# 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): February 7, 2023**

# Healthpeak Properties, Inc.

**(Exact name of registrant as specified in its charter)**

| **Maryland** | **001-08895** | **33-0091377** |
|---|---|---|
| **(State or other jurisdiction of incorporation)** | **(Commission File Number)** | **(IRS Employer Identification No.)** |

**4600 South Syracuse Street, Suite 500**
**Denver, CO 80237**
**(Address of principal executive offices, including zip code)**

**(720) 428-5050**
**Registrant's telephone number, including area code**

**N/A**
**(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))

Securities registered pursuant to Section 12(b) of the Act:

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|---|---|
| Common stock, $1.00 par value | PEAK | New York Stock Exchange |

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).

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. ☐

**EXPLANATORY NOTE**

On February 7, 2023, the company formerly known as Healthpeak Properties, Inc., a Maryland corporation ("Old Healthpeak"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with the company formerly known as New Healthpeak, Inc., a Maryland corporation ("Holdco"), which from its formation until the effective time of the Merger (the "Effective Time") was a wholly owned subsidiary of Old Healthpeak, and Healthpeak Merger Sub, Inc., a Maryland corporation ("Merger Sub"), which was a wholly owned subsidiary of Holdco. The purpose of the transactions contemplated by the Merger Agreement was for Old Healthpeak to implement a corporate reorganization into a new holding company structure commonly referred to as an Umbrella Partnership Real Estate Investment Trust, or UPREIT (the "Reorganization").

Effective on February 10, 2023, pursuant to the Merger Agreement, Merger Sub merged with and into Old Healthpeak, with Old Healthpeak continuing as the surviving corporation and a wholly owned subsidiary of New Healthpeak (the "Merger"). As part of the Merger, Old Healthpeak's name was changed to Healthpeak Properties Interim, Inc., and, effective immediately after the Effective Time, Holdco's name was changed to Healthpeak Properties, Inc. In this Current Report, we refer to Holdco after the Merger as "New Healthpeak" or the "Company."

The Merger was conducted in accordance with Section 3-106.2 of the Maryland General Corporation Law. Accordingly, the Merger did not require the approval of Old Healthpeak's stockholders, and the Merger did not give rise to statutory dissenters' rights.

In accordance with the Merger Agreement, at the Effective Time, (a) the separate existence of Merger Sub ceased; and (b) each issued and outstanding share of Old Healthpeak common stock immediately prior to the Effective Time was converted on a share-for-share basis into an issued and outstanding share of New Healthpeak common stock, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions and other terms as the corresponding share of Old Healthpeak common stock that was converted. Accordingly, each stockholder of Old Healthpeak immediately before the Effective Time owned, immediately after the Effective Time, shares of New Healthpeak common stock in the same amounts and percentages as such stockholder owned in Old Healthpeak immediately before the Effective Time. The conversion of stock took place automatically without an exchange of stock certificates at the Effective Time. Any certificates representing outstanding Old Healthpeak common stock are deemed to represent the same number and type of shares of New Healthpeak common stock. New Healthpeak replaced Old Healthpeak as the public company listed on the New York Stock Exchange (the "NYSE") and New Healthpeak common stock is trading on the NYSE on an uninterrupted basis under the existing symbol "PEAK" and has retained the CUSIP number of 42250P103.

In connection with the Reorganization and immediately following the Merger, Old Healthpeak converted from a Maryland corporation to a Maryland limited liability company named Healthpeak OP, LLC effective February 10, 2023 (the "LLC Conversion"). In this Current Report, we refer to Old Healthpeak after the effectiveness of the LLC Conversion as "Healthpeak OP."

Following the Merger, the business, management and board of directors of New Healthpeak was identical to the business, management and board of directors of Old Healthpeak immediately before the Merger, except that the business of the company is expected to be conducted exclusively through Healthpeak OP. The consolidated assets and liabilities of New Healthpeak immediately following the Merger were identical to the consolidated assets and liabilities of Old Healthpeak immediately prior to the Merger. New Healthpeak does not hold any assets directly other than its ownership interest in Healthpeak OP and certain de minimis assets that may be held for certain administrative functions. None of the properties owned by Old Healthpeak or its subsidiaries or any interests therein have been or will be transferred as part of the Reorganization. All material indebtedness of Old Healthpeak immediately prior to the Merger remained the indebtedness of Old Healthpeak after the Merger. Following the LLC Conversion, Healthpeak OP remains the borrower under Old Healthpeak's $3.0 billion senior unsecured revolving credit facility and $500.0 million senior unsecured term loan facility and Healthpeak OP remains the obligor under all of Old Healthpeak's outstanding senior notes.

