such amounts to such Lender or such Issuing Bank, as the case may be, within one (1) Business Day of receipt of such amounts, the Administrative Agent shall pay interest on such amount until paid at a rate per annum equal to the Federal Funds Rate from time to time in effect. If the due date of any payment under this Agreement or any other Loan Document would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall continue to accrue at the rate, if any, applicable to such payment for the period of such extension.

(b) [Intentionally Omitted].

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

Section 3.2. Pro Rata Treatment.

Except to the extent otherwise provided herein: (a) each payment of the fees under Sections 3.5(a), 3.5(b), the first sentence of 3.5(c), and 3.5(e) shall be made for the account of the applicable Revolving Lenders, and each termination or reduction of the Revolving Commitments under Section 2.13 shall be applied to the respective applicable Revolving Commitments of the applicable Revolving Lenders, pro rata according to the amounts of their respective applicable Revolving Commitments; (b) each payment or prepayment of principal of Revolving Loans shall be made for the account of the applicable Revolving Lenders pro rata in accordance with the respective unpaid principal amounts of the applicable Revolving Loans held by them, provided that, subject to Section 3.9, if immediately prior to giving effect to any such payment in respect of Revolving Loans the outstanding principal amount of the applicable Revolving Loans shall not be held by the applicable Revolving Lenders pro rata in accordance with their respective Revolving Commitments in effect at the time such Revolving Loans were made, then such payment shall be applied to the applicable Revolving Loans in such manner as shall result, as nearly as is practicable, in the outstanding principal amount of the applicable Revolving Loans being held by the applicable Revolving Lenders pro

rata in accordance with such respective applicable Revolving Commitments; (c) the making of Term Loans under Section 2.2(a) shall be made from the Term Loan Lenders, pro rata according to the amounts of their respective Term Loan Commitments; (d) each payment or prepayment of principal of any Tranche of Term Loans shall be made for the account of the applicable Term Loan Lenders pro rata in accordance with the respective unpaid principal amounts of the Term Loans of such Tranche held by them; (e) each payment of interest on Revolving Loans or Term Loans shall be made for the account of the applicable Revolving Lenders or Term Loan Lenders, as applicable, pro rata in accordance with the amounts of interest on such Revolving Loans or Term Loans, as applicable, then due and payable to the respective Lenders; (f) the Conversion and Continuation of Revolving Loans or Term Loans of a particular Type (other than Conversions provided for by Sections 5.1(c) and 5.5.) shall be made pro rata among the Revolving Lenders or Term Loan Lenders, as applicable, according to the amounts of their respective Revolving Loans or Term Loans, as applicable, and the then current Interest Period for each Lender's portion of each such Loan of such Type shall be coterminous; (g) each prepayment of principal of Bid Rate Loans pursuant to Section 2.9(b)(iii) shall be made for account of the Lenders then owed Bid Rate Loans pro rata in accordance with the respective unpaid principal amounts of the Bid Rate Loans then owing to each such Lender; (h) the Revolving Lenders' participation in, and payment obligations in respect of, Swingline Loans under Section 2.5, shall be in accordance with their respective Revolving Commitment Percentages; and (i) the Revolving Lenders' participation in, and payment obligations in respect of, Letters of Credit under Section 2.4, shall be in accordance with their respective Revolving Commitment Percentages. All payments of principal, interest, fees and other amounts in respect of the Swingline Loans shall be for the account of the applicable Swingline Lender only (except to the extent any Revolving Lender shall have acquired a participating interest in any such Swingline Loan pursuant to Section 2.5(e), in which case such payments shall be pro rata in accordance with such participating interests).

Section 3.3. Sharing of Payments, Etc.

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations owing to such Lender resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such Obligation greater than the share thereof as provided in Section 3.2 or Section 11.5, as applicable, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other Obligations owing to the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the applicable Lenders ratably in accordance with Section 3.2 or Section 11.5, as applicable; provided that:

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

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 3.9(e) or (z) any payment obtained by a Lender as consideration for the assignment of, or sale of a participation in, any of its Loans or participations in Swingline Loans or Letters of Credit to any assignee or participant, other than to the Borrower or any of its Subsidiaries or Affiliates (as to which the provisions of this Section shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender

were a direct creditor of the Borrower in the amount of such participation. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise and retain the benefits of exercising any such right with respect to any other indebtedness or obligation of the Borrower.

Section 3.4. Several Obligations.

No Lender shall be responsible for the failure of any other Lender to make a Loan or to perform any other obligation to be made or performed by such other Lender hereunder, and the failure of any Lender to make a Loan or to perform any other obligation to be made or performed by it hereunder shall not relieve the obligation of any other Lender to make any Loan or to perform any other obligation to be made or performed by such other Lender.

Section 3.5. Fees.

(a) Closing Fee. On the Effective Date, the Borrower agrees to pay to the Administrative Agent and each Lender all loan fees as have been agreed to in the Fee Letter.

(b) Facility Fees. During the period from the Effective Date to but excluding the Revolving Termination Date, the Borrower agrees to pay to the Administrative Agent for the account of the Revolving Lenders a facility fee equal to the daily aggregate amount of the Revolving Commitments (whether or not utilized) times a rate per annum equal to the Applicable Facility Fee. Such fee shall be payable quarterly in arrears on the first Business Day of each January, April, July and October during the term of this Agreement until the earlier of the Revolving Termination Date and date of termination of the Revolving Commitments or reduction of the Revolving Commitments to zero, and on such earlier date. The Borrower acknowledges that the fee payable under this Section 3.5(b) is a bona fide commitment fee and is intended as reasonable compensation to the Lenders for committing to make funds available to the Borrower as described herein and for no other purposes.

(c) Letter of Credit Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a letter of credit fee at a rate per annum equal to the Applicable Margin for LIBOR Loans times the daily average Stated Amount of each Letter of Credit for the period from and including the date of issuance of such Letter of Credit (x) to and including the date such Letter of Credit expires or is cancelled or terminated or (y) to but excluding the date such Letter of Credit is drawn in full. In addition to such fees, the Borrower shall pay to each Issuing Bank solely for its own account, an issuance or fronting fee in respect of each Letter of Credit issued by such Issuing Bank equal to one eighth of one percent (0.125%) of the initial Stated Amount of such Letter of Credit; provided, however, in no event shall the aggregate amount of such fee in respect of any Letter of Credit be less than \$1,000. The fees provided for in this subsection shall be nonrefundable and payable, in the case of the fee provided for in the first sentence, in arrears (i) quarterly on the first Business Day of January, April, July and October until the earlier of the Revolving Termination Date and the date on which the Revolving Commitments are terminated or reduced to zero, and on such earlier date, and (ii) thereafter, solely to the extent any Letters of Credit remain outstanding that have not been Cash Collateralized in accordance with the terms of this Agreement, from time to time on demand of the Administrative Agent and in the case of the fee provided for in the second sentence, at the time of issuance of such Letter of Credit. The Borrower shall pay directly to each Issuing Bank from time to time on demand all commissions, charges, costs and expenses in the amounts customarily charged or incurred by such Issuing Bank from time to time in like circumstances with respect to the issuance, amendment, renewal or extension of any Letter of Credit or any other transaction relating thereto.

(d) Bid Rate Loan Fees. The Borrower agrees to pay to the Administrative Agent a fee equal to \$1,000 at the time of each Bid Rate Quote Request made hereunder for services rendered by the Administrative Agent in connection with the Bid Rate Loans.

(e) Revolving Credit Extension Fee. If the Borrower exercises its right to extend the Revolving Termination Date in accordance with Section 2.14, the Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a fee equal to 0.075% of the amount of such Revolving Lender's aggregate Revolving Commitment (whether or not utilized) in effect on the effective date of such extension. Such fee shall be due and payable in full on and as a condition to the effective date of such extension.

(f) [Intentionally Omitted].

(g) Ticking Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Term Loan Lender, in respect of each Term Loan Lender's Term Loan Commitment, a ticking fee, which shall accrue at one quarter of one percent (0.25%) per annum on the daily amount of such Lender's remaining Term Loan Commitment. Such fee shall be payable (i) quarterly in arrears on the first Business Day of each January, April, July and October until the earlier of the expiration date of the Term Loan Availability Period and the date the Term Loan Commitment has been terminated or reduced to zero, and on such earlier date and (ii) upon any date on which a Term Loan installment is drawn. The Borrower acknowledges that the fee payable hereunder is a bona fide commitment fee and is intended as reasonable compensation to the Lenders for committing to make funds available to the Borrower as described herein and for no other purposes.

(h) Administrative and Other Fees. The Borrower agrees to pay the administrative and other fees of the Administrative Agent as provided in the Fee Letter and as may be otherwise agreed to in writing from time to time by the Borrower and the Administrative Agent.

All fees payable hereunder shall be paid on the dates due, in Dollars and immediately available funds, to the Administrative Agent (or to the applicable Issuing Bank, in the case of fees payable to it) for distribution, in the case of facility fees and participation fees, to the applicable Lenders. Fees paid shall not be refundable under any circumstances.

Section 3.6. Computations.

Unless otherwise expressly set forth herein, any accrued interest on any Loan, any Fees or any other Obligations due hereunder shall be computed on the basis of a year of three hundred sixty (360) days and the actual number of days elapsed.

Section 3.7. Usury.

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively, the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with Applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate. All charges other than charges for the use of money shall be fully earned and nonrefundable when due. If Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender

exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 3.8. Statements of Account.

The Administrative Agent will account to the Borrower monthly with a statement of Loans, accrued interest and Fees, charges and payments made pursuant to this Agreement and the other Loan Documents, and such account rendered by the Administrative Agent shall be deemed conclusive upon the Borrower absent manifest error. The failure of the Administrative Agent to deliver such a statement of accounts shall not relieve or discharge the Borrower from any of its obligations hereunder.

Section 3.9. Defaulting Lenders.

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

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Requisite Lenders, Requisite Revolving Lenders, Requisite Term Loan Lenders and in Section 13.6.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article XI. or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 13.3 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Banks or the Swingline Lenders hereunder; third, to Cash Collateralize the Issuing Banks' Fronting Exposures with respect to such Defaulting Lender in accordance with subsection (e) below; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Banks' future Fronting Exposures with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with subsection (e) below; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swingline Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or any Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or amounts owing by such Defaulting Lender under Section 2.4(j) in respect of Letters of Credit (such amounts "**L/C Disbursements**"), in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Article VI were satisfied or waived, such payment shall be applied

solely to pay the Loans of, and L/C Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in Letter of Credit Liabilities and Swingline Loans are held by the Revolving Lenders pro rata in accordance with their respective Revolving Commitment Percentages (determined without giving effect to the immediately following subsection (d)) and all Term Loans are held by the Term Loan Lenders pro rata as if there had been no Term Loan Lenders that are Defaulting Lenders. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this subsection shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents thereto.

(c) Certain Fees.

(i) Each Defaulting Lender shall be entitled to receive the Fee payable under Section 3.5(b) for any period during which that Lender is a Defaulting Lender only to the extent allocable to the sum of (1) the outstanding principal amount of the Revolving Loans funded by it, and (2) its Revolving Commitment Percentage of the Stated Amount of Letters of Credit for which it has provided Cash Collateral pursuant to the immediately following subsection (e).

(ii) [Intentionally Omitted].

(iii) Each Defaulting Lender shall be entitled to receive the Fee payable under Section 3.5(c) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to the immediately following subsection (e).

(iv) No Defaulting Lender shall be entitled to receive the Fee payable under Section 3.5(e) or (g) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been paid to that Defaulting Lender).

(v) With respect to any Fee not required to be paid to any Defaulting Lender pursuant to the immediately preceding clauses (i) through (iv), the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Liabilities or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to the immediately following subsection (d), (y) pay to the Issuing Banks and the Swingline Lenders, as applicable, the amount of any such Fee otherwise payable to such Defaulting Lender to the extent not reallocated to Non-Defaulting Lenders pursuant to the immediately following Subsection (d) and allocable to the Issuing Banks' or Swingline Lenders' Fronting Exposures to such Defaulting Lender and not, in the case of the Issuing Banks, Cash Collateralized in accordance with Subsection (e) of this Section 3.9, and (z) not be required to pay the remaining amount of any such Fee.

(d) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Revolving Lender's participation in Letter of Credit Liabilities and Swingline Loans shall be reallocated among the Revolving Lenders that are Non-Defaulting Lenders in accordance with their respective Revolving Commitment Percentages (determined without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that (x) the conditions set forth in Article VI are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure

of any Revolving Lender that is a Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 13.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Revolving Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(e) Cash Collateral, Repayment of Swingline Loans.

(i) If the reallocation described in the immediately preceding subsection (d) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposures and (y) second, Cash Collateralize the Issuing Banks' Fronting Exposures in accordance with the procedures set forth in this subsection.

(ii) At any time that there shall exist a Defaulting Lender, within one (1) Business Day following the written request of the Administrative Agent or an Issuing Bank (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize such Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to the immediately preceding subsection (d) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the aggregate Fronting Exposure of such Issuing Bank with respect to Letters of Credit issued and outstanding at such time.

(iii) The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to the Administrative Agent, for the benefit of the Issuing Banks, and agree to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of Letter of Credit Liabilities, to be applied pursuant to the immediately following clause (iv). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the aggregate Fronting Exposures of the Issuing Banks with respect to Letters of Credit issued and outstanding at such time, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(iv) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letter of Credit Liabilities (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(v) Cash Collateral (or the appropriate portion thereof) provided to reduce the Issuing Banks' Fronting Exposures shall no longer be required to be held as Cash Collateral pursuant to this subsection following (x) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Revolving Lender), or (y) the determination by the Administrative Agent and the Issuing Banks that there exists excess Cash Collateral; provided that, subject to the immediately preceding subsection (b), the Person providing Cash Collateral and the Issuing Banks may (but shall not be obligated to) agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations and provided further that to the

extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

(f) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lenders and the Issuing Banks agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause, as applicable, (i) the Revolving Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the applicable Lenders in accordance with their respective Revolving Commitment Percentages, as applicable (determined without giving effect to the immediately preceding subsection (d)) and (ii) the Term Loans to be held by the Term Loan Lenders pro rata as if there had been no Term Loan Lenders that were Defaulting Lenders, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that, subject to Section 13.21, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(g) New Swingline Loans/Letters of Credit. So long as any Revolving Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure (after giving effect to any reallocations in accordance with Subsection (a) of this Section 3.9) after giving effect to such Swingline Loan and (ii) no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure (after giving effect to any reallocations in accordance with subsection (d) of this Section 3.9, Cash Collateral provided by the Borrower and any defaulting Lenders at such time) after giving effect thereto.

(h) Purchase of Defaulting Lender's Commitment. During any period that a Lender is a Defaulting Lender, the Borrower may, by the Borrower giving written notice thereof to the Administrative Agent and such Defaulting Lender, demand that such Defaulting Lender assign its Commitment and Loans to an Eligible Assignee subject to and in accordance with the provisions of Section 13.5(b) for a purchase price equal to (1) (x) the aggregate principal balance of all Loans then owing to the Defaulting Lender, plus (y) the aggregate amount of payments previously made by the Defaulting Lender under Section 2.4(j) that have not been repaid, plus (z) any accrued but unpaid interest thereon and accrued but unpaid fees owing to the Defaulting Lender, or (2) any other amount as may be mutually agreed upon by such Defaulting Lender and Eligible Assignee (but net of any amounts that such Defaulting Lender has not funded or paid as required by this Agreement or fees to which such Defaulting Lender is not entitled pursuant to this Section 3.09). No party hereto shall have any obligation whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. In addition, any Lender who is not a Defaulting Lender may, but shall not be obligated to, in its sole discretion, acquire the face amount of all or a portion of such Defaulting Lender's Commitment and Loans via an assignment subject to and in accordance with the provisions of Section 13.5(b). In connection with any such assignment, such Defaulting Lender shall promptly execute all documents reasonably requested to effect such assignment, including an appropriate Assignment and Assumption and, notwithstanding Section 13.5(b), shall pay to the Administrative Agent an assignment fee in the amount of \$7,500. The exercise by the Borrower of its rights under this Section shall, except as provided in the immediately preceding sentence, be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent or any of the Lenders.

Section 3.10. Taxes.

(a) Issuing Bank. For purposes of this Section, the term “Lender” includes the Issuing Banks and the term “Applicable Law” includes FATCA.

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

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

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

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower or another Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower and the other Loan Parties to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 13.5 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this subsection. The provisions of this subsection shall continue to inure to the benefit of an Administrative Agent following its resignation or removal as Administrative Agent.

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or any other Loan Party to a Governmental Authority pursuant to this Section, the Borrower or such other Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by

such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

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

(ii) Without limiting the generality of the foregoing:

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

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

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

(II) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit Q-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “**U.S. Tax Compliance Certificate**”) and (y) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

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

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

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

ARTICLE IV. [INTENTIONALLY OMITTED]

ARTICLE V. YIELD PROTECTION, ETC.

Section 5.1. Additional Costs; Capital Adequacy.

(a) Capital Adequacy. If any Lender determines that any Regulatory Change affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity ratios or requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Regulatory Change (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then to the extent requested by such Lender in writing in accordance with subsection (e) and as reasonably determined by such Lender (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and generally consistent with similarly situated customers of such Lender under agreements having provisions similar to this Section 5.1, after consideration of such factors as such Lender then reasonably determines to be relevant), from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(b) Additional Costs. In addition to, and not in limitation of the immediately preceding subsection, the Borrower shall promptly pay to the Administrative Agent on its own account or for the account of a Lender from time to time such amounts as the Administrative Agent or such Lender may determine to be necessary to compensate the Administrative Agent or such Lender for any costs incurred by the Administrative Agent or such Lender that it determines are attributable to its making, Continuing, Converting to or maintaining of any Loans or its obligation to make, maintain, Continue or Convert any Loans hereunder, any reduction in any amount receivable by the Administrative Agent or such Lender under this Agreement or any of the other Loan Documents in respect of any of such Loans or such obligation or the maintenance by the Administrative Agent or such Lender of capital or liquidity in respect of its Loans or its Commitments (such increases in costs and reductions in amounts receivable being herein called “**Additional Costs**”), resulting from any Regulatory Change that:

(i) changes the basis of taxation of any amounts payable to the Administrative Agent or such Lender under this Agreement or any of the other Loan Documents in respect of any of such Loans or its Commitments (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes);

(ii) imposes or modifies any reserve, special deposit, compulsory loan, insurance charge or similar requirements (other than Regulation D of the Board of Governors of the Federal Reserve System or other similar reserve requirement applicable to any other category of liabilities or category of extensions of credit or other assets by reference to which the interest rate on LIBOR Loans or LIBOR Margin Loans is determined to the extent utilized when determining LIBOR for such Loans) relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, or other credit extended by, or any other acquisition of funds by the Administrative Agent or such Lender (or its parent corporation), or any commitment of the Administrative Agent or such Lender (including, without limitation, the Commitments of such Lender hereunder); or

(iii) imposes on the Administrative Agent or any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or the Loans made by the Administrative Agent or such Lender.

In each case, to the extent requested by the Administrative Agent or such Lender in writing in accordance with subsection (e) and as reasonably determined by the Administrative Agent or such Lender (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and generally consistent with similarly situated customers of the Administrative Agent or such Lender under agreements having provisions similar to this Section 5.1, after consideration of such factors as the Administrative Agent or such Lender then reasonably determines to be relevant).