The purpose of this Current Report on Form 8-K12B is to disclose matters in connection with the completion of the Merger and to provide notice pursuant to Rule 12g-3(f) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that, following the Merger, New Healthpeak became the successor issuer to Old Healthpeak. More specifically, pursuant to Exchange Act Rule 12g-3(a), shares of the New Healthpeak common stock, par value $1.00 per share ("New Healthpeak common stock"), issued in connection with the Merger are deemed registered under Section 12(b) of the Exchange Act.

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

The information set forth above under Explanatory Note is incorporated hereunder by reference.

**LLC Agreement**

As disclosed above, the LLC Conversion became effective as of February 10, 2023. At the effective time of the LLC Conversion, New Healthpeak and Healthpeak OP entered into the Operating Agreement of Healthpeak OP, LLC (the "LLC Agreement"). New Healthpeak is the managing member of, owns 100% of the limited liability company interests of and exercises exclusive control over Healthpeak OP. A summary of the material terms of the LLC Agreement is set forth below. The following summary of the LLC Agreement is qualified in its entirety by reference to the applicable provisions of Maryland law and the terms and conditions of the LLC Agreement, which is filed herewith as Exhibit 10.1 and incorporated by reference herein.

**General**

Following the LLC Conversion, substantially all of New Healthpeak's assets will be held by, and substantially all of New Healthpeak's operations will be conducted through, Healthpeak OP, either directly or through its subsidiaries. In connection with the LLC Conversion, New Healthpeak became the managing member (in such capacity, the "managing member") of Healthpeak OP. Healthpeak OP is also authorized to issue a class of units of membership interest designated as LTIP Units (as defined herein) and additional classes of units of membership interest, each having the terms described below. The common units are not, and LTIP Units (to the extent any are issued) will not be, listed on any exchange nor are the common units quoted, nor will LTIP Units (to the extent any are issued) be quoted, on any national market system.

Provisions in the LLC Agreement may delay or make more difficult unsolicited acquisitions of the managing member or changes in its control. These provisions could discourage third parties from making proposals involving an unsolicited acquisition of the managing member or change of its control, although some stockholders might consider such proposals, if made, desirable. These provisions also make it more difficult for third parties to alter the management structure of Healthpeak OP without the concurrence of the managing member's board of directors. These provisions include, among others:

- redemption rights of members and certain assignees of common units;
- transfer restrictions on common units and other membership interests;
- a requirement that the managing member may not be removed as the managing member of Healthpeak OP without its consent;
- the managing member's ability in some cases to amend the LLC Agreement and to cause Healthpeak OP to issue preferred membership interests in Healthpeak OP with terms that the managing member may determine, in either case, without the approval or consent of any non-managing member; and
- the right of the non-managing members to consent to certain transfers of the managing member's membership interest (whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise).

**Purpose, Business and Management**

Healthpeak OP was formed for the purpose of conducting any business, enterprise or activity permitted by or under the Maryland Limited Liability Company Act, directly or through one or more partnerships, joint ventures, subsidiaries, business trusts, limited liability companies or similar arrangements.

In general, the board of directors of the managing member manages the business and affairs of Healthpeak OP by directing its business and affairs (including through the officers of the managing member), in the managing member's capacity as the sole managing member of Healthpeak OP. Except as otherwise expressly provided in the LLC Agreement and subject to the rights of holders of any class or series of membership interest, all management powers over the business and affairs of Healthpeak OP are exclusively vested in the managing member, in its capacity as the sole managing member of Healthpeak OP, and no member will have any right to participate in or exercise control or management power over the business and affairs of Healthpeak OP. The managing member may not be removed as the managing member of Healthpeak OP, with or without cause, without its consent, which it may give or withhold in its sole and absolute discretion.

**Restrictions on Managing Member's Authority**

The LLC Agreement prohibits the managing member, in its capacity as managing member, from taking any action that would make it impossible to carry on the ordinary business of Healthpeak OP, except as otherwise provided in the LLC Agreement or with the consent of the non-managing members. The managing member generally may not, without the prior consent of the members of Healthpeak OP (including the managing member), amend, modify or terminate the LLC Agreement, except for certain amendments described in the LLC Agreement. The managing member may not, except as otherwise provided in the LLC Agreement or with the consent of the non-managing members of Healthpeak OP:

- transfer all or any portion of its managing membership interest in Healthpeak OP or admit any person as a successor managing member, subject to the exceptions described below; or
- voluntarily withdraw as the managing member.