(c) Lender’s Suspension of LIBOR Loans and LIBOR Margin Loans. Without limiting the effect of the provisions of the immediately preceding subsections (a) and (b), if by reason of any Regulatory Change, any Lender either (i) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Lender that includes deposits by reference to which the interest rate on LIBOR Loans or LIBOR Margin Loans is determined as provided in this Agreement or a category of extensions of credit or other assets of such Lender that includes LIBOR Loans or LIBOR Margin Loans, or (ii) becomes subject to restrictions on the amount of such a category of liabilities or assets that it may hold, then, if such Lender so elects by notice to the Borrower (with a copy to the Administrative Agent), the obligation of such Lender to make or Continue LIBOR Loans and/or the obligation of such Lender to Convert Base Rate Loans into LIBOR Loans and/or the obligation of a Revolving Lender that has outstanding a Bid Rate Quote to make LIBOR Margin Loans hereunder shall be suspended until such Regulatory Change ceases to be in effect (in which case the provisions of Section 5.5 shall apply).

(d) Additional Costs in Respect of Letters of Credit. Without limiting the obligations of the Borrower under the preceding subsections of this Section (but without duplication), if as a result of any Regulatory Change or any risk-based capital guideline or other requirement heretofore or hereafter issued by any Governmental Authority there shall be imposed, modified or deemed applicable any Tax (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes), reserve, special deposit, capital adequacy, liquidity or similar requirement against or with respect to or measured by reference to Letters of Credit and the result shall be to increase the cost to an Issuing Bank of issuing (or any Lender of purchasing participations in) or maintaining its obligation hereunder to issue (or purchase participations in) any Letter of Credit or reduce any amount receivable by an Issuing Bank or any Lender hereunder in respect of any Letter of Credit, then, upon demand by such Issuing Bank or such Lender, the Borrower shall pay immediately to such Issuing Bank or, in the case of such Lender, to the Administrative Agent for the account of such Lender, from time to time as specified by such Issuing Bank or such Lender, such additional amounts as shall be sufficient to compensate such Issuing Bank or such Lender for such increased costs or reductions in amount, to the extent required by such Issuing Bank or such Lender in writing in accordance with subsection (e) and as reasonably determined by such Issuing Bank or such Lender, as applicable, (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and generally consistent with similarly situated customers of such Issuing Bank or such Lender under agreements having provisions similar to this Section 5.1, after consideration of such factors as such Issuing Bank or such Lender, as applicable, then reasonably determines to be relevant).

(e) Notification and Determination of Additional Costs. Each of the Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to notify the Borrower (and in the case of an Issuing Bank or a Lender, to notify the Administrative Agent) of any event occurring after the Agreement Date entitling the Administrative Agent, such Issuing Bank or such Lender to compensation under any of the preceding subsections of this Section as promptly as practicable; provided, however, that the failure of the Administrative Agent, any Issuing Bank or any Lender to give such notice shall not release the Borrower from any of its obligations hereunder except to the extent set forth in subsection (f). The Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to furnish to the Borrower (and in the case of an Issuing Bank or a Lender to the Administrative Agent as well) a certificate setting forth the basis and amount of each request for compensation under this Section. Determinations by the Administrative Agent, such Issuing Bank or such Lender, as the case may be, of the effect of any Regulatory Change shall be conclusive and binding for all purposes, absent manifest error. The Borrower shall pay the Administrative Agent, any such Issuing Bank or any such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(f) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to the foregoing provisions of this Section 5.1 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Regulatory Change giving rise to such increased costs or reductions (except that, if the Regulatory Change giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 5.2. Suspension of LIBOR Loans and LIBOR Margin Loans.

(a) Anything herein to the contrary notwithstanding, unless and until a Replacement Rate is implemented in accordance with clause (b) below, if, on or prior to the determination of LIBOR for any Interest Period:

(i) the Administrative Agent shall determine (which determination shall be conclusive) that reasonable and adequate means do not exist for ascertaining LIBOR for such Interest Period;

(ii) the Administrative Agent reasonably determines (which determination shall be conclusive) that quotations of interest rates for the relevant deposits referred to in the definition of LIBOR are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR Loans as provided herein;

(iii) the Administrative Agent reasonably determines (which determination shall be conclusive) that the relevant rates of interest referred to in the definition of LIBOR upon the basis of which the rate of interest for LIBOR Loans for such Interest Period is to be determined are not likely to adequately cover the cost to any Lender of making or maintaining LIBOR Loans for such Interest Period; or

(iv) any Revolving Lender that has outstanding a Bid Rate Quote with respect to a LIBOR Margin Loan reasonably determines (which determination shall be conclusive) that LIBOR will not adequately and fairly reflect the cost to such Revolving Lender of making or maintaining such LIBOR Margin Loan;

then the Administrative Agent shall give the Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, (x) the Lenders shall be under no obligation to, and shall not, make additional LIBOR Loans, Continue LIBOR Loans, or Convert Loans into LIBOR Loans and the Borrower shall, on the last day of each current Interest Period for each outstanding LIBOR Loan either prepay such Loan or Convert such Loan into a Base Rate Loan and (y) in the case of clause (iv) above, no Revolving Lender that has outstanding a Bid Rate Quote with respect to a LIBOR Margin Loan shall be under any obligation to make such Loan.

(b) Notwithstanding anything to the contrary in Section 5.2(a) above, if the Administrative Agent has made the determination (such determination to be conclusive absent manifest error) that (i) the circumstances described in Section 5.2(a)(i) or (a)(ii) have arisen and that such circumstances are unlikely to be temporary, (ii) any applicable interest rate specified herein is no longer a widely recognized benchmark rate for newly originated loans in Dollars in the U.S. syndicated loan market or (iii) the applicable supervisor or administrator (if any) of any applicable interest rate specified herein or any Governmental Authority having or purporting to have jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which any applicable interest rate specified herein shall no longer be used for determining interest rates for loans in Dollars in the U.S. syndicated loan market, then the Administrative Agent may, to the extent practicable (with the consent of the Borrower, which shall not be unreasonably withheld, conditioned or delayed, and as determined by the Administrative Agent to be generally in accordance with similar situations in other transactions in which it is serving as administrative agent or otherwise consistent with market practice generally), establish a replacement interest rate (the “**Replacement Rate**”), in which case, the Replacement Rate shall, subject to the next two sentences, replace such applicable interest rate for all purposes under the Loan Documents unless and until (A) an event described in Section 5.2(a)(i) or (a)(ii), 5.2(b)(i), 5.2(b)(ii) or 5.2(b)(iii) occurs with respect to the Replacement Rate or (B) the Administrative Agent (or the Requisite Lenders through the Administrative Agent) notifies the

Borrower that the Replacement Rate does not adequately and fairly reflect the cost to the Lenders of funding the Loans bearing interest at the Replacement Rate. In connection with the establishment and application of the Replacement Rate, this Agreement and the other Loan Documents shall be amended solely with the consent of the Administrative Agent and the Borrower, as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 5.2(b). Notwithstanding anything to the contrary in this Agreement or the other Loan Documents (including, without limitation, Section 13.6), such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the delivery of such amendment to the Lenders, written notices signed from such Lenders that in the aggregate constitute Requisite Lenders, with each such notice stating that such Lender objects to such amendment (which such notice shall note with specificity the particular provisions of the amendment to which such Lender objects). To the extent the Replacement Rate is approved by the Administrative Agent in connection with this clause (b), the Replacement Rate shall be applied in a manner consistent with market practice. In no event shall the Replacement Rate be less than zero.

Section 5.3. Illegality.

Notwithstanding any other provision of this Agreement, (a) if any Lender shall determine (which determination shall be conclusive and binding) that it is unlawful for such Lender to honor its obligation to make or maintain LIBOR Loans hereunder and/or (b) if any Lender that has an outstanding Bid Rate Quote shall determine (which determination shall be conclusive and binding) that it is unlawful for such Lender to honor its obligation to make or maintain LIBOR Margin Loans hereunder, then such Lender shall promptly notify the Borrower thereof (with a copy of such notice to the Administrative Agent) and such Lender's obligation to make or Continue, or to Convert Loans of any other Type into, LIBOR Loans shall be suspended and/or such Lender's obligation to make LIBOR Margin Loans shall be suspended, in each case, until such time as such Lender may again make and maintain LIBOR Loans or LIBOR Margin Loans (in which case the provisions of Section 5.5 shall be applicable).

Section 5.4. Compensation.

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

(a) any payment or prepayment (whether mandatory or optional) of a LIBOR Loan or a Bid Rate Loan, or Conversion of a LIBOR Loan, made by such Lender for any reason (including, without limitation, acceleration or the exercise by the Borrower of its rights under Section 5.6) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by the Borrower for any reason (including, without limitation, the failure of any of the applicable conditions precedent specified in Section 6.2 to be satisfied) to borrow a LIBOR Loan or a Bid Rate Loan from such Lender on the date for such borrowing, or to Convert a Base Rate Loan into a LIBOR Loan or Continue a LIBOR Loan on the requested date of such Conversion or Continuation;

in any such case, excluding any loss of anticipated profits and including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. Upon the Borrower's request, such Lender shall provide the Borrower with a statement setting forth the basis for requesting such

compensation and the method for determining the amount thereof. Any such statement shall be conclusive absent manifest error.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 5.4, each Lender shall be deemed to have funded each LIBOR Loan made by it at LIBOR by a matching deposit or other borrowing in the relevant market for a comparable amount and for a comparable period, whether or not such LIBOR Loan was in fact so funded.

Section 5.5. Treatment of Affected Loans.

(a) If the obligation of any Lender to make LIBOR Loans, or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 5.1(c), Section 5.2 or Section 5.3 then such Lender's LIBOR Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for LIBOR Loans (or, in the case of a Conversion required by Section 5.1(c), Section 5.2, or Section 5.3 on such earlier date as such Lender or the Administrative Agent, as applicable, may specify to the Borrower (with a copy to the Administrative Agent, as applicable)) and, unless and until such Lender or the Administrative Agent, as applicable, gives notice as provided below that the circumstances specified in Section 5.1, Section 5.2 or Section 5.3 that gave rise to such Conversion no longer exist:

(i) to the extent that such Lender's LIBOR Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's LIBOR Loans shall be applied instead to its Base Rate Loans; and

(ii) all Loans that would otherwise be made or Continued by such Lender as LIBOR Loans shall be made or Continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be Converted into LIBOR Loans shall remain as Base Rate Loans.

If such Lender or the Administrative Agent, as applicable, gives notice to the Borrower (with a copy to the Administrative Agent, as applicable) that the circumstances specified in Section 5.1(c), 5.2 or 5.3 that gave rise to the Conversion of such Lender's LIBOR Loans pursuant to this Section no longer exist (which such Lender or the Administrative Agent, as applicable, agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Loans made by other Lenders are outstanding, then such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding LIBOR Loans and by such Lender are held pro rata (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

(b) [Intentionally omitted.]

(c) If the obligation of a Lender to make LIBOR Margin Loans shall be suspended pursuant to Section 5.1(c) or 5.2, then the LIBOR Margin Loans of such Lender shall be automatically due and payable on such date as such Lender may specify to the Borrower by written notice with a copy to the Administrative Agent.

Section 5.6. Affected Lenders.

If (a) a Lender requests compensation pursuant to Section 3.10 or 5.1, (b) the Borrower or any other Loan Party is required to pay any Indemnified Taxes or additional amounts to a Lender or any Governmental Authority for the account of such Lender pursuant to Section 3.10 or (c) the obligation of any Lender to make or Continue LIBOR Loans, or to Convert Base Rate Loans into LIBOR Loans, shall be suspended pursuant to Section 5.1(c) or 5.3, then the Borrower may demand that such Lender (the “**Affected Lender**”), and upon such demand the Affected Lender shall promptly, assign its Commitment to an Eligible Assignee subject to and in accordance with the provisions of Section 13.5(b) for a purchase price equal to (x) the aggregate principal balance of all Loans then owing to the Affected Lender, plus (y) the aggregate amount of payments previously made by the Affected Lender under Section 2.4(j) that have not been repaid, plus (z) any accrued but unpaid interest thereon and accrued but unpaid fees owing to the Affected Lender, or any other amount as may be mutually agreed upon by such Affected Lender and Eligible Assignee. Each of the Administrative Agent and the Affected Lender shall reasonably cooperate in effectuating the replacement of such Affected Lender under this Section, but at no time shall the Administrative Agent, such Affected Lender, any other Lender or any Titled Person be obligated in any way whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. The exercise by the Borrower of its rights under this Section shall be at the Borrower’s sole cost and expense and at no cost or expense to the Administrative Agent, the Affected Lender or any of the other Lenders. The terms of this Section shall not in any way limit the Borrower’s obligation to pay to any Affected Lender compensation owing to such Affected Lender pursuant to this Agreement (including, without limitation, pursuant to Sections 3.10, 5.1 or 5.4) with respect to any period up to the date of replacement.

Section 5.7. Change of Lending Office.

Each Lender agrees that it will use reasonable efforts (consistent with its legal and regulatory restrictions) to designate an alternate Lending Office with respect to any of its Loans affected by the matters or circumstances described in Sections 3.10, 5.1 or 5.3 to reduce the liability of the Borrower or avoid the results provided thereunder, so long as such designation is not disadvantageous to such Lender as determined by such Lender in its sole discretion, except that such Lender shall have no obligation to designate a Lending Office located in the United States of America.

ARTICLE VI. CONDITIONS PRECEDENT

Section 6.1. Initial Conditions Precedent.

The obligation of the Lenders to effect or permit the occurrence of the first Credit Event hereunder, whether as the making of a Loan or the issuance of a Letter of Credit, is subject to the satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent shall have received each of the following, in form and substance reasonably satisfactory to the Administrative Agent:

(i) counterparts of this Agreement executed by each of the parties hereto;

(ii) Revolving Notes, Term Notes and Swingline Notes executed by the Borrower, payable to each applicable Lender or Swingline Lender, as the case may be, that has requested any such Note at least two (2) Business Days prior to the Agreement Date and complying with the terms of Section 2.12(a);

- (iii) the Guaranty executed by each of the Guarantors initially to be a party thereto;
- (iv) opinions of Goodwin Procter LLP and Venable LLP, counsel to the Parent, the Borrower and each other Loan Party, addressed to the Administrative Agent and the Lenders and covering customary opinion matters, in form and substance reasonably satisfactory to the Administrative Agent;
- (v) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of each Loan Party certified as of a recent date by the Secretary of State of the state of formation of such Loan Party;
- (vi) a certificate of good standing (or certificate of similar meaning) with respect to each Loan Party issued as of a recent date by the Secretary of State of the state of formation of each such Loan Party;
- (vii) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party with respect to each of the officers of such Loan Party authorized to execute and deliver the Loan Documents to which such Loan Party is a party, and in the case of the Borrower, authorized to execute and deliver on behalf of the Borrower Notices of Borrowing, Notices of Swingline Borrowing, requests for Letters of Credit, Notices of Conversion and Notices of Continuation;
- (viii) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party of (A) the by-laws of such Loan Party, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) resolutions adopted by the board of directors, general partner, managers, members or other appropriate governing body of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which it is a party;
- (ix) a Compliance Certificate calculated on a pro forma basis for the Parent's fiscal quarter ending March 31, 2018;
- (x) a Disbursement Instruction Agreement effective as of the Agreement Date;
- (xi) [intentionally omitted];
- (xii) evidence that all indebtedness, liabilities or obligations owing by the Loan Parties under the Existing Credit Agreement shall have been, or, substantially concurrently with the first Credit Event hereunder, will be, paid in full;
- (xiii) a certificate signed by a Responsible Officer of Parent certifying that the conditions specified in Sections 6.2 (a) and (b) have been satisfied; and
- (xiv) evidence that the Fees, if any, then due and payable under Section 3.5, together with all other fees, expenses and reimbursement amounts due and payable to the Administrative Agent, the Arrangers or any of the Lenders pursuant to the Fee Letter or pursuant to the terms of this Agreement, including without limitation, the fees and expenses of counsel to the Administrative

Agent, have been paid, in the case of expenses and reimbursement amounts to the extent invoiced to the Borrower at least two (2) Business Days prior to the Agreement Date;

(b) since December 31, 2017, there shall not have occurred any change in the Borrower's financial condition that could reasonably be expected to result in a Material Adverse Effect;

(c) no material adverse litigation, action, suit, investigation or other arbitral, administrative or judicial proceeding shall be pending or threatened which could reasonably be expected to restrain or enjoin the consummation of the transactions contemplated by this Agreement to occur on the Effective Date; and

(d) the Borrower and each other Loan Party shall have provided all information requested by the Administrative Agent and each Lender in order to comply with applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act to the extent requested at least two (2) Business Days prior to the Agreement Date.

(e) At least two days prior to the Agreement Date, any Borrower and each other Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Borrower or such Loan Party.

Section 6.2. Conditions Precedent to All Loans and Letters of Credit.

In addition to satisfaction or waiver of the conditions precedent to the first Credit Event contained in Section 6.1, the obligations of (i) the Lenders to make any Loans and (ii) the Issuing Banks to issue, extend or increase any Letters of Credit are each subject to the further conditions precedent that: (a) no Default or Event of Default shall exist as of the date of the making of such Loan or date of issuance, extension or increase of such Letter of Credit or would exist immediately after giving effect thereto, and no violation of the limits described in Section 2.16 would occur after giving effect thereto; (b) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of the making of such Loan or date of issuance, extension or increase of such Letter of Credit with the same force and effect as if made on and as of such date except to the extent that such representations and warranties relate to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and (c) in the case of the borrowing of Revolving Loans or Term Loans, the Administrative Agent shall have received a timely Notice of Borrowing, in the case of a Swingline Loan, the applicable Swingline Lender shall have received a timely Notice of Swingline Borrowing, and in the case of the issuance, extension or increase of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a timely request for the issuance, extension or increase of such Letter of Credit. Each Credit Event shall constitute a certification by the Borrower to the effect set forth in the preceding sentence (both as of the date of the giving of notice relating to such Credit Event and, unless the Borrower otherwise notifies the Administrative Agent prior to the date of such Credit Event, as of the date of the occurrence of such Credit Event). In addition, the Borrower shall be deemed to have represented to the Administrative Agent and the Lenders at the time any Loan is made or any Letter of Credit is issued, extended or increased that all conditions to the making of such Loan or issuing, extending or increasing of such Letter of Credit contained in this Article VI have been satisfied. Unless set forth in writing to the contrary, the making of its initial Loan by a Lender shall constitute a certification by such Lender to the Administrative Agent for the benefit of the Administrative Agent, the Borrower and the Lenders that the

conditions precedent for initial Loans set forth in Sections 6.1 and 6.2 that have not previously been waived by the Lenders in accordance with the terms of this Agreement have been satisfied.

ARTICLE VII. REPRESENTATIONS AND WARRANTIES

Section 7.1. Representations and Warranties.

In order to induce the Administrative Agent and each Lender to enter into this Agreement and to make Loans and, in the case of the Issuing Banks, to issue Letters of Credit, each of the Parent and the Borrower represents and warrants to the Administrative Agent, each Issuing Bank and each Lender as follows:

(a) Organization; Power; Qualification. Each of the Parent and the Borrower, the other Loan Parties and the other Subsidiaries of the Parent (a) is a corporation, limited liability company, partnership or other legal entity (i) duly organized or formed and validly existing and (ii) in good standing under the jurisdiction of its incorporation or formation, (b) has the power and authority to own or lease its respective properties and to carry on its respective business as now being and hereafter proposed to be conducted and (c) is duly qualified and is in good standing as a foreign corporation, limited liability company, partnership or other legal entity, and authorized to do business, in each jurisdiction in which such qualification or authorization is required, except, in the case of clauses (a) (i) (other than with respect to the Parent or any other Loan Party), (a)(ii) (other than with respect to the Parent, the Borrower or any Parent Guarantor), (b) and (c), where the failure to be so qualified or authorized could not reasonably be expected to have, in each instance, a Material Adverse Effect. None of the Parent, the Borrower, any other Loan Party or any other Subsidiary is an EEA Financial Institution.