Without the consent of each affected member or in connection with a transfer of all of the managing member's interests in Healthpeak OP in connection with a merger, consolidation or other combination of its assets with another entity, a sale of all or substantially all of the managing member's assets or a reclassification, recapitalization or change in the managing member's outstanding stock permitted without the consent of the members as described in Section 11.2(b) of the LLC Agreement, or a permitted termination transaction, the managing member may not enter into any contract, mortgage, loan or other agreement that, in the absence of any default of the managing member of its obligations thereunder, expressly prohibits or restricts the managing member or Healthpeak OP from performing their specific obligations in connection with a redemption of units or expressly prohibits or restricts a non-managing member from exercising its redemption rights in full. In addition to any approval or consent required by any other provision of the LLC Agreement, the managing member may not, without the consent of each affected member, amend the LLC Agreement or take any other action that would:

- adversely modify in any material respect the limited liability of a member;
- alter the rights of any member to receive the distributions to which such member is entitled, or alter the allocations specified in the LLC Agreement, except to the extent permitted by the LLC Agreement including in connection with the creation or issuance of any new class or series of membership interest or to effect or facilitate a permitted termination transaction;
- alter or modify the redemption rights of holders of common units (except as permitted under the LLC Agreement to effect or facilitate a permitted termination transaction);
- alter or modify the provisions governing the transfer of the managing member's membership interest in Healthpeak OP (except as permitted under the LLC Agreement to effect or facilitate a permitted termination transaction);
- remove certain provisions of the LLC Agreement relating to the requirements for the managing member to qualify as a real estate investment trust ("REIT") or permitting the managing member to avoid paying tax under Sections 857 or 4981 of the Internal Revenue Code of 1986, as amended (the "Code"); or
- amend the provisions of the LLC Agreement requiring the consent of each affected member before taking any of the actions described above or the related definitions specified in the LLC Agreement (except as permitted under the LLC Agreement to effect or facilitate a permitted termination transaction).

**Additional Members**

The managing member may cause Healthpeak OP to issue additional units in one or more classes or series or other membership interests and to admit additional members to Healthpeak OP from time to time, on such terms and conditions and for such capital contributions as the managing member may establish in its sole and absolute discretion, without the approval or consent of any member.

The LLC Agreement authorizes Healthpeak OP to issue common units, LTIP Units and preferred units, and Healthpeak OP may issue additional membership interests in one or more additional classes, or one or more series of any of such classes, with such designations, preferences, conversion and other rights, voting powers, restrictions, limitations as to distributions, qualifications and terms and conditions of redemption (including, without limitation, terms that may be senior or otherwise entitled to preference over existing units) as the managing member may determine, in its sole and absolute discretion, without the approval of any additional members or any other person. Without limiting the generality of the foregoing, the managing member may specify, as to any such class or series of membership interest, the allocations of items of Healthpeak OP income, gain, loss, deduction and credit to each such class or series of membership interest.

**Ability to Engage in Other Businesses; Conflicts of Interest**

The LLC Agreement provides that, without the consent of the members of Healthpeak OP, not to be unreasonably withheld, conditioned, or delayed, the managing member may not conduct any business other than in connection with the ownership, acquisition and disposition of membership interests, the management of the business and affairs of Healthpeak OP, its operation as a reporting company with a class (or classes) of securities registered under the Exchange Act, its operations as a REIT, the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, financing or refinancing of any type related to Healthpeak OP or its assets or activities and such activities as are incidental to those activities discussed above. In general, the managing member must contribute any assets or funds that it acquires to Healthpeak OP whether as capital contributions, loans or otherwise, as appropriate, in exchange for additional membership interests. The managing member may, however, in its sole and absolute discretion, from time to time hold or acquire assets in its own name or otherwise other than through Healthpeak OP so long as the managing member takes commercially reasonable measures to ensure that the economic benefits and burdens of such property are otherwise vested in Healthpeak OP.

**Distributions**

Healthpeak OP will distribute such amounts, at such times, as the managing member may in its sole and absolute discretion determine:

- first, with respect to any membership interests that are entitled to any preference in distribution, including the preferred units, in accordance with the rights of the holders of such class(es) of membership interest, and, within each such class, among the holders of such class pro rata in proportion to their respective percentage interests of such class; and

- second, with respect to any membership interests that are not entitled to any preference in distribution, including the common units and, except as described below with respect to liquidating distributions and as may be provided in any incentive award plan or any applicable award agreement and the LTIP Units, in accordance with the rights of the holders of such class(es) of membership interest, and, within each such class, among the holders of each such class, pro rata in proportion to their respective percentage interests of such class.