(b) Ownership Structure. Part I of Schedule 7.1(b) is, as of the Agreement Date, a complete and correct list of all Subsidiaries of the Parent setting forth for each such Subsidiary, (i) the jurisdiction of incorporation or formation of such Subsidiary, (ii) each Person holding any Equity Interest in such Subsidiary, (iii) the type of Equity Interests held by each such Person and (iv) the percentage of ownership of such Subsidiary represented by such Equity Interests. As of the Agreement Date, except as disclosed in such Schedule, (A) each of the Parent, the Borrower and the Subsidiaries of the Parent owns, free and clear of all Liens (except Permitted Liens), and has the unencumbered right to vote, all outstanding Equity Interests in each Person shown to be held by it on such Schedule, (B) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and nonassessable (to the extent such concepts are applicable) and (C) there are no outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including, without limitation, any stockholders' or voting trust agreements) for the issuance, sale, registration or voting of, or outstanding securities convertible into, any additional shares of capital stock of any class, or partnership or other Equity Interests of any type in, any such Person. As of the Agreement Date, Part II of Schedule 7.1(b) correctly sets forth all Unconsolidated Affiliates of the Parent, including the correct legal name of such Person, the type of legal entity which each such Person is, and all Equity Interests in such Person held directly or indirectly by the Parent.

(c) Authorization of Loan Documents and Borrowings. Each of the Parent and the Borrower has the right and power, and has taken all necessary corporate, limited liability company, or partnership action required to authorize it, to borrow and obtain other extensions of credit hereunder. Each of the Parent, the Borrower and each other Loan Party has the right and power, and has taken all necessary corporate, limited liability company or partnership action required to authorize it, to execute, deliver and perform each of the Loan Documents to which it is a party in accordance with their respective terms and to consummate the transactions contemplated hereby and thereby. The Loan Documents to which the Parent, the Borrower or any other Loan Party is a party have been duly executed and delivered by the duly authorized officers of such Person and each is a legal, valid and binding obligation of such Person enforceable against such Person

in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations contained herein or therein and as may be limited by equitable principles generally.

(d) Compliance of Loan Documents with Laws. The execution, delivery and performance of this Agreement and the other Loan Documents to which any Loan Party is a party in accordance with their respective terms and the borrowings and other extensions of credit hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any Governmental Approval or violate any Applicable Law relating to the Parent, the Borrower or any other Loan Party; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of any Loan Party, or any indenture, agreement or other instrument to which the Parent, the Borrower or any other Loan Party is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by any Loan Party other than in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties.

(e) Compliance with Law; Governmental Approvals. Each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries of the Parent is in compliance with each Governmental Approval and all other Applicable Laws relating to it except for noncompliances which, and Governmental Approvals the failure to possess which, could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) Title to Properties; Liens. Each of the Borrower, each other Loan Party and each other Subsidiary of the Parent has good, marketable and legal title to, or a valid leasehold interest in, its respective assets, except for such defects in title as could not reasonably be expected to have a Material Adverse Effect.

(g) [Intentionally Omitted.]

(h) [Intentionally Omitted.]

(i) Litigation. Except as set forth on Schedule 7.1(i), there are no actions, suits or proceedings pending (nor, to the knowledge of any Loan Party, any actions, suits or proceedings threatened in writing) against or in any other way adversely affecting the Parent, the Borrower, any other Loan Party, any other Subsidiary of the Parent or any of their respective property in any court or before any arbitrator of any kind or before or by any other Governmental Authority which, individually or in the aggregate, (i) could reasonably be expected to have a Material Adverse Effect or (ii) in any manner draws into question the validity or enforceability of any Loan Document. There are no strikes, slow downs, work stoppages or walkouts or other labor disputes in progress or threatened in writing with respect to, the Parent, the Borrower, any Loan Party or any other Subsidiary of the Parent that could reasonably be expected to have a Material Adverse Effect.

(j) Taxes. All federal and state income and other material tax returns of each of the Parent, the Borrower, each other Loan Party and each other Subsidiary of the Parent required by Applicable Law to be filed have been duly filed (taking into account any extensions of time within which to file such tax returns), and all federal, state and other taxes, assessments and other governmental charges or levies upon, each of the Parent, the Borrower, each Loan Party, each other Subsidiary of the Parent and their respective properties, income, profits and assets which are due and payable have been paid, except any such nonpayment or non-filing (x) which is being contested in good faith by appropriate proceedings which operate to suspend the collection thereof and for which adequate reserves have been established on the books of such Person in

accordance with GAAP or (y) in respect of which the failure to do so would not be reasonably be expected to have a Material Adverse Effect. All charges, accruals and reserves on the books of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries of the Parent in respect of any taxes or other governmental charges are in accordance with GAAP.

(k) Financial Statements. The Borrower has furnished to the Administrative Agent copies of (i) the audited consolidated balance sheet of the Parent and its consolidated Subsidiaries for the fiscal years ended December 31, 2016 and December 31, 2017, and the related audited consolidated statements of operations, shareholders' equity and cash flow for the fiscal years ended on such dates, with the opinion thereon of Deloitte & Touche LLP, and (ii) the unaudited consolidated balance sheet of the Parent and its consolidated Subsidiaries for the fiscal quarter ended March 31, 2018, and the related unaudited consolidated statements of operations, shareholders' equity and cash flow of the Parent and its consolidated Subsidiaries for the fiscal quarter period ended on such date. Such financial statements (including in each case related schedules and notes) are complete and correct in all material respects and present fairly, in accordance with GAAP consistently applied throughout the periods involved, the consolidated financial position of the Parent and its consolidated Subsidiaries as at their respective dates and the results of operations and the cash flow for such periods (subject, as to interim statements, to changes resulting from normal year end audit adjustments and the absence of footnotes). None of the Parent, the Borrower or any of their respective Subsidiaries has on the Agreement Date any material contingent liabilities, liabilities, liabilities for taxes, unusual or long-term commitments or unrealized or forward anticipated losses from any unfavorable commitments that would be required to be set forth in its financial statements or notes thereto, except as referred to or reflected or provided for in said financial statements.

(l) No Material Adverse Change. Since December 31, 2017, there has been no event, change, circumstance or occurrence that could reasonably be expected to have a Material Adverse Effect. On a consolidated basis, the Parent and its Subsidiaries are Solvent.

(m) ERISA.

(i) Each Benefit Arrangement is in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other Applicable Law, except to the extent any such non-compliance could not reasonably be expected to have a Material Adverse Effect. Except with respect to Multiemployer Plans, each Qualified Plan has received a favorable determination or opinion letter from the Internal Revenue Service or a timely application for such letter has been filed with the Internal Revenue Service and is currently being processed by the Internal Revenue Service. To the knowledge of the Parent and the Borrower, nothing has occurred which would cause the loss of its reliance on each Qualified Plan's favorable determination letter or opinion letter.

(ii) No material Benefit Arrangement is a retiree welfare benefit arrangement, other than as required by applicable Law.

(iii) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) there are no pending, or to the best knowledge of the Parent and the Borrower, threatened in writing, claims, actions or lawsuits or other action by any Governmental Authority, plan participant or beneficiary with respect to a Benefit Arrangement; (iii) there are no violations of the fiduciary responsibility rules with respect to any Benefit Arrangement; and (iv) no member of the ERISA Group has engaged in a non-exempt "prohibited transaction," as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code, in connection with any Plan, that would subject

any member of the ERISA Group to a tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Internal Revenue Code.

(n) Absence of Default. None of the Parent, the Borrower, the other Loan Parties or any of the other Subsidiaries of the Parent is in default under its certificate of formation or articles of incorporation, bylaws, limited liability company agreement, partnership agreement or other similar organizational documents, except as could not reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

(o) Environmental Laws. Each of the Parent, the Borrower, each other Loan Party and the other Subsidiary of the Parent: (i) is in compliance with all Environmental Laws applicable to its business, operations and the Properties, (ii) has obtained all Governmental Approvals which are required under Environmental Laws, and each such Governmental Approval is in full force and effect, and (iii) is in compliance with all terms and conditions of such Governmental Approvals, where with respect to each of the immediately preceding clauses (i) through (iii) the failure to obtain or to comply with could reasonably be expected to have a Material Adverse Effect. Except for any of the following matters that could not reasonably be expected to have a Material Adverse Effect, no Loan Party has any knowledge of, or has received notice of, any past, present, or pending releases, events, conditions, circumstances, activities, practices, incidents, facts, occurrences, actions, or plans that, with respect to any Loan Party or any other Subsidiary of the Parent, their respective businesses, operations or with respect to the Properties, may: (x) cause or contribute to an actual or alleged violation of or noncompliance with Environmental Laws, (y) cause or contribute to any other potential common law or legal claim or other liability, or (z) cause any of the Properties to become subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law or require the filing or recording of any notice, approval or disclosure document under any Environmental Law and, with respect to the immediately preceding clauses (x) through (z) is based on or related to the on-site or off-site manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, removal, clean up or handling, or the emission, discharge, release or threatened release of any wastes or Hazardous Material, or any other requirement under Environmental Law. There is no civil, criminal, or administrative action, suit, demand, claim, hearing, notice, or demand letter, mandate, order, lien, request, investigation, or proceeding pending or, to the Parent's or the Borrower's knowledge after due inquiry, threatened, against the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent relating in any way to Environmental Laws which, reasonably could be expected to have a Material Adverse Effect. To the knowledge of the Parent or the Borrower, none of the Properties is listed on or proposed for listing on the National Priorities List promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its implementing regulations, or any state or local priority list promulgated pursuant to any analogous state or local law, except to the extent that such listing or proposal for listing could not reasonably be expected to result in a Material Adverse Effect. To the Parent's or the Borrower's knowledge, no Hazardous Materials generated at or transported from the Properties are or have been transported to, or disposed of at, any location that is listed or proposed for listing on the National Priorities List or any analogous state or local priority list, or any other location that is or has been the subject of a clean-up, removal or remedial action pursuant to any Environmental Law, except to the extent that such transportation or disposal could not reasonably be expected to result in a Material Adverse Effect.

(p) Investment Company. None of the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent is (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940 or (ii) subject to any other Applicable Law which purports to regulate or restrict its ability to borrow money or obtain other extensions of credit or

to consummate the transactions contemplated by this Agreement or to perform its obligations under any Loan Document to which it is a party.

(q) Margin Stock. None of the Parent, the Borrower, any other Loan Party or any Subsidiary of the Parent is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System.

(r) Intellectual Property. Each of the Parent, the Borrower, any other Loan Party and any other Subsidiary of the Parent owns or has the right to use, under valid license agreements or otherwise, all patents, licenses, franchises, trademarks, trademark rights, service marks, service mark rights, trade names, trade name rights, trade secrets and copyrights (collectively, “**Intellectual Property**”) necessary to the conduct of its businesses, without known conflict with any patent, license, franchise, trademark, trademark right, service mark, service mark right, trade secret, trade name, copyright, or other proprietary right of any other Person except, in each case, where the failure to own or have the right to use such Intellectual Property or such contract, could not reasonably be expected to have a Material Adverse Effect. All such Intellectual Property is fully protected and/or duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filing or issuances, except to the extent as could not reasonably be expected to have a Material Adverse Effect. No material claim has been asserted in writing by any Person against Parent, the Borrower, any other Loan Party or any other Subsidiary with respect to the use of any such Intellectual Property by the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent, or challenging or questioning the validity or effectiveness of any such Intellectual Property, the adverse determination of which could reasonably be expected to have a Material Adverse Effect. The use of such Intellectual Property (to the knowledge of the Loan Parties, with respect to any licensed Intellectual Property) by the Parent, the Borrower, the other Loan Parties and the other Subsidiaries of the Parent does not infringe on the rights of any Person, subject to such claims and infringements as do not, in the aggregate, give rise to any liabilities on the part of the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent that could reasonably be expected to have a Material Adverse Effect.

(s) [Intentionally Omitted.]

(t) Accuracy and Completeness of Information.

(i) All written information, reports and other papers and data (other than financial projections and other forward looking statements) furnished to the Administrative Agent or any Lender by, on behalf of, or at the direction of, the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent, taken as a whole and after giving effect to any supplements and updates thereto, do not contain any material misstatement of fact or fail to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. All financial projections and other forward looking statements prepared by or on behalf of the Parent, the Borrower, any other Loan Party or any Subsidiaries of the Parent that have been or may hereafter be made available to the Administrative Agent or any Lender were or will be prepared in good faith based on reasonable assumptions (it being understood that any such projections are subject to significant uncertainties and contingencies, some of which are beyond the control of such Person, that no assurance can be given that any particular projections will be realized, that actual results may differ and that such differences may be material).

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

(u) Not Plan Assets; No Prohibited Transactions. None of the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent is a Benefit Plan, a “governmental plan” within the meaning of Section 3(32) of ERISA, or an entity deemed to hold the assets of such a governmental plan. Assuming that no Lender funds any amount payable by it hereunder with “plan assets,” as that term is defined in 29 C.F.R. 2510.3-101, as modified by Section 3(42) of ERISA, the execution, delivery and performance of this Agreement and the other Loan Documents, and the extensions of credit and repayment of amounts hereunder, do not and will not constitute “prohibited transactions” under ERISA or the Internal Revenue Code.

(v) Sanctions; Anti-Corruption Laws. None of the Parent, the Borrower, any Subsidiary, any of their respective directors, officers, or, to the knowledge of the Parent, employees, Affiliates or any agent or representative of the Parent, the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from this Agreement, (i) is a Sanctioned Person or currently the subject or target of any Sanctions, (ii) has its assets located in a Sanctioned Country, (iii) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons or (iv) has violated any Anti-Money Laundering Law in any material respect. Each of the Parent, the Borrower and their Subsidiaries, and to the knowledge of the Parent, each director, officer, employee, agent and Affiliate of the Parent and each such Subsidiary, is in compliance with the Anti-Corruption Laws in all material respects.

(w) REIT Status. The Parent qualifies as, and has elected to be treated as, a REIT and is in compliance with all requirements and conditions imposed under the Internal Revenue Code to allow the Parent to maintain its status as a REIT.

Section 7.2. Survival of Representations and Warranties, Etc.

All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any of the other Loan Documents (including, but not limited to, any such statement made in or in connection with any amendment thereto or any statement contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party prior to the Agreement Date and delivered to the Administrative Agent or any Lender in connection with the underwriting or closing the transactions contemplated hereby) shall constitute representations and warranties made by the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent under this Agreement. All such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the Loan Documents and the making of the Loans and the issuance of the Letters of Credit. All representations and warranties made under this Agreement and the other Loan Documents shall be deemed to be made at and as of the Agreement Date, the Effective Date, the date on which any extension of the Revolving Termination Date is effectuated pursuant to Section 2.14, the date on which any increase of the Revolving Commitments or Incremental Term Loans is effectuated pursuant to Section 2.17 and at and as of the date of the occurrence of each Credit Event, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date). All such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the Loan Documents and the making of the Loans and the issuance of the Letters of Credit.

ARTICLE VIII. AFFIRMATIVE COVENANTS

Until the Termination Date, the Parent and the Borrower shall, and shall cause each other Loan Party and Subsidiary thereof to, comply with the following covenants:

Section 8.1. Preservation of Existence and Similar Matters.

Except as otherwise permitted under Section 10.4, each of the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary of the Parent to, (i) preserve and maintain its respective existence, (ii) take reasonable action to preserve and maintain its rights, franchises, licenses and privileges in the jurisdiction of its incorporation or formation necessary for the conduct of its respective business and (iii) qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization in each case of clauses (i) (except with respect to any Loan Party), (ii) and (iii), except to the extent such failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 8.2. Compliance with Applicable Law.

The Parent and the Borrower shall comply, and shall cause each other Loan Party and each other Subsidiary of the Parent to comply, with all Applicable Law, including the obtaining of all Governmental Approvals, in each case, except to the extent that the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

Section 8.3. Maintenance of Property.

In addition to the requirements of any of the other Loan Documents, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary of the Parent to, protect and preserve all of its properties, including, but not limited to, all Intellectual Property, necessary to the conduct of its respective business, and maintain in good repair, working order and condition all tangible properties, ordinary wear and tear excepted, in each case except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 8.4. Conduct of Business.

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary of the Parent to, directly or indirectly, engage only in a material line of business or any business substantially related, incidental or ancillary thereto that is substantially similar to such line of business conducted by the Parent, the Borrower, such Loan Party or such other Subsidiary of the Parent on the Effective Date.

Section 8.5. Insurance.

In addition to the requirements of any of the other Loan Documents, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary of the Parent to, maintain insurance (on a replacement cost basis) with financially sound and reputable insurance companies against such risks and in such amounts determined by such Person in its prudent business judgment or as may be required by Applicable Law. The Parent and the Borrower shall deliver to the Administrative Agent upon request (but in no event more frequently than once per calendar year unless an Event of Default has occurred and is continuing) a detailed list, together with, to the extent requested by the Administrative Agent, copies of all policies of the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

Section 8.6. Payment of Taxes and Claims.

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary of the Parent to, pay and discharge when due (a) all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it, and (b) all lawful claims of materialmen, mechanics, carriers, warehousemen and landlords for labor, materials, supplies and rentals which, if unpaid, might become a Lien on any properties of such Person (other than any Permitted Lien); provided, however, that this Section shall not require the payment or discharge of any such tax, assessment, charge, levy or claim (x) which is being contested in good faith by appropriate proceedings and for which adequate reserves have been established on the books of such Person in accordance with GAAP or (y) in respect of which the failure to do so could not be reasonably be expected to have a Material Adverse Effect.

Section 8.7. Books and Records; Inspections.

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary of the Parent to, keep proper books of record and account in which entries that are, in all material respects, full, true and correct shall be made of all financial dealings and transactions in relation to its business and assets. The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary of the Parent to, permit representatives of the Administrative Agent (which may be accompanied by representatives or independent contractors of one of more Lenders) to visit and inspect, subject to the rights of tenants, any of their respective properties, to examine and make abstracts from any of their respective books and records and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (in the presence of an officer of the Parent), all at such reasonable times during business hours, with reasonable prior notice; provided, that unless an Event of Default has occurred and is continuing, such visits and inspections shall be limited to once in any calendar year; provided, further, that if an Event of Default has occurred and is continuing, the Administrative Agent may be accompanied by any requesting Lender and any representatives, agents and designees of such Lender. The Parent and the Borrower shall be obligated to reimburse (a) the Administrative Agent for its costs and expenses incurred in connection with any annual visit or inspection described above conducted prior to the occurrence or continuance of any Event of Default and (b) the Administrative Agent and the Lenders for their costs and expenses incurred in connection with the exercise of their rights under this Section only if such exercise occurs while an Event of Default exists. The Parent hereby authorizes and instructs its accountants to discuss the financial affairs of the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent with the Administrative Agent or any Lender in accordance with the terms of this Section. Notwithstanding the foregoing, in no event shall the Parent, the Borrower, any Loan Party or any Subsidiary be required to disclose or make available any information hereunder to the extent that such disclosure would (i) vitiate any applicable attorney-client privilege or (ii) violate any applicable fiduciary duty or confidentiality obligation due to another party.

Section 8.8. Use of Proceeds.

The Borrower will use the proceeds of Loans only to provide for the general working capital needs of the Parent and its Subsidiaries and for other general corporate purposes of the Parent and the Subsidiaries of the Parent (including Acquisitions and other Investments not otherwise prohibited hereunder or under any other Loan Document, Restricted Payments permitted hereunder and refinancing indebtedness). The Borrower shall only use Letters of Credit for the same purposes for which it may use the proceeds of Loans. The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, use any part of such proceeds to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System), other than share repurchases (so long as such margin stock is cancelled

immediately upon any such share repurchase) or to extend credit to others for the purpose of purchasing or carrying any such margin stock. Neither the Borrower nor the Parent shall (and the Borrower and the Parent shall procure that no other Subsidiary of the Parent or its or their respective directors, officers, employees and agents shall) use, lend, make payments of, contribute or otherwise make available, directly or, to the knowledge of any Loan Party, indirectly, all or any part of the proceeds of the Loans or Letters of Credit to fund or finance any business activities or transactions (a) of or with a Sanctioned Person or (b) in any other manner which would result in (i) a violation of any Sanctions or Anti-Corruption Laws or (ii) becoming a Sanctioned Person.

Section 8.9. Environmental Matters.

The Parent and the Borrower shall, and shall cause each other Loan Party and each Subsidiary of the Parent to, comply with all Environmental Laws, except to the extent that the failure to so comply could not reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to have a Material Adverse Effect, the Parent and the Borrower shall not cause or allow, and shall take commercially reasonable efforts to prevent any other Loan Party, each Subsidiary or tenant from causing or allowing a third party to cause, any release or spill of Hazardous Materials at, on or from the Properties in violation of or in a manner that could reasonably be expected to lead to any Environmental Claim against the Parent, the Borrower or any Loan Party or the imposition of a Lien related to Environmental Law at any Property. The Parent and the Borrower shall, and shall cause each other Loan Party and each Subsidiary of the Parent to, promptly take all actions to remove and dispose of all Hazardous Materials from the Properties and to clean up the Properties as required under Environmental Laws, except where the failure to take such actions could reasonably be expected to have a Material Adverse Effect. The Parent and the Borrower shall, and shall cause each other Loan Party and each Subsidiary of the Parent to, promptly take all actions necessary to prevent the imposition of any Liens on any of their respective properties arising out of or related to any Environmental Laws. Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent or any Lender.

Section 8.10. [Intentionally Omitted].

Section 8.11. [Intentionally Omitted.]

Section 8.12. REIT Status.

The Parent shall maintain its status as, and election to be treated as, a REIT under the Internal Revenue Code.

Section 8.13. Exchange Listing.

The Parent shall maintain at least one class of common shares of the Parent having trading privileges on the New York Stock Exchange or NYSE Amex Equities or which is subject to price quotations on The NASDAQ Stock Market's National Market System.

Section 8.14. Guarantors.

(a) (x) Within fifteen (15) Business Days of any Person becoming a Subsidiary of the Parent owning a direct or indirect interest in the Borrower after the Agreement Date, or (y) substantially concurrently with any Subsidiary of the Parent (other than the Borrower) entering into any Guarantee of Indebtedness of any Loan Party (other than Indebtedness described on Schedule 8.14 on the Effective Date), the Parent, the Borrower and such Subsidiary shall deliver to the Administrative Agent each of the following: (i) an Accession Agreement executed by such Subsidiary and (ii) the items that would have been delivered under subsections (iv) through (viii) and (xvi) of Section 6.1(a) and under Section 6.1(e) if such Subsidiary had been a Guarantor on the Agreement Date, in form and substance substantially consistent with such items delivered on the Effective Date or otherwise reasonably satisfactory to the Administrative Agent.

(b) The Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall release, a Subsidiary Guarantor from the Guaranty so long as: (i) such Subsidiary Guarantor is not otherwise required to be a party to the Guaranty under the immediately preceding subsection (a) (after giving effect to clause (ii) hereof); (ii) such Subsidiary Guarantor no longer Guarantees (or which Guarantee is being substantially concurrently released) any other Indebtedness of any Loan Party; (iii) no Default or Event of Default shall then be in existence or would occur as a result of such release, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1; and (iv) the Administrative Agent shall have received such written request at least five (5) Business Days (or such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Parent and the Borrower that the conditions set forth in the preceding sentence are or will be satisfied as of the requested date of release.

ARTICLE IX. INFORMATION

For so long as this Agreement is in effect, the Parent and the Borrower shall furnish to the Administrative Agent for distribution to each of the Lenders:

Section 9.1. Quarterly Financial Statements.

Within five (5) days after the same is required to be filed with the SEC (but in no event later than forty five (45) days after the end of each of the first, second and third fiscal quarters of the Parent, commencing with the fiscal quarter ending June 30, 2018), the unaudited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such period and the related unaudited consolidated statements of operations, income and cash flows of the Parent and its Subsidiaries for such period, setting forth in each case in comparative form the figures as of the end of and for the corresponding periods of the previous fiscal year, all of which shall be certified by a Responsible Officer of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the consolidated financial position of the Parent and its Subsidiaries as at the date thereof and the results of operations for such period (subject to the absence of footnotes and normal year end audit adjustments).

Section 9.2. Year End Statements.

Within five (5) days after the same is required to be filed with the SEC (but in no event later than ninety (90) days after the end of each fiscal year of the Parent, commencing with the fiscal year ending December 31, 2018), the audited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of operations, income, stockholders' equity and cash flows of the Parent and its Subsidiaries for such fiscal year, setting forth in comparative form the

figures as at the end of and for the previous fiscal year, all of which shall (a) present fairly, in accordance with GAAP and in all material respects, the financial position of the Parent and its Subsidiaries as at the date thereof and the result of operations for such period and (b) accompanied by an unqualified report thereon of Deloitte & Touche LLP or any other independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent (it being acknowledged that any of the “Big 4” accounting firms shall be acceptable to the Administrative Agent), whose report shall not be subject to (i) any “going concern” or like qualification or exception (other than a qualification indicating that the Obligations with respect to either or both of the Revolving Loans and Term Loans have become current liabilities within the year prior to the then applicable Revolving Termination Date or Term Loan Maturity Date, as the case may be) or (ii) any qualification or exception as to the scope of such audit.

Section 9.3. Compliance Certificate.

At the time the financial statements are furnished pursuant to Sections 9.1 and 9.2, a certificate substantially in the form of Exhibit R (a “**Compliance Certificate**”) executed on behalf of the Parent by a Responsible Officer of the Parent (a) setting forth in reasonable detail as of the end of such fiscal quarter or fiscal year, as the case may be, the calculations required to establish whether the Parent was in compliance with the covenants contained in Section 10.1; and (b) stating that no Default or Event of Default exists, or, if such is not the case, specifying such Default or Event of Default and its nature, when it occurred and the steps being taken by the Parent with respect to such event, condition or failure.

Section 9.4. Other Information.

(a) [Intentionally omitted];

(b) Within five (5) Business Days of the filing thereof, copies of all registration statements (excluding the exhibits thereto (unless requested by the Administrative Agent) and any registration statements on Form S-8 or its equivalent), reports on Forms 10-K, 10-Q and 8-K (or their equivalents) and all other periodic reports which any Loan Party or any other Subsidiary of the Parent shall file with the SEC;

(c) Concurrent with the delivery of the financial statements referred to in Section 9.2, projected balance sheets, operating statements, profit and loss projections and cash flow budgets of the Parent and its Subsidiaries on a consolidated basis for each quarter of the next succeeding fiscal year, all itemized in reasonable detail;

(d) If any ERISA Event shall occur that individually, or together with any other ERISA Event that has occurred, could reasonably be expected to have a Material Adverse Effect, a certificate of the chief executive officer or chief financial officer of the Parent setting forth details as to such occurrence and the action, if any, which the Parent or applicable member of the ERISA Group is required or proposes to take;

(e) To the extent the Parent or the Borrower is aware of the same, prompt notice of the commencement of any proceeding or investigation by or before any Governmental Authority and any action or proceeding in any court or other tribunal or before any arbitrator against or in any other way relating to, or affecting, the Parent, the Borrower, any other Loan Party or any Subsidiary of the Parent or any of their respective properties, assets or businesses which could reasonably be expected to have a Material Adverse Effect;

(f) [Intentionally omitted];

(g) Prompt notice of the occurrence of any other event which has had, or could reasonably be expected to have, a Material Adverse Effect;

(h) Prompt notice of the occurrence of any Default or Event of Default;

(i) Promptly upon the request of the Administrative Agent, a copy of any Specified Derivatives Contract after the Agreement Date (to the extent not previously provided);

(j) Prompt notice of any order, judgment or decree having been entered against any Loan Party or any other Subsidiary of the Parent or any of their respective properties or assets that could reasonably be expected to have a Material Adverse Effect;

(k) [Intentionally omitted];

(l) [Intentionally omitted];

(m) Promptly, upon any change in the Parent's Credit Rating, written notice stating that the Parent's Credit Rating has changed and the new Credit Rating that is in effect;

(n) [Intentionally omitted];

(o) Promptly, and in any event within three (3) Business Days after the Parent or the Borrower obtains knowledge thereof, written notice of the occurrence of any of the following: (i) the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent shall receive notice that any violation of or noncompliance with any Environmental Law has or may have been committed or is threatened; (ii) the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent shall receive notice that any administrative or judicial complaint, order or petition has been filed or other proceeding has been initiated, or is about to be filed or initiated against any such Person alleging any violation of or noncompliance with any Environmental Law or requiring any such Person to take any action in connection with the release or threatened release of Hazardous Materials; (iii) the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent shall receive any notice from a Governmental Authority or private party alleging that any such Person may be liable or responsible for any costs associated with a response to, or remediation or cleanup of, a release or threatened release of Hazardous Materials or any damages caused thereby; or (iv) the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent shall receive notice of any other fact, circumstance or condition that could reasonably be expected to form the basis of an environmental claim, and the matters covered by notices referred to in any of the immediately preceding clauses (i) through (iv), whether individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(p) [Intentionally omitted]; and

(q) From time to time and promptly upon each request, (i) such data, certificates, reports, statements, documents or further information regarding the business, assets, liabilities, financial condition or results of operations of the Parent, the Borrower, any Subsidiaries of the Parent, or any other Loan Party as the Administrative Agent may reasonably request and (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or any other applicable anti-money laundering laws.

Notwithstanding anything to the contrary in this Agreement, none of the Parent or any of its Subsidiaries will be required to disclose, permit the inspection, examination or making of copies or extracts, or discussion of, any document, information or other matter that (i) in respect of which disclosure to the Administrative Agent (or its designated representative) or any Lender is then prohibited by law, rule, regulation or court order or (ii) is subject to attorney–client or similar privilege or constitutes attorney work product.

Section 9.5. Electronic Delivery of Certain Information.

(a) Any financial statement, report, proxy statement or other document (to the extent any such financial statement, report, proxy statement or other document is included in materials otherwise filed with the SEC) required to be delivered pursuant to the Loan Documents may be so delivered by the filing by any Loan Party or any other Subsidiary of the Parent of a Form 8-K, 10-K, 10-Q or other publicly available filing with the SEC. All financial statements and other documents, reports, proxy statements or other materials required to be delivered pursuant to the Loan Documents may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) such financial statements and/or other documents are posted on the SEC’s website on the Internet at www.sec.gov, (ii) on which the Parent posts such documents, or provides a link thereto, on the Parent or any Loan Party’s website or (iii) on which such documents are posted on the Parent’s behalf on an Internet or Intranet website, if any, to which the Administrative Agent and each Lender has access (whether a commercial third-party website or a website sponsored by the Administrative Agent), provided that the Parent shall, at the request of the Administrative Agent, continue to deliver copies (which delivery may be by electronic transmission (including PDF)) of such documents to the Administrative Agent or to any Lender that requests paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. Documents or notices delivered electronically shall be deemed to have been delivered at the date and time on which the Administrative Agent, the Parent or the Borrower posts such documents or the documents become available on a commercial website and the Parent or Borrower notifies the Administrative Agent, for further notification to the Lenders, of said posting and provides a link thereto provided if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 9:00 a.m. Central time on the opening of business on the next business day for the recipient. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Parent or the Borrower with any such request for delivery. Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Parent or the Borrower with any such request for delivery. Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents.

(b) Documents required to be delivered pursuant to Article II may be delivered electronically to a website provided for such purpose by the Administrative Agent pursuant to the procedures provided to the Parent and the Borrower by the Administrative Agent.

Section 9.6. Public/Private Information.

Each of the Parent and the Borrower shall cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Parent or the Borrower. Documents required to be delivered pursuant to the Loan Documents shall be delivered by or on behalf of the Parent or the Borrower to the Administrative Agent (collectively, “**Information Materials**”) pursuant to this Article and, to the extent reasonably requested by the Administrative Agent, the Parent and the Borrower shall designate Information Materials (a) that are either available to the public or not material

with respect to the Parent, the Borrower and the Subsidiaries of the Parent or any of their respective securities for purposes of United States federal and state securities laws, as “Public Information” and (b) that are not Public Information as “Private Information” (clauses (a) and (b), collectively, the “MNPI”); it being agreed that no such designation shall be required to the extent no Lender has notified the Administrative Agent that it does not wish to receive MNPI.

Section 9.7. USA Patriot Act Notice; Compliance.

The Patriot Act and federal regulations issued with respect thereto require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an “account” with such financial institution. Consequently, a Lender (for itself and/or as agent for all Lenders hereunder) may from time-to-time request, and the Parent and the Borrower shall, and shall cause the other Loan Parties and Subsidiaries of the Parent to, provide promptly upon any such request to such Lender, such Loan Party’s or Subsidiary’s name, address, tax identification number and/or such other identification information as shall be necessary for such Lender to comply with federal law, including without limitation, applicable “know your customer” and Anti-Money Laundering Laws). An “account” for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

ARTICLE X. NEGATIVE COVENANTS

Until the Termination Date, the Parent and the Borrower shall, and shall cause each other Loan Party or Subsidiary thereof to, comply with the following covenants:

Section 10.1. Financial Covenants.

(a) [Intentionally Omitted].

(b) Ratio of Total Indebtedness to Total Asset Value. The Parent and the Borrower shall not permit the ratio of (i) Total Indebtedness of the Parent and its Subsidiaries to (ii) Total Asset Value to exceed 0.60 to 1.00 as of the last day of each fiscal quarter for which financial statements are required to be delivered hereunder. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, (i) Total Indebtedness on any date shall be adjusted by deducting therefrom an amount equal to the lesser of (x) the aggregate amount of Indebtedness outstanding on such date that by its terms is scheduled to mature on or before the date that is twenty-four (24) months following such date and (y) the aggregate amount of all unrestricted cash and Cash Equivalents on such date and escrow and other deposits (excluding tenant deposits and other cash and Cash Equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted in any way) to the extent available for the repayment of Indebtedness of the type described in clause (x) and (ii) Total Asset Value shall be adjusted by deducting therefrom the amount by which Total Indebtedness is adjusted under clause (i).

(c) Ratio of Adjusted EBITDA to Fixed Charges. The Parent and the Borrower shall not permit the ratio of (i) Adjusted EBITDA of the Parent and its Subsidiaries for any period of four (4) consecutive fiscal quarters to (ii) Fixed Charges of the Parent and its Subsidiaries for such period of four (4) consecutive fiscal quarters, to be less than 1.50 to 1.00 as of the last day of each fiscal quarter for which financial statements are required to be delivered hereunder.

(d) Ratio of Secured Indebtedness to Total Asset Value. The Parent and the Borrower shall not permit the ratio of (i) Secured Indebtedness of the Parent and its Subsidiaries to (ii) Total Asset Value to exceed 0.45 to 1.00 as of the last day of each fiscal quarter for which financial statements are required to be

delivered hereunder. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, (i) Secured Indebtedness on any date shall be adjusted by deducting therefrom an amount equal to the lesser of (x) the aggregate amount of Secured Indebtedness outstanding on such date that by its terms is scheduled to mature on or before the date that is twenty-four (24) months following such date and (y) the aggregate amount of all unrestricted cash and Cash Equivalents on such date and escrow and other deposits (excluding (A) tenant deposits and other cash and Cash Equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted in any way and (B) any such unrestricted cash and Cash Equivalents and escrow and other deposits used to determine the Unsecured Indebtedness to Unencumbered Asset Value ratio) to the extent available for the repayment of Secured Indebtedness of the type described in clause (x) and (ii) Total Asset Value shall be adjusted by deducting therefrom the amount by which Secured Indebtedness is adjusted under clause (i).

(e) Ratio of Unsecured Indebtedness to Unencumbered Asset Value. The Parent and the Borrower shall not permit the ratio of (i) Unsecured Indebtedness of the Parent and its Subsidiaries to (ii) Unencumbered Asset Value to exceed 0.60 to 1.00 as of the last day of each fiscal quarter for which financial statements are required to be delivered hereunder. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, (i) Unsecured Indebtedness on any date shall be adjusted by deducting therefrom an amount equal to the lesser of (x) the aggregate amount of Unsecured Indebtedness outstanding on such date that by its terms is scheduled to mature on or before the date that is twenty-four (24) months following such date and (y) the aggregate amount of all unrestricted cash and Cash Equivalents on such date and escrow and other deposits (excluding (A) tenant deposits and other cash and Cash Equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted in any way and (B) any such unrestricted cash and Cash Equivalents and escrow and other deposits used to determine the Secured Indebtedness to Total Asset Value ratio) to the extent available for the repayment of Unsecured Indebtedness of the type described in clause (x) and (ii) Unencumbered Asset Value shall be adjusted by deducting therefrom the amount by which Unsecured Indebtedness is adjusted under clause (i).

(f) Ratio of Unencumbered Adjusted NOI to Unsecured Interest Expense. The Parent and the Borrower shall not permit the ratio of (i) the sum of (x) Unencumbered Adjusted NOI for any period of four (4) consecutive fiscal quarters plus (y) Unencumbered Management EBITDA to (ii) Unsecured Interest Expense of the Parent and its Subsidiaries for such period of four (4) consecutive fiscal quarters, to be less than 1.75 to 1.00 as of the last day of each fiscal quarter for which financial statements are required to be delivered hereunder.

Section 10.2. Liens; Negative Pledge.

(a) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any Subsidiary of the Parent to, create, assume, incur, permit or suffer to exist any Lien (other than Permitted Liens) upon any of its material properties, assets, income or profits of any character whether now owned or hereafter acquired if immediately prior to the creation, assumption or incurring of such Lien, or immediately thereafter, a Default or Event of Default is or would be in existence, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1.

(b) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any Subsidiary of the Parent to, enter into, assume or otherwise be bound by any Negative Pledge if immediately prior to the effectiveness of such Negative Pledge, or immediately thereafter, a Default or Event of Default is or would be in existence, including, without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1.

Section 10.3. Restrictions on Intercompany Transfers.