**Exculpation and Indemnification of Managing Member**

The LLC Agreement provides that the managing member is not liable to Healthpeak OP or any member for any action or omission taken in its capacity as managing member, for the debts or liabilities of Healthpeak OP or for the obligations of Healthpeak OP under the LLC Agreement, except for liability for its fraud, willful misconduct or gross negligence, or pursuant to any express indemnity the managing member may give to Healthpeak OP or in connection with a redemption. The LLC Agreement also provides that any obligation or liability in its capacity as the managing member of Healthpeak OP that may arise at any time under the LLC Agreement or any other instrument, transaction or undertaking contemplated by the LLC Agreement will be satisfied, if at all, out of its assets or the assets of Healthpeak OP only, and no such obligation or liability will be personally binding upon any of its directors, stockholders, officers, employees or agents.

In its capacity as managing member, the managing member is entitled to a presumption that any act or failure to act on the part of the managing member, and any decision or determination made by it, is presumed to satisfy its duties as the managing member, whether under the LLC Agreement or otherwise existing at law or in equity, and no act or failure to act by the managing member, or decision or determination made by it (whether with respect to a change of control of Healthpeak OP or otherwise) shall be subject to any duty, standard of conduct, burden of proof or scrutiny, whether at law or in equity, or otherwise set forth in the LLC Agreement.

In addition, the LLC Agreement provides that, to the fullest extent that a Maryland corporation may indemnify and advance expenses to directors and officers of a Maryland corporation under the laws of the State of Maryland, Healthpeak OP will indemnify, and will pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, any indemnitee (as defined in the LLC Agreement) who is made or threatened to be made a party to, or witness in, a proceeding by reason of his or her service as an indemnitee. The LLC Agreement provides that, without limitation, the foregoing indemnity will extend to any liability of any indemnitee, pursuant to a loan guaranty or otherwise, for any indebtedness of Healthpeak OP or any subsidiary of Healthpeak OP (including, without limitation, any indebtedness that Healthpeak OP or any subsidiary of Healthpeak OP has assumed or taken subject to). The LLC Agreement further provides that Healthpeak OP may indemnify each indemnitee to the fullest extent permitted by law and the LLC Agreement. The LLC Agreement provides that the termination of any proceeding by judgment, order or settlement does not create a presumption that the indemnitee did not meet the requisite standard of conduct set forth in the LLC Agreement, and that the termination of any proceeding by conviction of an indemnitee or upon a plea of nolo contendere or its equivalent by an indemnitee, or an entry of an order of probation against an indemnitee prior to judgment, does not create a presumption that such indemnitee acted in a manner contrary to that specified in the LLC Agreement with respect to the subject matter of such proceeding. The LLC Agreement further provides that any indemnification pursuant to the LLC Agreement will be made only out of the assets of Healthpeak OP, and neither the managing member nor any other holder will have any obligation to contribute to the capital of Healthpeak OP or otherwise provide funds to enable Healthpeak OP to fund its indemnification obligations under the LLC Agreement. Under the LLC Agreement, an “indemnitee” includes the managing member, each of the managing member’s present or former directors and officers of Healthpeak OP or the managing member, and such other persons (including affiliates or employees of the managing member or Healthpeak OP) as Healthpeak OP may designate from time to time in its sole and absolute discretion.

Healthpeak OP's obligation to indemnify or advance expenses under the LLC Agreement to any such person shall be reduced by any amount such person has actually received as indemnification or advancement of expenses from any other person, including the managing member or from any insurance policy or policies.

**Business Combinations and Dissolution of Healthpeak OP**

Subject to the limitations on the transfer of the managing member's interest in Healthpeak OP described in the LLC Agreement, the managing member generally has the exclusive power to cause Healthpeak OP to merge, reorganize, consolidate, sell all or substantially all of its assets or otherwise combine its assets with another entity. The managing member may also elect to dissolve Healthpeak OP without the consent of any additional member.

**Redemption Rights of Qualifying Parties**

Beginning 14 months after first acquiring such common units, each member and some assignees of the members will have the right, subject to the terms and conditions set forth in the LLC Agreement, to require Healthpeak OP to redeem all or a portion of the common units held by such member or assignee in exchange for a cash amount per common unit equal to the value of one share of the managing member's common stock, determined in accordance with and subject to adjustment under the LLC Agreement. Healthpeak OP's obligation to redeem common units does not arise and is not binding against Healthpeak OP until the 31st business day after the managing member receives the holder's notice of redemption or, if earlier, the day the managing member notifies the holder seeking redemption that the managing member has declined to acquire some or all of the common units tendered for redemption.