The Parent and the Borrower shall not, and shall not permit any Subsidiary of the Parent to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary (other than the Borrower) to: (a) pay dividends or make any other distribution on any of such Subsidiary's capital stock or other equity interests owned by the Parent, the Borrower or any Subsidiary of the Parent; (b) pay any Indebtedness owed to the Parent, the Borrower or any Subsidiary of the Parent; (c) make loans or advances to the Parent, the Borrower or any Subsidiary of the Parent; or (d) transfer any of its property or assets to the Parent, the Borrower or any Subsidiary of the Parent; other than, (A) with respect to each of clauses (a) through (d), encumbrances or restrictions (i) contained in this Agreement and the other Loan Documents, (ii) existing on the Agreement Date and identified on Schedule 10.3, (iii) (x) contained in any agreement evidencing Indebtedness which the Parent, the Borrower, any other Loan Party or any Subsidiary of the Parent is not prohibited from creating, incurring, assuming, or permitting or suffering to exist under this Agreement, (y) which Indebtedness is secured by a Lien not prohibited under the Loan Documents, and (z) which prohibits the creation of any other Lien on only the property (including proceeds or products thereof) securing such Indebtedness as of the date such agreement was entered into; (iv) relating to the sale of a Subsidiary or assets pending such sale to the extent such sale is not prohibited under the Loan Documents, provided that in any such case, such encumbrance or restriction applies only to the Subsidiary or the assets that are the subject of such sale; (v) existing pursuant to Applicable Law; (vi) consisting of customary prohibitions restricting subletting or assignment of any lease governing a leasehold interest of Parent, the Borrower or any Subsidiary of the Parent; (vii) consisting of joint venture agreements or other similar arrangements or contained in organizational documents of any Subsidiary that is not a Wholly Owned Subsidiary if such provisions apply only to the Person (and the Equity Interests in such Person) that is the subject thereof; (viii) prohibiting the payment of dividends or the making of other distributions with respect to Equity Interests of a Person other than on a pro rata basis; (ix) customarily contained in agreements relating to any acquisition or other investment that is not otherwise prohibited under this Agreement; (x) consisting of any agreement in effect at the time a Person becomes a Subsidiary of the Parent, so long as such agreement was not entered into in connection with or in contemplation of such Person becoming a Subsidiary of the Parent, which encumbrance or restriction is not applicable to the properties or assets of any Loan Party or other Subsidiary of the Parent; and (xi) relating to amendments, refinancings, extensions and renewals of any of the foregoing, to the extent otherwise not prohibited, provided, that such amendments, refinancings, extensions and renewals are, taken as a whole, no more materially restrictive with respect to such prohibitions and limitations than those prior to such amendment, refinancing, extension or renewal and (B) with respect to clause (d), (i) customary provisions restricting assignment of any agreement entered into by the Parent, the Borrower or any Subsidiary of the Parent in the ordinary course of business and (ii) customary non-assignment provisions or other customary restrictions on transfer arising under licenses and other contracts entered into in the ordinary course of business; provided, that such restrictions are limited to assets subject to such licenses and contracts.

Section 10.4. Merger, Consolidation, Sales of Assets and Other Arrangements.

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any Subsidiary of the Parent to (a) merge or consolidate; (b) liquidate, windup or dissolve itself (or suffer any liquidation or dissolution); or (c) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or substantially all of its business or assets (a "**Disposition**"); provided, however, that:

(i) any Subsidiary of the Parent (other than the Borrower) may merge or consolidate with (x) Parent or Borrower, provided that Parent or Borrower, as applicable, shall be the continuing or surviving Person, or (y) any other Subsidiary of the Parent, provided that if such merger or

consolidation involves a Parent Guarantor (other than the Parent), such Parent Guarantor shall be the survivor;

(ii) (x) any Parent Guarantor (other than the Parent) may sell, transfer or dispose of its assets to the Borrower or any other Parent Guarantor and (y) any Subsidiary of the Parent (other than the Borrower or a Parent Guarantor) may sell, transfer or dispose of its assets to any other Subsidiary of the Parent;

(iii) any Subsidiary of the Parent (other than the Borrower or a Parent Guarantor) may convey, sell, transfer or otherwise dispose of, in one transaction or a series of transactions, all or substantially all of its business or assets and substantially concurrently therewith thereafter liquidate, provided that immediately prior to any such conveyance, sale, transfer, disposition or liquidation and immediately thereafter and after giving effect thereto on a pro forma basis, no Default or Event of Default is or would be in existence;

(iv) any Parent Guarantor may liquidate, wind up or dissolve so long as all of its assets have been conveyed, sold or otherwise transferred to the Parent, any other Parent Guarantor or the Borrower prior to such liquidation, wind-up or dissolution;

(v) [intentionally omitted];

(vi) the Parent, the Borrower, the other Loan Parties and the other Subsidiaries of the Parent may lease and sublease their respective assets, as lessor or sublessor (as the case may be), in the ordinary course of their business or because such assets have become damaged, worn, obsolete or unnecessary or are no longer used or useful in their business;

(vii) a Person other than the Parent, a Parent Guarantor or the Borrower may make any other Disposition so long as, after giving effect thereto on a pro forma basis, the covenants set forth in Section 10.1 are satisfied.

Section 10.5. Plans.

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any Subsidiary of the Parent to, become or be deemed to be a Benefit Plan, a “governmental plan” within the meaning of Section 3(32) of ERISA or an entity deemed to hold the assets of such a governmental plan.

Section 10.6. Fiscal Year.

The Parent and the Borrower shall not, and shall not permit any other Loan Party or other Subsidiary of the Parent to, change its fiscal year from that in effect as of the Agreement Date (other than any change to conform to the fiscal year of the Parent).

Section 10.7. Modifications of Organizational Documents.

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any Subsidiary of the Parent to, amend, supplement, restate or otherwise modify or waive the application of any provision of its certificate or articles of incorporation or formation, by-laws, operating agreement, declaration of trust, partnership agreement or other applicable organizational document if such amendment, supplement, restatement or other modification (a) is materially adverse to the interest of the Administrative Agent, the Issuing Banks or the Lenders or (b) could reasonably be expected to have a Material Adverse Effect.

Section 10.8. [Intentionally Omitted].

Section 10.9. Transactions with Affiliates.

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any Subsidiary of the Parent to, permit to exist or enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate, except (a) as set forth on Schedule 10.9, (b) transactions upon fair and reasonable terms which are no less favorable to the Parent, the Borrower or such other Subsidiary of the Parent than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, (c) transactions among the Parent, the Borrower, the other Loan Parties and the other Subsidiaries of the Parent not prohibited by the Loan Documents, (d) payments of compensation, perquisites and fringe benefits arising out of any employment or consulting relationship in the ordinary course of business, (e) Restricted Payments permitted under Section 10.11, (f) the provision of services under any Management Contract, (g) other transactions approved by the independent directors or by any requisite committee of the Board of Directors of the Parent pursuant to which the aggregate payments made (including the Fair Market Value of any assets subject thereto) do not exceed \$30,000,000 in any fiscal quarter, (h) transactions with Unconsolidated Affiliates relating to the provision of management services and overhead and similar arrangements in the ordinary course of business, (i) transactions pursuant to employment and severance arrangements with directors, managers, officers and employees in the ordinary course of business and transactions pursuant to stock option plans and employee benefit plans and arrangements, and (j) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries of the Parent in the ordinary course of business to the extent attributable to the ownership, management or operation of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries of the Parent.

Section 10.10. [Intentionally Omitted].

Section 10.11. Dividends and Other Restricted Payments.

The Parent and the Borrower shall not, and shall not permit any of their Subsidiaries to, declare or make any Restricted Payment so long as any Event of Default exists or would result therefrom. Notwithstanding the foregoing, unless an Event of Default specified in Section 11.1(a), resulting from the Borrower's failure to pay when due the principal of, or interest on, any of the Loans or any Fees or Section 11.1(e) or (f), in each case, solely with respect to the Parent or the Borrower, shall have occurred and be continuing, or if as a result of the occurrence of any other Event of Default the Obligations have been accelerated pursuant to Section 11.2(a), the Borrower and its Subsidiaries and any other Subsidiary of the Parent may pay dividends and distributions to the Parent and other holders of partnership interests in the Borrower to the extent necessary for the Parent to distribute, and the Parent may so distribute, dividends and distributions to its shareholders in an aggregate amount not to exceed the amount required to be distributed for the Parent to (x) remain in compliance with Section 8.12 and (y) avoid the payment of U.S. federal or state income or excise tax. Subsidiaries other than the Borrower may, at any time, make Restricted Payments (x) to the Borrower and the other Subsidiaries that are Guarantors or (y) to Subsidiaries that are not Guarantors, so long as such Restricted Payments are substantially concurrently distributed, directly or indirectly, to the Borrower or any Subsidiary Guarantor.

ARTICLE XI. DEFAULT

Section 11.1. Events of Default.

Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of Applicable Law or pursuant to any judgment or order of any Governmental Authority:

(a) Default in Payment. The Borrower shall fail to pay when due under this Agreement or any other Loan Document (whether upon demand, at maturity, by reason of acceleration or otherwise) (i) the principal of any of the Loans or any Reimbursement Obligation, or (ii) interest or any of the other payment Obligations owing by the Borrower under this Agreement or any other Loan Document, or any other Loan Party shall fail to pay when due any payment obligation owing by such Loan Party, as applicable under any Loan Document to which it is a party and such failure under this clause (ii) shall continue for a period of five (5) Business Days after the earlier of (x) the date upon which a Responsible Officer of the Parent or the Borrower obtains actual knowledge of such failure and (y) the date upon which the Parent has received written notice of such failure from the Administrative Agent.

(b) Default in Performance.

(i) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement on its part to be performed or observed and contained in Section 8.1 (solely with respect to the existence of the Parent and the Borrower), Section 8.8, Article IX or Article X; or

(ii) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement contained in this Agreement or any other Loan Document to which it is a party and not otherwise mentioned in this Section, and in the case of this subsection (b)(ii) only, such failure shall continue for a period of thirty (30) days after the earlier of (x) the date upon which a Responsible Officer of the Parent or the Borrower or such other Loan Party obtains actual knowledge of such failure and (y) the date upon which the Parent has received written notice of such failure from the Administrative Agent.

(c) Misrepresentations. Any written statement, representation or warranty made or deemed made by or on behalf of any Loan Party under this Agreement or under any other Loan Document, or any amendment hereto or thereto, or in any other writing or statement at any time furnished by, or at the direction of, any Loan Party to the Administrative Agent, any Issuing Bank or any Lender, shall at any time prove to have been incorrect or misleading in any material respect when furnished or made or deemed made.

(d) Indebtedness Cross Default.

(i) The Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent shall fail to make any payment when due and payable (after giving effect to applicable grace or cure periods) in respect of any Recourse Indebtedness (other than the Loans and Reimbursement Obligations) having an aggregate outstanding principal amount (or, in the case of any Derivatives Contract, having a Derivatives Termination Value), in each case individually or in the aggregate with all other Indebtedness as to which such a failure exists, of \$75,000,000 or more (“**Material Indebtedness**”); or

(ii) (x) The maturity of any Material Indebtedness shall have been accelerated in accordance with the provisions of any indenture, contract or instrument evidencing, providing for

the creation of or otherwise concerning such Material Indebtedness or (y) any Material Indebtedness shall have been required to be prepaid, repurchased, redeemed or defeased prior to the stated maturity thereof; or

(iii) Any other event shall have occurred and be continuing which, with the giving of notice, if required, would permit any holder or holders of any Material Indebtedness, any trustee or agent acting on behalf of such holder or holders or any other Person, to accelerate the maturity of any such Material Indebtedness or require any such Material Indebtedness to be prepaid, repurchased, redeemed or defeased prior to its stated maturity; or

(iv) There occurs an “Early Termination Date” under and as defined in any Derivatives Contract as to which the Borrower, any Loan Party or any other Subsidiary of the Parent is a “Defaulting Party” (as defined therein), or there occurs an “Early Termination Date” (as defined therein) in respect of any Specified Derivatives Contract as a result of a “Termination Event” (as defined therein) as to which the Parent, the Borrower or any of the Subsidiaries of the Parent is an “Affected Party” (as defined therein), in each case, solely to the extent such Derivatives Contract or Specified Derivatives Contract is Material Indebtedness;

provided that this clause (d) shall not apply to any redemption, conversion or settlement of any such Indebtedness that is convertible into Equity Interests in the Parent (and cash in lieu of fractional shares or units) and/or cash (in lieu of such Equity Interests in an amount determined by reference to the price of the common stock of the Parent at the time of such redemption, conversion or settlement) pursuant to its terms unless such redemption, conversion or settlement results from a default thereunder or an event of a type that constitutes an Event of Default.

(e) Voluntary Bankruptcy Proceeding. The Parent, the Borrower, any other Loan Party or any Material Subsidiary shall: (i) commence a voluntary case under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect); (ii) file a petition seeking to take advantage of any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts; (iii) consent to, or fail to contest in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other Applicable Laws or consent to any proceeding or action described in the immediately following subsection (f); (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; (v) admit in writing its inability to pay its debts as they become due; (vi) make a general assignment for the benefit of creditors; (vii) make a conveyance fraudulent as to creditors under any Applicable Law; or (viii) take any corporate or partnership action for the purpose of effecting any of the foregoing.

(f) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against the Parent, the Borrower, any other Loan Party or any Material Subsidiary in any court of competent jurisdiction seeking: (i) relief under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect) or under any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person, or of all or any substantial part of the assets, domestic or foreign, of such Person, and in the case of either clause (i) or (ii) such case or proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or an order granting the remedy or other relief requested in such case or proceeding (including, but not limited to, an order for relief under such Bankruptcy Code or such other federal bankruptcy laws) shall be entered.

(g) Revocation of Loan Documents. Any Loan Party shall (or shall attempt to) disavow, revoke or terminate any Loan Document to which it is a party or shall otherwise challenge or contest in any action, suit or proceeding in any court or before any Governmental Authority the validity or enforceability of any Loan Document or any Loan Document shall cease to be in full force and effect (except as a result of the express terms thereof or the express written agreement of the parties thereto).

(h) Judgment. A judgment or order for the payment of money or for an injunction or other non-monetary relief shall be entered against the Parent, the Borrower, any other Loan Party or any Material Subsidiary by any court or other tribunal and (i) (x) such judgment or order shall continue for a period of sixty (60) days or (y) any action shall be legally taken by a judgment creditor to attach or levy upon any assets of such Person to enforce any such judgment, in each case, without being paid, stayed or dismissed through appropriate appellate proceedings and (ii) either (A) the amount of such judgment or order for which insurance has been denied in writing by the applicable insurance carrier (or the amount as to which the insurer has denied liability) exceeds, individually or together with all other such judgments or orders entered against the Parent, the Borrower, any other Loan Party or any other Material Subsidiary, \$75,000,000 or (B) in the case of an injunction or other non-monetary relief, such injunction or judgment or order could reasonably be expected to have a Material Adverse Effect.

(i) [Intentionally Omitted].

(j) ERISA. Any ERISA Event shall have occurred that results or could reasonably be expected to result in a Material Adverse Effect.

(k) [Intentionally Omitted]

(l) Change of Control/Change in Management.

(i) Any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the “**Exchange Act**”)), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person will be deemed to have “beneficial ownership” of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of the total voting power of the then outstanding voting stock of the Parent;

(ii) During any period of 12 consecutive months ending after the Agreement Date, individuals who at the beginning of any such 12 month period constituted the Board of Directors of the Parent (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Parent was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Parent then in office;

(iii) The Parent shall cease to own and control, directly or indirectly, at least 50% of the outstanding Equity Interests of the Borrower; or

(iv) The Parent or a Wholly Owned Subsidiary of the Parent shall (A) cease to be the sole general partner of the Borrower or (B) subject to customary rights of limited partners, shall cease to have the sole and exclusive power to exercise all management and control over the Borrower.

Section 11.2. Remedies Upon Event of Default.

Upon the occurrence of an Event of Default and so long as such Event of Default is continuing, the following provisions shall apply:

(a) Acceleration; Termination of Facilities.

(i) Automatic. Upon the occurrence of an Event of Default specified in Sections 11.1(e) or 11.1(f) with respect to the Parent or the Borrower, (1)(A) the principal of, and all accrued interest on, the Loans and the Notes at the time outstanding, (B) an amount equal to the Stated Amount of all Letters of Credit outstanding as of the date of the occurrence of such Event of Default for deposit into the Letter of Credit Collateral Account and (C) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents shall become immediately and automatically due and payable without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Parent and the Borrower, each on behalf of itself and the other Loan Parties, and (2) the Commitments and the Swingline Commitment and the obligation of the Issuing Banks to issue Letters of Credit hereunder, shall all immediately and automatically terminate.

(ii) Optional. If any other Event of Default shall exist, the Administrative Agent may, and at the direction of the Requisite Lenders shall: (1) declare (A) the principal of, and accrued interest on, the Loans and the Notes at the time outstanding, (B) an amount equal to the Stated Amount of all Letters of Credit outstanding as of the date of the occurrence of such Event of Default for deposit into the Letter of Credit Collateral Account and (C) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Parent and the Borrower, each on behalf of itself and the other Loan Parties, and (2) terminate the Commitments and the Swingline Commitment and the obligation of the Issuing Banks to issue Letters of Credit hereunder.

(b) Loan Documents. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise any and all of its rights under any and all of the other Loan Documents.

(c) Applicable Law. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise all other rights and remedies it may have under any Applicable Law.

Section 11.3. [Intentionally Omitted].

Section 11.4. Marshaling; Payments Set Aside.

No Lender Party shall be under any obligation to marshal any assets in favor of any Loan Party or any other party or against or in payment of any or all of the Guaranteed Obligations. To the extent that any Loan Party makes a payment or payments to a Lender Party, or a Lender Party enforces its security interest (if any) or exercises its right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/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 recovery, the Guaranteed Obligations, or part

thereof originally intended to be satisfied, and all Liens (if any), rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section 11.5. Allocation of Proceeds.

If an Event of Default exists, all payments received by the Administrative Agent (or any Lender as a result of its exercise of remedies permitted under Section 13.3) under any of the Loan Documents in respect of any Guaranteed Obligations shall be applied in the following order and priority:

(a) to payment of that portion of the Guaranteed Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable under the Loan Documents to the Administrative Agent in its capacity as such, the Issuing Banks in their capacity as such and the Swingline Lenders in their capacity as such, ratably among the Administrative Agent, the Issuing Banks and the Swingline Lenders in proportion to the respective amounts described in this clause (a) payable to them;

(b) to payment of that portion of the Guaranteed Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees to the extent payable under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause (b) payable to them;

(c) to payment of that portion of the Guaranteed Obligations constituting accrued and unpaid interest on the Swingline Loans;

(d) to payment of that portion of the Guaranteed Obligations constituting accrued and unpaid interest on the Loans and Reimbursement Obligations, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause (d) payable to them;

(e) to payment of that portion of the Guaranteed Obligations constituting unpaid principal of the Swingline Loans;

(f) to payment of that portion of the Guaranteed Obligations constituting unpaid principal of the Loans, Reimbursement Obligations, other Letter of Credit Liabilities and payment obligations then owing under Specified Derivatives Contracts ratably among the Lenders, the Issuing Banks and the Specified Derivatives Providers in proportion to the respective amounts described in this clause (f) payable to them; provided, however, to the extent that any amounts available for distribution pursuant to this clause are attributable to the issued but undrawn amount of an outstanding Letter of Credit, such amounts shall be paid to the Administrative Agent for deposit into the Letter of Credit Collateral Account; and

(g) the balance, if any, after all of the Guaranteed Obligations (other than any contingent obligation for which no claim has been made) have been paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Guaranteed Obligations arising under Specified Derivatives Contracts shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Specified Derivatives Provider. Each Specified Derivatives Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XII. for itself and its Affiliates as if a "Lender" party hereto.

Section 11.6. Letter of Credit Collateral Account.

(a) As collateral security for the prompt payment in full when due of all Letter of Credit Liabilities and the other Obligations, the Borrower hereby pledges and grants to the Administrative Agent, for the ratable benefit of the Administrative Agent, the Issuing Banks and the Lenders as provided herein, a security interest in all of its right, title and interest in and to the Letter of Credit Collateral Account and the balances from time to time in the Letter of Credit Collateral Account (including the investments and reinvestments therein provided for below). The balances from time to time in the Letter of Credit Collateral Account shall not constitute payment of any Letter of Credit Liabilities until applied by the Issuing Banks as provided herein. Anything in this Agreement to the contrary notwithstanding, funds held in the Letter of Credit Collateral Account shall be subject to withdrawal only as provided in this Section.