On or before the close of business on the 30th business day after a holder of common units gives notice of redemption to the managing member, the managing member may, in its sole and absolute discretion but subject to the restrictions on the ownership and transfer of its stock set forth in its charter, elect to acquire some or all of the common units tendered for redemption from the tendering party in exchange for shares of its common stock, based on an exchange ratio of one share of common stock for each common unit, subject to adjustment as provided in the LLC Agreement. The LLC Agreement does not require the managing member to register, qualify or list any shares of common stock issued in exchange for common units with the SEC, with any state securities commissioner, department or agency, under the Securities Act or the Exchange Act or with any stock exchange.

**Transfers of Membership Interests**

***Restrictions on Transfers by Members.*** Until the expiration of 14 months after the date on which a member acquires a membership interest, no member generally may directly or indirectly transfer all or any portion of such membership interest without the managing member's consent, which the managing member may give or withhold in its sole and absolute discretion, except for certain permitted transfers to certain affiliates, family members and charities, and certain pledges of membership interests, except as provided for in the LLC Agreement, to lending institutions in connection with bona fide loans. After the expiration of such initial holding period, the member will have the right to transfer all or any portion of its membership interest without the managing member's consent to any person that is an "accredited investor," within the meaning set forth in Rule 501 promulgated under the Securities Act, upon ten business days prior notice to the managing member, subject to certain provisions of the LLC Agreement and the satisfaction of conditions specified in the LLC Agreement, including minimum transfer requirements and the managing member's right of first refusal.

***Restrictions on Transfers by the Managing Member.*** Except as described below, any transfer of all or any portion of the managing member's interest in Healthpeak OP, whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise, must be approved by the consent of the non-managing members (excluding, for purposes of such consent, any outstanding LTIP Units). Subject to the rights of holders of any class or series of membership interest, the managing member may transfer all (but not less than all) of its membership interest without the consent of the non-managing members in connection with a permitted termination transaction, which is a merger, consolidation or other combination of the managing member's assets with another entity, a sale of all or substantially all of the managing member's assets not in the ordinary course of business, or a reclassification, recapitalization or change in any outstanding shares of its stock or other outstanding equity interests, if:

- in connection with such event, all of the members will receive or have the right to elect to receive, for each common unit, the greatest amount of cash, securities or other property paid to a holder of one share of the managing member's common stock (subject to adjustment in accordance with the LLC Agreement) in the transaction and, if a purchase, tender or exchange offer is made and accepted by holders of the managing member's common stock in connection with the event, each holder of common units receives, or has the right to elect to receive, the greatest amount of cash, securities or other property that the holder would have received if it had exercised its redemption right and received shares of the managing member's common stock in exchange for its common units immediately before the expiration of the purchase, tender or exchange offer and had accepted the purchase, tender or exchange offer; or

- substantially all of the assets of Healthpeak OP will be owned by a surviving entity (which may be Healthpeak OP or another limited liability company or entity) in which the members of Healthpeak OP holding common units immediately before the event will hold a percentage interest based on the relative fair market value of the net assets of Healthpeak OP and the other net assets of the surviving entity immediately before the event, which interest will be on terms that are at least as favorable as the terms of the common units in effect immediately before the event and as those applicable to any other non-managing members or owners of the surviving entity and will include a right to redeem interests in the surviving entity for the consideration described in the preceding bullet or cash on similar terms as those in effect with respect to the common units immediately before the event, or, if common equity securities of the person controlling the surviving entity are publicly traded, such common equity securities.

The managing member may also transfer all (but not less than all) of its interest in Healthpeak OP to an affiliate of the managing member without the consent of any non-managing members, subject to the rights of holders of any class or series of membership interest.

In addition, any transferee of the managing member's interest in Healthpeak OP must be admitted as a managing member of Healthpeak OP, assume, by operation of law or express agreement, all of the managing member's obligations as managing member under the LLC Agreement, accept all of the terms and conditions of the LLC Agreement and execute such instruments as may be necessary to effectuate the transferee's admission as a managing member.

The managing member may not voluntarily withdraw as the managing member of Healthpeak OP without the consent of a majority in interest of the non-managing members, other than upon the transfer of the managing member's entire interest in Healthpeak OP and the admission of its successor as a managing member of Healthpeak OP.