(b) Amounts on deposit in the Letter of Credit Collateral Account shall be invested and reinvested by the Administrative Agent in such Cash Equivalents as the Administrative Agent shall determine in its sole discretion. All such investments and reinvestments shall be held in the name of and be under the sole dominion and control of the Administrative Agent for the ratable benefit of the Administrative Agent, the Issuing Banks and the Lenders; provided, that all earnings on such investments will be credited to and retained in the Letter of Credit Collateral Account. The Administrative Agent shall exercise reasonable care in the custody and preservation of any funds held in the Letter of Credit Collateral Account and shall be deemed to have exercised such care if such funds are accorded treatment substantially equivalent to that which the Administrative Agent accords other funds deposited with the Administrative Agent, it being understood that the Administrative Agent shall not have any responsibility for taking any necessary steps to preserve rights against any parties with respect to any funds held in the Letter of Credit Collateral Account.

(c) If a drawing pursuant to any Letter of Credit occurs on or prior to the expiration date of such Letter of Credit, the Borrower and the Lenders authorize the Administrative Agent to use the monies deposited in the Letter of Credit Collateral Account to reimburse such Issuing Bank for the payment made by such Issuing Bank to the beneficiary with respect to such drawing.

(d) If an Event of Default exists, the Administrative Agent may (and, if instructed by the Requisite Lenders, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such investments and reinvestments and apply the proceeds thereof to the Obligations in accordance with Section 11.5. Notwithstanding the foregoing, the Administrative Agent shall not be required to liquidate and release any such amounts if such liquidation or release would result in the amount available in the Letter of Credit Collateral Account to be less than the Stated Amount of all Extended Letters of Credit that remain outstanding.

(e) So long as no Default or Event of Default exists, and to the extent amounts on deposit in or credited to the Letter of Credit Collateral Account exceed the aggregate amount of the Letter of Credit Liabilities then due and owing, the Administrative Agent shall, from time to time, at the request of the Borrower, deliver to the Borrower within ten (10) Business Days after the Administrative Agent's receipt of such request from the Borrower, against receipt but without any recourse, warranty or representation whatsoever, such amount of the credit balances in the Letter of Credit Collateral Account as exceeds the aggregate amount of Letter of Credit Liabilities at such time. Upon the expiration, termination or cancellation of an Extended Letter of Credit for which the Lenders reimbursed (or funded participations in) a drawing deemed to have occurred under the fourth sentence of Section 2.4(b) for deposit into the Letter of Credit Collateral Account but in respect of which the Lenders have not otherwise received payment for the amount so reimbursed or funded, the Administrative Agent shall promptly remit to the Lenders the amount so reimbursed or funded for such Extended Letter of Credit that remains in the Letter of Credit Collateral Account, pro rata in accordance with the respective unpaid reimbursements or funded participations of the

Lenders in respect of such Extended Letter of Credit, against receipt but without any recourse, warranty or representation whatsoever. When all of the Obligations shall have been paid in full and no Letters of Credit remain outstanding, the Administrative Agent shall deliver to the Borrower, against receipt but without any recourse, warranty or representation whatsoever, the balances remaining in the Letter of Credit Collateral Account.

(f) The Borrower shall pay to the Administrative Agent from time to time such fees as the Administrative Agent normally charges for similar services in connection with the Administrative Agent's administration of the Letter of Credit Collateral Account and investments and reinvestments of funds therein.

Section 11.7. Rescission of Acceleration by Requisite Lenders.

If at any time after acceleration of the maturity of the Loans and the other Obligations, the Borrower shall pay all arrears of interest and all payments on account of principal of the Obligations which shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by Applicable Law, on overdue interest, at the rates specified in this Agreement) and all Events of Default and Defaults (other than nonpayment of principal of and accrued interest on the Obligations due and payable solely by virtue of acceleration) shall become remedied or waived to the satisfaction of the Requisite Lenders, then by written notice to the Borrower, the Requisite Lenders may elect, in the sole discretion of such Requisite Lenders, to rescind and annul the acceleration and its consequences. The provisions of the preceding sentence are intended merely to bind all of the Lenders to a decision which may be made at the election of the Requisite Lenders, and are not intended to benefit the Borrower and do not give the Borrower the right to require the Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are satisfied.

Section 11.8. Performance by Administrative Agent.

If the Parent, the Borrower or any other Loan Party shall fail to perform any covenant, duty or agreement contained in any of the Loan Documents, the Administrative Agent may, after notice to the Parent or the Borrower, perform or attempt to perform such covenant, duty or agreement on behalf of the Parent, the Borrower or such other Loan Party after the expiration of any cure or grace periods set forth herein. In such event, the Parent or the Borrower shall, at the request of the Administrative Agent, promptly pay any amount reasonably expended by the Administrative Agent in such performance or attempted performance to the Administrative Agent, together with interest thereon at the applicable rate or Post-Default Rate from the date of such expenditure until paid. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall have any liability or responsibility whatsoever for the performance of any obligation of the Parent, the Borrower or any other Loan Party under this Agreement or any other Loan Document.

Section 11.9. Rights Cumulative.

(a) Generally. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders under this Agreement and each of the other Loan Documents and of the Specified Derivatives Providers under the Specified Derivatives Contracts, shall be cumulative and not exclusive of any rights or remedies which any of them may otherwise have under Applicable Law. In exercising their respective rights and remedies the Administrative Agent, the Issuing Banks, the Lenders and the Specified Derivatives Providers may be selective and no failure or delay by any such Lender Party in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

(b) Enforcement by Administrative Agent. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the

other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Article XI. for the benefit of all the Lenders and the Issuing Banks; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) the Issuing Banks or the Swingline Lenders from exercising the rights and remedies that inure to their benefit (solely in their capacity as an Issuing Bank or a Swingline Lender, as the case may be) hereunder or under the other Loan Documents, (iii) any Specified Derivatives Provider from exercising the rights and remedies that inure to its benefit under any Specified Derivatives Contract, (iv) any Lender from exercising setoff rights in accordance with Section 13.3 (subject to the terms of Section 3.3), or (v) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Requisite Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Article XI and (y) in addition to the matters set forth in clauses (ii), (iv) and (v) of the preceding proviso and subject to Section 3.3, any Lender may, with the consent of the Requisite Lenders, enforce any rights and remedies available to it and as authorized by the Requisite Lenders.

ARTICLE XII. THE ADMINISTRATIVE AGENT

Section 12.1. Appointment and Authorization.

Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement and the other Loan Documents as are specifically delegated to the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents for the benefit of the Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this Agreement or the Loan Documents, and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms "Agent", "Administrative Agent", "agent" and similar terms in the Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Administrative Agent shall deliver or otherwise make available to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Article IX. that the Parent or the Borrower is not otherwise required to deliver directly to the Lenders. The Administrative Agent will furnish to any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative Agent by the Parent, the Borrower, any other Loan Party or any other Affiliate of the Borrower, pursuant to this Agreement or any other Loan Document not already delivered or otherwise made available to such Lender pursuant to the terms of this Agreement or any such other Loan Document. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of any of the Obligations), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall

be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the Obligations; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Applicable Law. Not in limitation of the foregoing, the Administrative Agent may exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or an Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all the Lenders. The Lenders hereby authorize the Administrative Agent, to release any Guarantor from its Guaranty (i) in the case of a Subsidiary Guarantor, upon satisfaction of the conditions to release set forth in Section 8.14(b); (ii) if approved, authorized or ratified in writing by the Requisite Lenders or all of the Lenders hereunder, as the required under the circumstances; or (iii) on the Termination Date. In connection with any such release of a Guarantor pursuant to the preceding sentence, the Administrative Agent shall (and is hereby irrevocably authorized by each Lender to) execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release (any execution and delivery of such documents being without recourse to or warranty by the Administrative Agent).

Section 12.2. Administrative Agent as Lender.

The Lender acting as Administrative Agent shall have the same rights and powers as a Lender or a Specified Derivatives Provider, as the case may be, under this Agreement and any other Loan Document and under any Specified Derivatives Contract, as the case may be, as any other Lender or Specified Derivatives Provider and may exercise the same as though it were not the Administrative Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include the Lender acting as Administrative Agent in each case in its individual capacity. Such Lender and its Affiliates may each accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with the Parent, the Borrower, any other Loan Party or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the Issuing Banks, the other Lenders, or any other Specified Derivatives Providers. Further, the Administrative Agent and any Affiliate may accept fees and other consideration from the Borrower for services in connection with this Agreement or any Specified Derivatives Contract, or otherwise without having to account for the same to the Issuing Banks, the other Lenders or any other Specified Derivatives Providers. The Issuing Banks and the Lenders acknowledge that, pursuant to such activities, the Lender acting as Administrative Agent or its Affiliates may receive information regarding the Parent, the Borrower, other Loan Parties, other Subsidiaries of the Parent and other Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

Section 12.3. Approvals of Lenders.

All communications from the Administrative Agent to any Lender requesting such Lender's determination, consent or approval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, consent or approval is requested, or shall advise such Lender where information, if any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved and (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials provided

to the Administrative Agent by the Parent or the Borrower in respect of the matter or issue to be resolved. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the requested determination, consent or approval (together with a reasonable written explanation of the reasons behind such objection) within ten (10) Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents) of receipt of such communication, such Lender shall be deemed to have conclusively approved of or consented to such.

Section 12.4. Notice of Events of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default unless the Administrative Agent has received notice from a Lender, the Parent or the Borrower referring to this Agreement, describing with reasonable specificity such Default or Event of Default and stating that such notice is a “notice of default.” If any Lender (excluding the Lender which is also serving as the Administrative Agent) becomes aware of any Default or Event of Default, it shall promptly send to the Administrative Agent such a “notice of default”; provided, a Lender’s failure to provide such a “notice of default” to the Administrative Agent shall not result in any liability of such Lender to any other party to any of the Loan Documents. Further, if the Administrative Agent receives such a “notice of default,” the Administrative Agent shall give prompt notice thereof to the Lenders.

Section 12.5. Administrative Agent’s Reliance.

Notwithstanding any other provisions of this Agreement or any other Loan Documents, neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein as determined by a court of competent jurisdiction in a final non-appealable judgment. Without limiting the generality of the foregoing, the Administrative Agent may consult with legal counsel (including its own counsel or counsel for the Parent, the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Neither the Administrative Agent nor any of its Related Parties: (a) makes any warranty or representation to any Lender, any Issuing Bank or any other Person, or shall be responsible to any Lender, any Issuing Bank or any other Person for any statement, warranty or representation made or deemed made by the Parent, the Borrower, any other Loan Party or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of the Parent, the Borrower or other Persons, or to inspect the property, books or records of the Parent, the Borrower or any other Person; (c) shall be responsible to any Lender or any Issuing Bank for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any collateral covered thereby or the perfection or priority of any Lien in favor of the Administrative Agent on behalf of the Lender Parties in any such collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; and (e) shall incur any liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, telecopy or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties. The Administrative Agent may execute any of its duties under the Loan Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful

misconduct in the selection of such agent or attorney-in-fact as determined by a court of competent jurisdiction in a final non-appealable judgment.

Section 12.6. Indemnification of Administrative Agent.

Each Lender agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) pro rata in accordance with such Lender's respective Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable out-of-pocket costs and expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Administrative Agent (in its capacity as Administrative Agent but not as a Lender) in any way relating to or arising out of the Loan Documents, any transaction contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, "**Indemnifiable Amounts**"); provided, however, that no Lender shall be liable for any portion of such Indemnifiable Amounts to the extent resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment; provided, however, that no action taken in accordance with the directions of the Requisite Lenders (or all of the Lenders, if expressly required hereunder) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) promptly upon demand for its Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of any out of pocket expenses (including the reasonable fees and expenses of one law firm acting as outside counsel to the Administrative Agent and the Arrangers (taken as a whole), with exception, in consultation with the Borrower, in the case of conflicts of interest) incurred by the Administrative Agent in connection with the preparation, negotiation, execution, administration, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice with respect to the rights or responsibilities of the parties under, the Loan Documents, any suit or action brought by the Administrative Agent to enforce the terms of the Loan Documents and/or collect any Obligations, any "lender liability" suit or claim brought against the Administrative Agent and/or the Lenders, and any claim or suit brought against the Administrative Agent and/or the Lenders arising under any Environmental Laws. Such out of pocket expenses (including counsel fees) shall be advanced by the Lenders on the request of the Administrative Agent notwithstanding any claim or assertion that the Administrative Agent is not entitled to indemnification hereunder upon receipt of an undertaking by the Administrative Agent that the Administrative Agent will reimburse the Lenders if it is actually and finally determined by a court of competent jurisdiction that the Administrative Agent is not so entitled to indemnification. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder or under the other Loan Documents and the termination of this Agreement. If the Borrower shall reimburse the Administrative Agent for any Indemnifiable Amount following payment by any Lender to the Administrative Agent in respect of such Indemnifiable Amount pursuant to this Section, the Administrative Agent shall share such reimbursement on a ratable basis with each Lender making any such payment.

Section 12.7. Lender Credit Decision, Etc.

Each of the Lenders and the Issuing Banks expressly acknowledges and agrees that neither the Administrative Agent nor any of its Related Parties has made any representations or warranties to such Issuing Bank or such Lender and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Parent, the Borrower, any other Loan Party or any other Subsidiary or Affiliate, shall be deemed to constitute any such representation or warranty by the Administrative Agent to any Issuing Bank or any Lender. Each of the Lenders and the Issuing Banks acknowledges that it has made its own

credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent, or any of their respective Related Parties, and based on the financial statements of the Parent, the Borrower, the other Loan Parties, the other Subsidiaries of the Parent and other Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Parent, the Borrower, the other Loan Parties, the other Subsidiaries of the Parent and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate. Each of the Lenders and the Issuing Banks also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent or any of their respective Related Parties, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Parent, the Borrower or any other Loan Party of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, the Parent, the Borrower, any other Loan Party or any other Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders and the Issuing Banks by the Administrative Agent under this Agreement or any of the other Loan Documents, the Administrative Agent shall have no duty or responsibility to provide any Lender or any Issuing Bank with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of the Parent, the Borrower, any other Loan Party or any other Affiliate thereof which may come into possession of the Administrative Agent or any of its Related Parties. Each of the Lenders and the Issuing Banks acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to any Lender or any Issuing Bank.

Section 12.8. Successor Administrative Agent.

The Administrative Agent may resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and the Borrower. The Administrative Agent may be removed as administrative agent by the Requisite Lenders (excluding for such purpose Loans and Commitments held by the Lender then acting as Administrative Agent) upon thirty (30) days' prior written notice if the Administrative Agent (i) is found by a court of competent jurisdiction in a final, non-appealable judgment to have committed gross negligence or willful misconduct in the course of performing its duties hereunder or (ii) the Lender then acting as Administrative Agent has become a Defaulting Lender under clause (d) of the definition of that term. Upon any such resignation or removal, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Default or Event of Default exists, be subject to the Borrower's approval, which approval shall not be unreasonably withheld or delayed. If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within thirty (30) days after the current Administrative Agent's giving of notice of resignation, then the current Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be an Eligible Assignee (but in no event shall any such successor Administrative Agent be a Defaulting Lender or an Affiliate of a Defaulting Lender); provided that if the Administrative Agent shall notify the Borrower and the Lenders that no Lender has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made to each Lender and each Issuing Bank directly, until such time as a successor Administrative Agent has been appointed as provided for above

in this Section; provided, further that such Lenders and the Issuing Banks so acting directly shall be and be deemed to be protected by all indemnities and other provisions herein for the benefit and protection of the Administrative Agent as if each such Lender or Issuing Bank were itself the Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. Any resignation by or removal of an Administrative Agent shall also constitute the resignation as an Issuing Bank and as a Swingline Lender by the Lender then acting as Administrative Agent (the “**Resigning Lender**”). Upon the acceptance of a successor’s appointment as Administrative Agent hereunder (i) the Resigning Lender shall be discharged from all duties and obligations of an Issuing Bank and a Swingline Lender hereunder and under the other Loan Documents and (ii) the successor Issuing Bank shall issue letters of credit in substitution for all Letters of Credit issued by the Resigning Lender as Issuing Bank outstanding at the time of such succession (which letters of credit issued in substitutions shall be deemed to be Letters of Credit issued hereunder) or make other arrangements satisfactory to the Resigning Lender to effectively assume the obligations of the Resigning Lender with respect to such Letters of Credit. After any Administrative Agent’s resignation or removal hereunder as Administrative Agent, the provisions of this Article XII shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents to any of its Affiliates by giving the Borrower and each Lender prior written notice.

Section 12.9. Titled Persons.

Each of the Arrangers, the additional Joint Lead Arrangers, Syndication Agent and Co-Documentation Agents (each a “**Titled Person**”) in each such respective capacity, assumes no responsibility or obligation hereunder, including, without limitation, for servicing, enforcement or collection of any of the Loans, nor any duties as an agent hereunder for the Lenders. The titles given to the Titled Persons are solely honorific and imply no fiduciary responsibility on the part of the Titled Persons to the Administrative Agent, any Lender, any Issuing Bank, the Parent, the Borrower or any other Loan Party and the use of such titles does not impose on the Titled Persons any duties or obligations greater than those of any other Lender or entitle the Titled Persons to any rights other than those to which any other Lender is entitled.

Section 12.10. Specified Derivatives Contracts.

No Specified Derivatives Provider that obtains the benefits of Section 11.5 by virtue of the provisions hereof or of any Loan Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of any Loan Document other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to Specified Derivatives Contracts unless the Administrative Agent has received written notice of such Specified Derivatives Contracts, together with such supporting documentation as the Administrative Agent may request, from the applicable Specified Derivatives Provider.

Section 12.11. Rates.

The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of “LIBOR”.

Section 12.12. Additional ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Administrative Agent or any Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto);

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E);

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations);

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is a fiduciary under ERISA or the Internal Revenue Code, or both, with respect to the Loans, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder; and

(v) no fee or other compensation is being paid directly to the Administrative Agent or any Arranger or any of their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Commitments or this Agreement.

(c) The Administrative Agent and each Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, or the Commitments for an amount less than the amount being paid for an interest in the Loans, or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE XIII. MISCELLANEOUS

Section 13.1. Notices.

Unless otherwise provided herein (including without limitation as provided in Section 9.5), communications provided for hereunder shall be in writing and shall be mailed, telecopied, or delivered as follows:

If to the Borrower:

VEREIT Operating Partnership, L.P.
c/o VEREIT, Inc.
2325 E. Camelback Road, Suite 1100
Phoenix, AZ 85016
Attn: Michael J. Bartolotta
Phone: (646) 601-7120
Fax: (480) 449-7000

with a copy to:

VEREIT Operating Partnership, L.P.
c/o VEREIT, Inc.
2325 E. Camelback Road, Suite 1100
Phoenix, AZ 85016
Attn: Liem Do
Phone: (602) 778-6013
Fax: (480) 449-7000

with a copy to:

VEREIT, Inc.
5 Bryant Park, 23rd Floor
New York, NY 10018
Attn: Lauren Goldberg
Phone: (646) 601-7117
Fax: (212) 813-0920

If to the Administrative Agent:

Wells Fargo Bank, National Association
Commercial Real Estate Loan Services
600 South 4th Street, 9th Floor
Minneapolis, Minnesota 55415
Attn: Anthony J. Gangelhoff
Telecopier: 877-410-5023
Telephone: 612-316-0109

with a copy to:

Dale A. Northup
Wells Fargo Bank
401 B Street, Suite 1100
San Diego, CA 92101
Attn: Dale A. Northup
Phone: (619) 699-3025
dale.a.northup@wellsfargo.com

If to the Administrative Agent under Article II.:

Wells Fargo Bank, National Association
Commercial Real Estate Loan Services
600 South 4th Street, 9th Floor
Minneapolis, Minnesota 55415
Attn: Anthony J. Gangelhoff
Telecopier: 877-410-5023
Telephone: 612-316-0109

with a copy to:

Dale A. Northup
Wells Fargo Bank
401 B Street, Suite 1100
San Diego, CA 92101
Attn: Dale A. Northup
Phone: (619) 699-3025
dale.a.northup@wellsfargo.com

If to Wells Fargo, as an Issuing Bank:

Dale A. Northup
Wells Fargo Bank
401 B Street, Suite 1100
San Diego, CA 92101
Attn: Dale A. Northup
Phone: (619) 699-3025
dale.a.northup@wellsfargo.com

with a copy to:

Patty Cabrera
Wells Fargo CRE Portfolio Services
1512 Eureka Road, Suite 350
Roseville, CA 95661
Phone: (916) 788-4672
Telecopier: (916) 787-4526
pcabrera@wellsfargo.com

If to Bank of America, as an Issuing Bank:

Bank of America, N.A.
One Fleet Way, 2nd Floor
Mail Code PA6-580-02-30
Scranton, PA 18507
Attention: Global Trade Operations
Phone: 1.800.370.7519 and choose Trade product
opt. #1
Fax: 1. 800.755.8743
Email: scranton_standby_lc@bankofamerica.com

If to any other Lender:

To such Lender's address or telecopy number or email address as set forth in the applicable Administrative Questionnaire

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties delivered in compliance with this Section; provided, a Lender and an Issuing Bank shall only be required to give notice of any such other address to the Administrative Agent and the Borrower. All such notices and other communications shall be effective (i) if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service certified mail, postage prepaid and addressed to the address of the Borrower or the Administrative Agent, the Issuing Banks and Lenders at the addresses specified; (ii) if telecopied, when transmitted (with confirmation); (iii) if hand delivered or sent by overnight courier, when delivered; or (iv) if delivered in accordance with Section 9.5 to the extent applicable; provided, however, that, in the case of the immediately preceding clauses (i), (ii) and (iii), non-receipt of any communication as of the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Notwithstanding the immediately preceding sentence, all notices or communications to the Administrative Agent, any Issuing Bank or any Lender under Article II. shall be effective only when actually received. None of the Administrative Agent, any Issuing Bank or any Lender shall incur any liability to any Loan Party (nor shall the Administrative Agent incur any liability to the Issuing Banks or the Lenders) for acting upon any telephonic notice referred to in this Agreement which the Administrative Agent, such Issuing Bank or such Lender, as the case may be, believes in good faith to have been given by a Person authorized to deliver such notice or for otherwise acting in good faith hereunder. Failure of a Person designated to get a copy of a notice to receive such copy shall not affect the validity of notice properly given to another Person.

Section 13.2. Expenses.

The Borrower agrees (a) to pay or reimburse the Administrative Agent for all of its reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of, and any amendment, supplement or modification to, any of the Loan Documents (including due diligence expenses), and the consummation of the transactions contemplated hereby and thereby, including the reasonable and documented out-of-pocket fees and disbursements of one law firm acting as outside counsel to the Administrative Agent, and all reasonable and documented costs and expenses of the Administrative Agent in connection with the use of IntraLinks, SyndTrak or other similar information transmission systems in connection with the Loan Documents, (b) to pay or reimburse the Administrative Agent, the Issuing Banks and the Lenders for all their reasonable and documented costs and expenses incurred

in connection with the enforcement or preservation of any rights under the Loan Documents, including the reasonable fees and disbursements of their respective counsel and any payments in indemnification or otherwise payable by the Lenders to the Administrative Agent pursuant to the Loan Documents and (c) to the extent not already covered by any of the preceding subsections, to pay or reimburse the fees and disbursements of counsel to the Administrative Agent, any Issuing Bank and any Lender incurred in connection with the representation of the Administrative Agent, such Issuing Bank or such Lender in any matter relating to or arising out of any bankruptcy or other proceeding of the type described in Sections 11.1(e) or 11.1(f), including, without limitation (i) any motion for relief from any stay or similar order, (ii) the negotiation, preparation, execution and delivery of any document relating to the Obligations and (iii) the negotiation and preparation of any debtor in possession financing or any plan of reorganization of the Parent, the Borrower or any other Loan Party, whether proposed by the Parent, the Borrower, such Loan Party, the Lenders or any other Person, and whether such fees and expenses are incurred prior to, during or after the commencement of such proceeding or the confirmation or conclusion of any such proceeding. If the Borrower shall fail to pay any amounts required to be paid by it pursuant to this Section, the Administrative Agent and/or the Lenders may pay such amounts on behalf of the Borrower and such amounts shall be deemed to be Obligations owing hereunder.

Section 13.3. Setoff.

Subject to Section 3.3 and in addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Borrower hereby authorizes the Administrative Agent, each Issuing Bank, each Lender, each Affiliate of the Administrative Agent, any Issuing Bank or any Lender, and each Participant, at any time or from time to time while an Event of Default exists, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived, but in the case of an Issuing Bank, a Lender, an Affiliate of an Issuing Bank or a Lender, or a Participant, subject to receipt of the prior written consent of the Requisite Lenders exercised in their sole discretion, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by the Administrative Agent, such Issuing Bank, such Lender, any Affiliate of the Administrative Agent, such Issuing Bank or such Lender, or such Participant, to or for the credit or the account of the Borrower against and on account of any of the Obligations, irrespective of whether or not any or all of the Loans and all other Obligations have been declared to be, or have otherwise become, due and payable as permitted by Section 11.2, and although such Obligations shall be contingent or unmatured. Notwithstanding anything to the contrary in this Section, if any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.9 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks and the Lenders and (y) such Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

Section 13.4. Litigation; Jurisdiction; Other Matters; Waivers.

(a) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY OF THE LENDERS WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE LENDERS, THE ADMINISTRATIVE AGENT, THE ISSUING BANKS, THE PARENT AND THE BORROWER HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR

PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE LOAN DOCUMENTS.

(b) THE PARENT, THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY ISSUING BANK, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL NON-APPEALABLE JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY ISSUING BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE PARENT, THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY LENDER OR THE ENFORCEMENT BY THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(c) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS, THE TERMINATION OR EXPIRATION OF ALL LETTERS OF CREDIT AND THE TERMINATION OF THIS AGREEMENT.

Section 13.5. Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Parent, the Borrower nor any other Loan Party may assign or otherwise transfer any

of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of the immediately following subsection (b), (ii) by way of participation in accordance with the provisions of the immediately following subsection (d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of the immediately following subsection (e) (and, subject to the last sentence of the immediately following subsection (b), any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in the immediately following subsection (d) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of an assigning Revolving Lender's Revolving Commitment and/or the Loans at the time owing to it, or in the case of an assignment of the entire remaining amount of an assigning Term Loan Lender's Term Loans at the time owing to it, or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in the immediately preceding subsection (A), the aggregate amount of the Revolving Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, and the principal outstanding balance of the Term Loan subject to such assignment (in each case, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 in the case of any assignment of a Revolving Commitment and \$1,000,000 in the case of any assignment in respect of a Term Loan, unless each of the Administrative Agent and, so long as no Event of Default shall exist, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that if, after giving effect to such assignment, the amount of the Commitment held by such assigning Lender or the outstanding principal balance of the Loans of such assigning Lender, as applicable, would be less than \$5,000,000 in the case of a Commitment or Revolving Loans or \$1,000,000 in the case of a Term Loan, then such assigning Lender shall assign the entire amount of its Commitment and the Loans at the time owing to it.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Type of Loan or the Revolving Commitment assigned, except that this clause (ii) shall not apply to rights in respect of a Bid Rate Loan.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (i) (B) of this subsection (b) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default shall exist at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (x) a Revolving Commitment or any unfunded Term Loan Commitments if such assignment is to a Person that is not already a Lender with a Commitment, an Affiliate of such a Lender or an Approved Fund with respect to such a Lender or (y) a Term Loan to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of each Issuing Bank and each Swingline Lender (any such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of a Revolving Commitment.

(iv) Assignment and Acceptance; Notes. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$4,500 (or \$7,500 in the event that such transferor Lender is a Defaulting Lender) for each assignment (which fee the Administrative Agent may, in its sole discretion, elect to waive), and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. If requested by the transferor Lender or the assignee, upon the consummation of any assignment, the transferor Lender, the Administrative Agent and the Borrower shall make appropriate arrangements so that new Notes are issued to the assignee and such transferor Lender, as appropriate.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or to any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to any Disqualified Institution.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each Issuing Bank, each Swingline

Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to the immediately following subsection (c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.4, 13.2 and 13.9 and the other provisions of this Agreement and the other Loan Documents as provided in Section 13.10 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with the immediately following subsection (d), other than any assignment to a Disqualified Institution, which shall be void ab initio.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Principal Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, any Issuing Bank or any Swingline Lender, sell participations to any Person (other than a Disqualified Institution, a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Issuing Banks and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to (w) increase such Lender's

Commitment, (x) extend the date fixed for the payment of principal on the Loans or portions thereof owing to such Lender, (y) reduce the rate at which interest is payable thereon (other than a waiver of default interest) or (z) release any Guarantor from its Obligations under the Guaranty except as contemplated by Section 8.14(b), in each case, as applicable to that portion of such Lender's rights and/or obligations that are subject to the participation. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.10, 5.1, 5.4 (subject to the requirements and limitations therein, including the requirements under Sections 3.10(g) and 5.7 (it being understood that the documentation required under Section 3.10(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.6 as if it were an assignee under subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 5.1 or 3.10, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Regulatory Change that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.6 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.3 as though it were a Lender; provided that such Participant agrees to be subject to Section 3.3 as though it were a Lender. Each Lender that sells a participation, including a participation pursuant to Section 2.5(e), shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central banking authority; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) No Registration. Each Lender agrees that, without the prior written consent of the Borrower and the Administrative Agent, it will not make any assignment hereunder in any manner or under any circumstances that would require registration or qualification of, or filings in respect of, any Loan or Note under the Securities Act or any other securities laws of the United States of America or of any other jurisdiction.

(g) Designated Lenders. Any Lender (each, a "**Designating Lender**") may at any time while the Parent has been assigned an Investment Grade Rating from at least two of Moody's, S&P and Fitch, designate one Designated Lender to fund Bid Rate Loans on behalf of such Designating Lender subject to the terms of this subsection, and the provisions in the immediately preceding subsections (b) and (d) shall not apply to such designation. No Lender may designate more than one Designated Lender. The parties to

each such designation shall execute and deliver to the Administrative Agent for its acceptance a Designation Agreement. Upon such receipt of an appropriately completed Designation Agreement executed by a Designating Lender and a designee representing that it is a Designated Lender, the Administrative Agent will accept such Designation Agreement and give prompt notice thereof to the Borrower, whereupon (i) the Borrower shall execute and deliver to the Designating Lender, to the extent requested by such Designated Lender, a Bid Rate Note payable to the order of the Designated Lender, (ii) from and after the effective date specified in the Designation Agreement, the Designated Lender shall become a party to this Agreement with a right to make Bid Rate Loans on behalf of its Designating Lender pursuant to Section 2.3 after the Borrower has accepted a Bid Rate Loan (or portion thereof) of the Designating Lender, and (iii) the Designated Lender shall not be required to make payments with respect to any obligations in this Agreement except to the extent of excess cash flow of such Designated Lender which is not otherwise required to repay obligations of such Designated Lender which are then due and payable; provided, however, that regardless of such designation and assumption by the Designated Lender, the Designating Lender shall be and remain obligated to the Borrower, the Administrative Agent and the Lenders for each and every of the obligations of the Designating Lender and its related Designated Lender with respect to this Agreement, including, without limitation, any indemnification obligations under Section 12.6 and any sums otherwise payable to the Borrower by the Designated Lender. Each Designating Lender shall serve as the agent of the Designated Lender and shall on behalf of, and to the exclusion of, the Designated Lender: (i) receive any and all payments made for the benefit of the Designated Lender and (ii) give and receive all communications and notices and take all actions hereunder, including, without limitation, votes, approvals, waivers, consents and amendments under or relating to this Agreement and the other Loan Documents. Any such notice, communication, vote, approval, waiver, consent or amendment shall be signed by the Designating Lender as agent for the Designated Lender and shall not be signed by the Designated Lender on its own behalf and shall be binding on the Designated Lender to the same extent as if signed by the Designated Lender on its own behalf. The Borrower, the Administrative Agent and the Lenders may rely thereon without any requirement that the Designated Lender sign or acknowledge the same. No Designated Lender may assign or transfer all or any portion of its interest hereunder or under any other Loan Document, other than assignments to the Designating Lender which originally designated such Designated Lender. The Borrower, the Lenders and the Administrative Agent each hereby agrees that it will not institute against any Designated Lender or join any other Person in instituting against any Designated Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any federal or state bankruptcy or similar law, until the later to occur of (x) one year and one day after the payment in full of the latest maturing commercial paper note issued by such Designated Lender and (y) the Revolving Termination Date. In connection with any such designation, the Designating Lender shall pay to the Administrative Agent an administrative fee for processing such designation in the amount of \$4,500.

(h) USA Patriot Act Notice; Compliance. In order for the Administrative Agent to comply with “know your customer” and Anti-Money Laundering Laws, including without limitation, the Patriot Act, prior to any Lender that is organized under the laws of a jurisdiction outside of the United States of America becoming a party hereto, the Administrative Agent may request, and such Lender shall provide to the Administrative Agent, its name, address, tax identification number and/or such other identification information as shall be necessary for the Administrative Agent to comply with federal law.

Section 13.6. Amendments and Waivers.

(a) Generally. Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or any other Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document may be amended, (iii) the performance or observance by the Parent, the Borrower, any other Loan Party or any other Subsidiary of the

Parent of any terms of this Agreement or such other Loan Document may be waived, and (iv) the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (or the Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is party thereto. Subject to the immediately following subsection (b), (w) any term of this Agreement or of any other Loan Document relating to the rights or obligations of the Revolving Lenders, and not any other Lenders, may be amended, and the performance or observance by the Parent, the Borrower or any other Loan Party or any other Subsidiary of the Parent of any such terms may be waived (either generally or in a particular instance and either retroactively or prospectively) with, and only with, the written consent of the Requisite Revolving Lenders (and, in the case of an amendment to any Loan Document, the written consent of each Loan Party a party thereto), (x) any term of this Agreement or of any other Loan Document relating to the rights or obligations of the Revolving Lenders, and not any other Lenders, may be amended, and the performance or observance by the Parent, the Borrower or any other Loan Party or any other Subsidiary of the Parent of any such terms may be waived (either generally or in a particular instance and either retroactively or prospectively) with, and only with, the written consent of the Requisite Revolving Lenders (and, in the case of an amendment to any Loan Document, the written consent of each Loan Party a party thereto) and (y) any term of this Agreement or of any other Loan Document relating to the rights or obligations of the Term Loan Lenders, and not any other Lenders, may be amended, and the performance or observance by the Parent, the Borrower or any other Loan Party or any other Subsidiary of the Parent of any such terms may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Term Loan Lenders (and, in the case of an amendment to any Loan Document, the written consent of each Loan Party a party thereto). Notwithstanding anything to the contrary contained in this Section, the Fee Letter may only be amended, and the performance or observance by any Loan Party thereunder may only be waived, in a writing executed by the parties thereto.

(b) Additional Lender Consents. In addition to the foregoing requirements, no amendment, waiver or consent shall:

(i) increase, extend or reinstate the Commitments of a Lender (excluding any increase as a result of an assignment of Commitments permitted under Section 13.5 and any increase in the Revolving Commitments or Incremental Term Loans effected pursuant to Section 2.17) or subject a Lender to any additional obligations without the written consent of such Lender;

(ii) reduce the principal of, or interest that has accrued or the rates of interest that will be charged (subject to the fourth sentence of Section 13.6(f)) on the outstanding principal amount of, any Loans or other Obligations (other than a waiver of default interest) without the written consent of each Lender directly affected thereby; provided, however, only the written consent of the Requisite Lenders shall be required for the waiver of interest payable at the Post-Default Rate, retraction of the imposition of interest at the Post-Default Rate and amendment of the definition of "Post-Default Rate";

(iii) reduce the amount of any Fees payable to a Lender without the written consent of such Lender;

(iv) modify the definitions of "Revolving Termination Date" (except in accordance with Section 2.14 or Section 13.6(c)) or "Revolving Commitment Percentage", otherwise postpone any date fixed for, or forgive, any payment of principal of, or interest on, any Revolving Loans or for the payment of Fees or any other Obligations owing to the Revolving Lenders, or extend the expiration date of any Letter of Credit beyond the Revolving Termination Date (except for Extended Letters

of Credit extended pursuant to Section 2.4 hereof), in each case, without the written consent of each Revolving Lender directly affected thereby;

(v) modify the definition of “Term Loan Maturity Date” (except in accordance with Section 13.6(c)), or otherwise postpone any date fixed for, or forgive, any payment of principal of, or interest on, any Term Loans or for the payment of Fees or any other Obligations owing to the Term Loan Lenders, in each case, without the written consent of each Term Loan Lender directly affected thereby;

(vi) amend, modify or waive (A) Section 6.2 or any other provision of this Agreement if the effect of such amendment, modification or waiver is to require the Revolving Lenders to make Revolving Loans when such Lenders would not otherwise be required to do so, (B) the amount of the Swingline Commitment or (C) the L/C Commitment Amount, in each case, without the prior written consent of the Requisite Revolving Lenders;

(vii) amend, modify or waive Section 6.2 or any other provision of this Agreement if the effect of such amendment, modification or waiver is to require the Term Loan Lenders to make Term Loans when such Lenders would not otherwise be required to do so without the prior written consent of the Requisite Term Loan Lenders;

(viii) modify the definition of “Pro Rata Share” or amend or otherwise modify the provisions of Section 3.2 or Section 11.5 without the written consent of each Lender directly affected thereby;

(ix) amend this Section or amend the definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section without the written consent of each Lender;

(x) modify the definition of the term “Requisite Lenders” or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder (including any provision of this Agreement that expressly requires the consent of all Lenders or applicable Lenders) or to modify any provision hereof without the written consent of each Lender;

(xi) modify the definition of the term “Requisite Revolving Lenders” or modify in any other manner the number or percentage of the Revolving Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof without the written consent of each Revolving Lender;

(xii) modify the definition of the term “Requisite Term Loan Lenders” or modify in any other manner the number or percentage of the Term Loan Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof without the written consent of each Term Loan Lender;

(xiii) release any Parent Guarantor, or all or substantially all other Guarantors, from its or their respective obligations under the Guaranty (except as contemplated by Section 8.14(b)) without the written consent of each Lender; or

(xiv) amend, or waive the Borrower’s compliance with, Section 2.16 without the written consent of each Lender.

Notwithstanding the foregoing, any term of this Agreement or of any other Loan Document may be amended in connection with any transaction permitted by Section 2.17 or clause (c) below, subject to and in accordance with such Sections.

(c) Permitted Additional Extension Amendments.

(i) Notwithstanding any provision herein to the contrary, this Agreement may be amended (x) to add one or more additional revolving credit or term loan facilities to this Agreement, in each case subject to the limitations in Section 2.17, and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder with the written consent solely of the Borrower, the Administrative Agent and the Lenders providing such additional facilities, and (y) in connection with the foregoing, to permit, as deemed appropriate by the Administrative Agent and approved by such Lenders, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Requisite Lenders or by any other number, percentage or class of Lenders hereunder.