**LTIP Units**

Healthpeak OP is authorized to issue a class of units of membership interest designated as "LTIP Units." The managing member may cause Healthpeak OP to issue LTIP Units to persons who provide services to or for the benefit of Healthpeak OP, for such consideration or for no consideration as the managing member may determine to be appropriate, and the managing member may admit such persons as members of Healthpeak OP, without the approval or consent of any additional member. Further, the managing member may cause Healthpeak OP to issue LTIP Units in one or more classes or series, with such terms as the managing member may determine, without the approval or consent of any additional member. LTIP Units may be subject to vesting, forfeiture and restrictions on transfer and receipt of distributions pursuant to the terms of any applicable equity-based plan and the terms of any award agreement relating to the issuance of the LTIP Units.

***Conversion Rights***. Vested LTIP Units are convertible at the option of each member and some assignees of the members (in each case, that hold vested LTIP Units) into common units, upon notice to the managing member and Healthpeak OP, to the extent that the capital account balance of the LTIP unitholder with respect to such LTIP Units is at least equal to the managing member's capital account balance with respect to an equal number of common units. The Managing member may cause Healthpeak OP to convert vested LTIP Units eligible for conversion into an equal number of common units at any time, upon not less than three calendar days' notice prior to the conversion date.

If the managing member or Healthpeak OP is party to a transaction, including a merger, consolidation, sale of all or substantially all of its assets or other business combination, as a result of which common units are exchanged for or converted into the right, or holders of common units are otherwise entitled, to receive cash, securities or other property (or any combination thereof), the managing member must cause Healthpeak OP to convert any vested LTIP Units then eligible for conversion into common units immediately before the transaction, taking into account any special allocations of income that would be made as a result of the transaction. Healthpeak OP must use commercially reasonable efforts to cause each member (other than a party to such a transaction or an affiliate of such a party) holding LTIP Units that will be converted into common units in such a transaction to be afforded the right to receive the same kind and amount of cash, securities and other property (or any combination thereof) for such common units that each holder of common units receives in the transaction.

***Transfer***. Unless an applicable equity-based plan or the terms of an award agreement specify additional restrictions on transfer of LTIP Units, LTIP Units are transferable to the same extent, and subject to the same restrictions, as common units, as described above in the section entitled "Transfers of Membership Interests."

***Voting Rights***. Members holding LTIP Units are entitled to vote together as a class with members holding common units on all matters on which members holding common units are entitled to vote or consent, and may cast one vote for each LTIP Unit so held.

***Adjustment of LTIP Units***. If Healthpeak OP takes certain actions, including making a distribution of units on all outstanding common units, combining or subdividing the outstanding common units into a different number of common units or reclassifying the outstanding common units, the managing member must adjust the number of outstanding LTIP Units or subdivide or combine outstanding LTIP Units to maintain a one-for-one conversion ratio and economic equivalence between common units and LTIP Units.

**Preferred Units**

Healthpeak OP is authorized to issue preferred units. As of February 10, 2023, there are no preferred units issued or outstanding. Preferred units rank senior to the common units and LTIP Units. Holders of series preferred units are entitled to receive preferential cash distributions in an amount to be fixed at the time of issuance of such units. Holders of preferred units are also entitled to receive a liquidation preference in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Healthpeak OP that are substantially similar to those of the managing member's preferred stock (but, in the case of distributions upon the liquidation, dissolution or winding up of the affairs of Healthpeak OP, only to the extent consistent with a liquidation in accordance with positive capital account balances). Preferred units are also subject to redemption by Healthpeak OP in connection with the managing member's reacquisition of shares of its preferred stock.

***Conversion Rights***. Preferred units will be converted into common units in the event of a conversion of the managing member's preferred stock, at the option of holders of shares of preferred stock pursuant to the articles supplementary designating the terms of the preferred stock.

***Transfer***. Preferred units are transferrable to the same extent as common units.

***Voting Rights***. The managing member will not have any voting or consent rights in respect of its membership interest represented by the preferred units.