(ii) In addition, notwithstanding any provision herein to the contrary, the Borrower may, by written notice to the Administrative Agent from time to time after the initial Revolving Termination Date and Term Loan Maturity Date, make one or more offers (each, a “**Loan Modification Offer**”) to all the Lenders of one or more of the facilities hereunder (including any revolving credit or term loan additional facilities added hereto pursuant to the immediately preceding paragraph) (each facility subject to such a Loan Modification Offer, an “**Affected Facility**”) to make one or more Permitted Additional Extension Amendments pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower, as the case may be. Such notice shall set forth (x) the terms and conditions of the requested Permitted Additional Extension Amendment and (y) the date on which such Permitted Additional Extension Amendment is requested to become effective (which shall not be less than ten (10) Business Days nor more than 30 Business Days after the date of such notice, unless otherwise agreed to by the Administrative Agent). Permitted Additional Extension Amendments shall become effective (1) only with respect to the Loans and/or Commitments of the Lenders of the Affected Facility that accept the applicable Loan Modification Offer (such Lenders, the “**Accepting Lenders**”), (2) only to the extent the Accepting Lenders constitute at least a majority of the Lenders of the Affected Facility, (3) in the case of any Accepting Lender, only with respect to such Lender’s Loans and Commitments of such Affected Facility as to which such Lender’s acceptance has been made and (4) only if (A) all Accepting Lenders shall be treated on a pro rata basis and (B) all non-Accepting Lenders shall be treated on a pro rata basis. Upon the acceptance of a Loan Modification Offer by the requisite Lenders, the applicable Loan Parties and each Accepting Lender shall execute and deliver to the Administrative Agent such documentation (which may include legal opinions, board resolutions and/or certificates consistent with those delivered on the Effective Date) as the Administrative Agent shall reasonably specify to evidence the acceptance of the Permitted Additional Extension Amendments and the terms and conditions thereof. The Administrative Agent shall promptly notify each Lender as to the effectiveness of such Permitted Additional Extension Amendments. Each of the parties hereto hereby agrees that, upon the effectiveness of any Permitted Additional Extension Amendments, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of such Permitted Additional Extension Amendment and only with respect to the Loans and Commitments of the Accepting Lenders of the Affected Facility. For avoidance of

doubt, notwithstanding a Permitted Additional Extension Amendment with Accepting Lenders, (i) non-Accepting Lenders rights, remedies and existing obligations will in no way be deemed as modified or waived and are otherwise not effected by the Permitted Additional Extension Amendment and (ii) the Commitments (if any) of the non-Accepting Lenders under the Affected Facility shall be terminated and the Obligations owing to any non-Accepting Lenders under the Affected Facility shall be paid in full on the applicable then existing maturity date for such Affected Facility (without giving effect to any Permitted Additional Extension Amendments).

(d) Replacement of Non-Consenting Lenders. If any Lender is a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 13.5, other than the consent of any Lender being so replaced), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.10 and 5.1) and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that (i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 13.5(b)(iv); (ii) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.4) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts); (iii) such assignment does not conflict with Applicable Laws; and (iv) the applicable assignee shall have consented to the applicable amendment, waiver or consent. A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each Lender agrees that, if the Borrower elects to replace such Lender in accordance with this clause (d), it shall promptly execute and deliver to the Administrative Agent an Assignment and Assumption to evidence the assignment and shall deliver to the Administrative Agent any Note (if a Note has been issued in respect of such Lender's Loans) subject to such Assignment and Assumption; provided that the failure of any such Lender to execute an Assignment and Assumption shall not render such assignment invalid and such assignment shall be recorded in the Register.

(e) Amendment of Administrative Agent's Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement or any of the other Loan Documents. Any amendment, waiver or consent relating to Section 2.5 or the obligations of the Swingline Lenders under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of each Swingline Lender. Any amendment, waiver or consent relating to Section 2.4 or the obligations of the Issuing Banks under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of the Issuing Banks. Any amendment, waiver or consent with respect to any Loan Document that (i) diminishes the rights of a Specified Derivatives Provider in a manner or to an extent dissimilar to that affecting the Lenders or (ii) increases the liabilities or obligations of a Specified Derivatives Provider shall, in addition to the Lenders required hereinabove to take such action, require the consent of the Lender that is (or having an Affiliate that is) such Specified Derivatives Provider. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitments of any Defaulting Lender may not be increased, reinstated or extended without the written consent of such Defaulting Lender

and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the written consent of such Defaulting Lender. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as such Event of Default is waived in writing in accordance with the terms of this Section, notwithstanding any attempted cure or other action by the Parent, the Borrower, any other Loan Party or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon the Borrower shall entitle the Borrower to other or further notice or demand in similar or other circumstances.

(f) **Technical Amendments.** Notwithstanding anything to the contrary in this Section 13.6, if the Administrative Agent and the Borrower have jointly identified an ambiguity, omission, mistake or defect in any provision of this Agreement or an inconsistency between provisions of this Agreement, the Administrative Agent and the Borrower shall be permitted to amend such provision or provisions to cure such ambiguity, omission, mistake, defect or inconsistency so long as to do so would not adversely affect the interests of the Lenders and the Issuing Banks. Any such amendment shall become effective without any further action or consent of any of other party to this Agreement. The Borrower shall be permitted, without consent of any other Person, to amend or update any Schedule which the Borrower is otherwise expressly permitted or required hereunder to independently amend or update. Notwithstanding the foregoing, the Administrative Agent and the Borrower may, without the consent of any Lender, (x) enter into amendments or modifications to this Agreement or any of the other Loan Documents or (y) enter into additional Loan Documents, in each case, as the Administrative Agent reasonably deems appropriate in order to implement any Replacement Rate or otherwise effectuate the terms of Section 5.2(b) in accordance with the terms of Section 5.2(b). The Administrative Agent shall remit to the Lenders and the Issuing Banks an executed copy of any such amendment under this Section 13.6(f) promptly after the effectiveness thereof.

Section 13.7. Nonliability of Administrative Agent and Lenders.

The relationship between the Borrower, on the one hand, and the Lenders, the Issuing Banks and the Administrative Agent, on the other hand, shall be solely that of borrower and lender. None of the Administrative Agent, any Issuing Bank or any Lender shall have any fiduciary responsibilities to the Borrower and no provision in this Agreement or in any of the other Loan Documents, and no course of dealing between or among any of the parties hereto, shall be deemed to create any fiduciary duty owing by the Administrative Agent, any Issuing Bank or any Lender to any Lender, the Parent, the Borrower, any Subsidiary of the Parent or any other Loan Party. None of the Administrative Agent, any Issuing Bank or any Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations.

Section 13.8. Confidentiality.

The Administrative Agent, each Issuing Bank and each Lender shall maintain the confidentiality of all Information (as defined below) but in any event may make disclosure: (a) to its Affiliates and to its and its Affiliates' other respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or proposed assignee, Participant or other transferee in connection with a potential transfer of any Commitment or participation therein as permitted hereunder (but, in each case, not

to any Disqualified Institutions), or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations (but, in each case, not to any Disqualified Institutions); (c) as required or requested by any Governmental Authority or representative thereof or pursuant to legal process or in connection with any legal proceedings, or as otherwise required by Applicable Law (in which case, it shall, to the extent practicable and not prohibited by law, inform the Borrower promptly thereof prior to disclosure); (d) to the Administrative Agent's, such Issuing Bank's or such Lender's independent auditors and other professional advisors (provided they shall be notified of the confidential nature of the information); (e) in connection with the exercise of any remedies under any Loan Document (or any Specified Derivatives Contract) or any action or proceeding relating to any Loan Document (or any Specified Derivatives Contract) or the enforcement of rights hereunder or thereunder; (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section actually known by the Administrative Agent, such Issuing Bank or such Lender to be a breach of this Section or any other confidentiality undertaking of which it is aware or (ii) becomes available to the Administrative Agent, any Issuing Bank, any Lender or any Affiliate of the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis after due inquiry from a source other than the Borrower or any Affiliate of the Borrower; (g) to the extent requested by, or required to be disclosed to, any nationally recognized rating agency or regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) having or purporting to have jurisdiction over it; (h) to bank trade publications, such information to consist of deal terms and other information customarily reported to Thomson Reuters, other bank market data collectors and similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of the Loan Documents; (i) to any other party hereto; (j) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loan Documents; (k) for purposes of establishing a "due diligence" defense; and (l) with the consent of the Borrower. Notwithstanding the foregoing, the Administrative Agent, each Issuing Bank and each Lender may disclose any such confidential information, without notice to the Parent, the Borrower or any other Loan Party, to Governmental Authorities in connection with any regulatory examination of the Administrative Agent, such Issuing Bank or such Lender or in accordance with the regulatory compliance policy of the Administrative Agent, such Issuing Bank or such Lender. As used in this Section, the term "**Information**" means all information received from the Parent, the Borrower, any other Loan Party, any other Subsidiary or Affiliate relating to any Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by the Parent, the Borrower, any other Loan Party, any other Subsidiary of the Parent or any Affiliate, provided that, in the case of any such information received from the Parent, the Borrower, any other Loan Party, any other Subsidiary of the Parent or any Affiliate after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 13.9. Indemnification.

(a) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Issuing Bank, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnified Party**") against, and hold each Indemnified Party harmless from, and shall pay or reimburse any such Indemnified Party within twenty-one (21) days following demand for, any and all losses, claims (including without limitation, Environmental Claims), damages, liabilities and related reasonable and documented out-of-pocket expenses (including without limitation, the reasonable and documented out-of-pocket fees, charges and disbursements of any counsel for any Indemnified Party (but limited, in the case

of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnified Parties (taken as a whole) and, if reasonably necessary, a single local counsel for all Indemnified Parties (taken as a whole) in each relevant material jurisdiction and with respect to each relevant material specialty, and in the case of an actual or perceived conflict of interest, one additional counsel in each relevant material jurisdiction to the affected Indemnified Parties similarly situated and taken as a whole)), incurred by any Indemnified Party or asserted against any Indemnified Party by any Person (including the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent) other than such Indemnified Party and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower, any other Loan Party or any other Subsidiary of the Parent, or any Environmental Claim related in any way to the Borrower, any other Loan Party or any other Subsidiary of the Parent, (iv) any actual or prospective claim, litigation, investigation or proceeding (an “**Indemnity Proceeding**”) relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, any other Loan Party or any other Subsidiary of the Parent, and regardless of whether any Indemnified Party is a party thereto or (v) any claim (including without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent, any Issuing Bank or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or the transactions contemplated hereby, including without limitation, reasonable attorneys and consultant’s fees; provided, however, that such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses have resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnified Party as determined by a final non-appealable judgment of a court of competent jurisdiction, (y) solely in connection with any claim initiated, or counter-claim asserted, by the Borrower, a material breach of any express obligation of such Indemnified Party under this Agreement as determined by a court of competent jurisdiction in a final non-appealable judgment or (z) any dispute solely among Indemnified Parties, other than any claims against any Indemnified Party in its respective capacity or in fulfilling its role as an Administrative Agent or Arranger or any similar role hereunder, and other than any claims arising out of any act or omission on the part of the Parent, the Borrower, any other Loan Party or any other Subsidiary of the Parent; and provided further, that this Section 13.9 shall not apply with respect to Taxes, other than any Taxes arising from any non-Tax claim.

(b) If and to the extent that the obligations of the Borrower under this Section are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under Applicable Law.

(c) The Borrower’s obligations under this Section shall survive any termination of this Agreement and the other Loan Documents and the payment in full in cash of the Obligations, and are in addition to, and not in substitution of, any of the other obligations set forth in this Agreement or any other Loan Document to which it is a party.

References in this Section 13.9 to “Lender” or “Lenders” shall be deemed to include such Persons (and their Affiliates) in their capacity as Specified Derivatives Providers.

Section 13.10. Termination; Survival.

This Agreement shall terminate at such time as (a) all of the Commitments have been terminated, (b) all Letters of Credit have terminated or expired or been canceled (other than Extended Letters of Credit in respect of which the Borrower has satisfied the requirements to provide Cash Collateral as required in Section 2.4(b)), (c) none of the Lenders is obligated any longer under this Agreement to make any Loans and the Issuing Banks are no longer obligated under this Agreement to issue Letters of Credit and (d) all Obligations (other than obligations which survive as provided in the following sentence) have been paid and satisfied in full. The indemnities to which the Administrative Agent, the Issuing Banks and the Lenders are entitled under the provisions of Sections 3.10, 5.1, 5.4, 12.6, 13.2 and 13.9 and any other provision of this Agreement and the other Loan Documents, and the provisions of Section 13.4, shall continue in full force and effect and shall protect the Administrative Agent, the Issuing Banks and the Lenders (i) notwithstanding any termination of this Agreement, or of the other Loan Documents, against events arising after such termination as well as before and (ii) at all times after any such party ceases to be a party to this Agreement with respect to all matters and events existing on or prior to the date such party ceased to be a party to this Agreement.

Section 13.11. Severability of Provisions.

If any provision of this Agreement or the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the Loan Documents, and the validity, legality and enforceability of the remaining provisions shall remain in full force as though the invalid, illegal, or unenforceable provision had never been part of the Loan Documents.

Section 13.12. GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 13.13. Counterparts.

To facilitate execution, this Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts as may be convenient or required (which may be effectively delivered by facsimile, in portable document format (“**PDF**”) or other similar electronic means). It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

Section 13.14. No Advisory or Fiduciary Relationship.

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Parent and the Borrower acknowledges and agrees, and acknowledges its Affiliates’ understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by Administrative Agent and Arrangers are arm’s-length commercial transactions between the Parent, the Borrower each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and the Arrangers, on the other hand, (B) each of the Parent, the Borrower, and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Parent, the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions

of the transactions contemplated hereby and by the other Loan Documents; (ii)(A) the Administrative Agent, each Lender, each Issuing Bank and each Arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Parent, the Borrower, any other Loan Party, or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any Lender, any Issuing Bank nor any Arranger has any obligation to the Parent, the Borrower, any other Loan Party, or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, each Lender, each Issuing Bank and each Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Parent, the Borrower, the other Loan Parties, and their respective Affiliates, and neither Administrative Agent, any Lender, any Issuing Bank nor any Arranger has any obligation to disclose any of such interests to the Parent, the Borrower, any other Loan Party, or any of their respective Affiliates. To the fullest extent permitted by Applicable Law, each of the Parent, the Borrower, and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, each Lender, each Issuing Bank and each Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 13.15. Obligations with Respect to Loan Parties and Subsidiaries.

The obligations of the Parent or the Borrower to direct or prohibit the taking of certain actions by the other Loan Parties and Subsidiaries as specified herein shall be absolute and not subject to any defense the Parent or the Borrower may have that the Parent or the Borrower does not control such Loan Parties or Subsidiaries.

Section 13.16. Independence of Covenants.

All covenants hereunder shall be given in any jurisdiction independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 13.17. Limitation of Liability.

Except, in the case of the Loan Parties, to the extent otherwise subject to indemnification pursuant to Section 13.9, no party hereto or any of their respective Related Parties (including any Indemnified Party) shall have any liability with respect to, and each party hereto hereby waives, releases, and agrees not to sue any other party hereto or any of their respective Related Parties (including any Indemnified Party) upon, any claim for any special, indirect, incidental, consequential or punitive damages suffered or incurred by such party in connection with, arising out of, or in any way related to, this Agreement, any of the other Loan Documents or any of the transactions contemplated by this Agreement or any of the other Loan Documents. No Indemnified Party referred to in Section 13.9(a) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except for any damages arising from, solely in connection with a claim initiated, or counter-claim asserted, by the Borrower, a material breach of this Agreement or any other Loan Document or such Indemnified Party's gross negligence, bad faith or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction.

Section 13.18. Entire Agreement.

This Agreement, the Notes and the other Loan Documents embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. To the extent any term of this Agreement is inconsistent with a term of any other Loan Document to which the parties of this Agreement are party, the term of this Agreement shall control to the extent of such inconsistency. There are no oral agreements among the parties hereto.

Section 13.19. Construction.

The Administrative Agent, each Issuing Bank, the Borrower and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by the Administrative Agent, each Issuing Bank, the Borrower and each Lender.

Section 13.20. Headings.

The paragraph and section headings in this Agreement are provided for convenience of reference only and shall not affect its construction or interpretation.

Section 13.21. Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

Section 13.22. Waiver of Certain Notices Under the Existing Credit Agreement.

Each of the signatories hereto that is also a “Lender” under and as defined in the Existing Credit Agreement immediately prior to the Effective Date hereby agrees that any required notice periods under (a)

Section 2.9 of the Existing Credit Agreement in connection with the prepayment on the Effective Date of any “Loans” under and as defined in the Existing Credit Agreement or (b) Section 2.13 of the Existing Credit Agreement in connection with the reduction of “Dollar Tranche Revolving Commitments” under and as defined in the Existing Credit Agreement are, in each case, hereby waived and of no force and effect.

[Signatures on Following Pages]

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

VEREIT OPERATING PARTNERSHIP, L.P.

By: /s/ Michael J. Bartolotta
Name: Michael J. Bartolotta
Title: Executive Vice President and Chief Financial Officer

VEREIT, INC.

By: /s/ Michael J. Bartolotta
Name: Michael J. Bartolotta
Title: Executive Vice President and Chief Financial Officer

[Signatures Continued on Next Page]

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, as a
Swingline Lender, as an Issuing Bank and as a Lender

By: /s/ Dale Northup
Name: Dale Northup
Title: Senior Vice President

[Signatures Continued on Next Page]

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

BANK OF AMERICA, N.A., as a Lender, as a Swingline Lender, and as an Issuing Bank

By: /s/ Tom W. Nowak
Name: Tom W. Nowak
Title: Vice President

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

BARCLAYS BANK PLC, as a Lender

By: /s/ Craig Malloy
Name: Craig Malloy
Title: Director

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

BMO HARRIS BANK N.A., as a Lender

By: /s/ Michael Kauffman
Name: Michael Kauffman
Title: Managing Director

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

CAPITAL ONE, NATIONAL ASSOCIATION, as a Lender

By: /s/ Frederick H. Denecke

Name: Frederick H. Denecke

Title: Senior Vice President

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

CITIBANK, N.A., as a Lender

By: /s/ John Rowland
Name: John Rowland
Title: Vice President

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

JPMORGAN CHASE BANK, N.A., as a Lender

By: /s/ Ryan M. Dempsey
Name: Ryan M. Dempsey
Title: Authorized Officer

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Patrick Trowbridge
Name: Patrick Trowbridge
Title: Senior Vice President

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

MIZUHO BANK, LTD., as a Lender

By: /s/ Tracy Rahn

Name: Tracy Rahn

Title: Authorized Signatory

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

REGIONS BANK, as a Lender

By: /s/ Lee Surtees

Name: Lee Surtees

Title: Senior Vice President

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

SUMITOMO MITSUI BANK CORPORATION, as a Lender

By: /s/ Natsuhiro Samejima

Name: Natsuhiro Samejima

Title: Managing Director & General Manager

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

THE BANK OF NEW YORK MELLON, as a Lender

By: /s/ Carol Murray
Name: Carol Murray
Title: Managing Director

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

GOLDMAN SACHS BANK USA, as a Lender

By: /s/ Annie Carr

Name: Annie Carr

Title: Authorized Signatory

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Daniel Stegemoeller
Name: Daniel Stegemoeller
Title: Sr. Vice President

[Signature Page to Credit Agreement with VEREIT Operating Partnership, L.P.]

MORGAN STANLEY BANK, N.A., as a Lender

By: /s/ Michael King
Name: Michael King
Title: Authorized Signatory

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COMERICA BANK, as a Lender

By: /s/ Casey L. Stevenson
Name: Casey L. Stevenson
Title: Vice President

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PEOPLE'S UNITED BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Victor Galati

Name: Victor Galati

Title: Senior Vice President

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FIRST TENNESSEE BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Thomas C Owens
Name: Thomas C Owens
Title: Senior Vice President

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BANK HAPOALIM B.M., as a Lender

By: /s/ Charles McLaughlin
Name: Charles McLaughlin
Title: Senior Vice President

By: /s/ Helen H. Gateson
Name: Helen H. Gateson
Title: Vice President

[\(Back To Top\)](#)