**Amendments to Loan Agreements**

Following the LLC Conversion, on February 10, 2023, Healthpeak OP and New Healthpeak entered into (i) the Consent and Amendment No. 1 to its Second Amended and Restated Credit Agreement, dated as of September 20, 2021, by and among Old Healthpeak, the lenders listed therein and Bank of America, N.A., as administrative agent (the "Credit Agreement"), and (ii) the Consent and Amendment No. 1 to its Term Loan Agreement, dated August 22, 2022, by and among Old Healthpeak, the lenders listed therein and Bank of America, N.A., as administrative agent (the "Term Loan Agreement" and such amendments in items (i) and (ii), collectively the "Amendments"). Among other things, the Amendments (i) give effect to or otherwise take account of, and provide the consent of the applicable lenders to, the Merger and the LLC Conversion, as applicable, and join New Healthpeak as a guarantor of Healthpeak OP's obligations under the Credit Agreement and Term Loan Agreement and (ii) provide for the transition from U.S. dollar London Interbank Offered Rate (LIBOR) to Term Secured Overnight Financing Rate (SOFR) for floating rate borrowings denominated in U.S. dollars for all purposes under the Credit Agreement and the Term Loan Agreement. Healthpeak OP, as successor to Old Healthpeak following the LLC Conversion, will remain the borrower under the Credit Agreement and the Term Loan Agreement.

The foregoing summary of the Amendments is qualified in its entirety by reference to the terms and conditions of the Amendments, which are filed herewith as Exhibits 10.2 and 10.3 and incorporated by reference herein.

**Supplemental Indentures**

In connection with the Merger, on February 10, 2023, Healthpeak OP and New Healthpeak entered into (i) a supplemental indenture (the "1993 Supplemental Indenture") with The Bank of New York Mellon Trust Company, N.A. to Old Healthpeak's indenture, dated as of September 1, 1993 (the "1993 Indenture"), and (ii) a supplemental indenture (the "2012 Supplemental Indenture" and, together with the 1993 Supplemental Indenture, the "Supplemental Indentures") with The Bank of New York Mellon Trust Company, N.A., to Old Healthpeak's indenture, dated as of November 19, 2012 (the "2012 Indenture" and, together with the 1993 Indenture, the "Base Indentures"), in each case, to, among other things, have New Healthpeak fully and unconditionally guarantee all existing and future senior notes previously issued and to be issued under the applicable Base Indenture and cure ambiguities in certain supplemental indentures to the applicable Base Indenture resulting from the Merger. The foregoing summary of the Supplemental Indentures is qualified in its entirety by reference to the terms and conditions of each of the 1993 Supplemental Indenture and the 2012 Supplemental Indenture, which are filed herewith as Exhibits 4.1 and 4.2, respectively, and incorporated by reference herein.

**Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

In connection with the Merger, Old Healthpeak notified the NYSE that the Merger had been completed. The New Healthpeak common stock is trading on the NYSE on an uninterrupted basis under the symbol "PEAK," which is the same symbol formerly used for common stock, par value $1.00 per share, of Old Healthpeak ("Old Healthpeak common stock"), and has retained the CUSIP number of 42250P103. The NYSE is expected to file with the Securities and Exchange Commission (the "SEC") an application on Form 25 to delist the Old Healthpeak common stock from the NYSE and to deregister the Old Healthpeak common stock under Section 12(b) of the Exchange Act. Old Healthpeak intends to file with the SEC a certificate on Form 15 requesting that the Old Healthpeak common stock be deregistered under the Exchange Act, and that Old Healthpeak's reporting obligations under Section 15(d) of the Exchange Act with respect to Old Healthpeak common stock be suspended (although Old Healthpeak will continue to be subject to the reporting requirements of Section 12(b) and 15(d) of the Exchange Act to the extent of the succession of New Healthpeak to the Exchange Act Section 12(b) registration and reporting obligations of Old Healthpeak as noted above under Explanatory Note).

Following the Reorganization, including both the Merger and the LLC Conversion, we expect only New Healthpeak will have Exchange Act reporting obligations. New Healthpeak expects to make filings with the SEC under Old Healthpeak's prior CIK (0000765880). Pursuant to Rule 3-10 of Regulation S-X, subsidiary issuers of obligations guaranteed by the parent are not required to provide separate financial statements, provided that the subsidiary obligor is consolidated into the parent company's consolidated financial statements and the parent guarantee is "full and unconditional." Following the Reorganization, New Healthpeak owns all of its assets and conducts all of its operations through Healthpeak OP, all outstanding senior notes issued by Healthpeak OP are fully and unconditionally guaranteed by New Healthpeak, and Healthpeak OP will be consolidated into Healthpeak Properties, Inc.'s consolidated financial statements. Accordingly, as permitted under Rule 13-01(a)(4)(vi) of Regulation S-X, separate consolidated financial statements of Healthpeak OP are not expected to be presented in any filing pursuant to the Exchange Act or the Securities Act.

**Item 3.03 Material Modification of Rights of Securityholders.**

The information set forth under and/or incorporated by reference into Items 3.01 and 8.01 is incorporated hereunder by reference.

**Item 5.01 Changes in Control of the Registrant.**

The information set forth under and/or incorporated by reference into Items 3.01 and 8.01 is incorporated hereunder by reference.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

The information set forth under and/or incorporated by reference into Items 3.01 and 8.01 is incorporated hereunder by reference.

The management and board of directors of New Healthpeak immediately after the Merger is identical to the management and board of directors of Old Healthpeak immediately before the Merger. The executive officers of Old Healthpeak immediately before the Merger serve in the same positions and hold the same titles with New Healthpeak immediately after the Merger and the LLC Conversion.

**Amendment to Amended and Restated 2014 Performance Incentive Plan**

Effective February 10, 2023, the board of directors of Old Healthpeak adopted an amendment (the "Plan Amendment") to the Amended and Restated Healthpeak Properties, Inc. 2014 Performance Incentive Plan (the "2014 Plan"), which among other things provides that the plan administrator is authorized to grant awards of LTIP Units under the 2014 Plan to eligible employees, directors or consultants in such amounts and subject to such terms and conditions as may be determined by the plan administrator. Pursuant to the Plan Amendment, LTIP Units are intended to constitute "profits interests" within the meaning of the Internal Revenue Code and may only be issued to an eligible individual for the performance of services to or for the benefit of Healthpeak OP in the individual's capacity as a member of Healthpeak OP, in anticipation of the individual becoming a member of Healthpeak OP, or as otherwise determined by the plan administrator. The Plan Amendment provides that each LTIP Unit subject to an award under the 2014 Plan shall be treated as a share of common stock (or, for purposes of applying the full-value award ratio under the 2014 Plan, 1.5 shares of common stock) for purposes of calculating the aggregate number of shares of common stock available for issuance under the 2014 Plan and for purposes of the other award limits under the 2014 Plan. The adoption of the Plan Amendment was subject to and conditioned upon, and became effective as of the date of, the consummation of the Merger and the LLC Conversion.

The foregoing description of the Plan Amendment is qualified in its entirety by reference to the complete text of the Plan Amendment, which is filed herewith as Exhibit 10.5 and incorporated by reference herein.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

The information set forth under and/or incorporated by reference into Items 3.01 and 8.01 is incorporated hereunder by reference.

**Item 7.01 Regulation FD Disclosure.**

On February 10, 2023, the Company issued a press release announcing that it has completed the Reorganization and posted a set of Frequently Asked Questions about the Reorganization on its website. Copies of the press release and Frequently Asked Questions about the Reorganization have been furnished as Exhibits 99.1 and 99.2, respectively, to this Current Report, and are incorporated herein solely for purposes of this Item 7.01 disclosure.

The information set forth in this Item 7.01 of this Current Report on Form 8-K and the related information in Exhibits 99.1 and 99.2 attached hereto is being furnished herewith, and shall not be deemed filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section and shall not be incorporated by reference in any filing with, the SEC under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference therein.

**Item 8.01 Other Events.**

The information set forth above under Explanatory Note is incorporated hereunder by reference.

**Merger Agreement**

As disclosed above, the Merger became effective on February 10, 2023. The Merger, which was approved by Old Healthpeak's board of directors on February 2, 2023, was conducted in accordance with Section 3-106.2 of the Maryland General Corporation Law. Accordingly, the Merger did not require the approval of Old Healthpeak's stockholders, and the Merger did not give rise to statutory dissenters' rights. The Merger is expected to qualify as a reorganization under Section 368(a)(1)(F) of the Code and Old Healthpeak's stockholders are not expected to recognize gain or loss for federal income tax purposes as a result of the Merger. Following the Merger, New Healthpeak intends to qualify as a REIT for federal income tax purposes.

Immediately prior to the Effective Time, New Healthpeak filed Articles of Amendment and Restatement (the "New Healthpeak Charter"), such that the New Healthpeak Charter and the Bylaws of New Healthpeak (the "New Healthpeak Bylaws") immediately following the Effective Time were identical to the charter and bylaws of Old Healthpeak in effect immediately before the Effective Time other than certain changes to the charter permitted by the Maryland General Corporation Law. Accordingly, each share of New Healthpeak common stock has the same designations, rights, powers and preferences, and the qualifications, limitations, restrictions and other terms as the corresponding share of Old Healthpeak common stock immediately prior to the Effective Time. Following the Effective Time, New Healthpeak filed Articles of Amendment to reflect its name change and adopted Amended and Restated Bylaws to (i) reflect its name change, (ii) provide for universal proxy cards in accordance with Rule 14a-19 of the Exchange Act and (iii) make certain technical, conforming, modernizing and clarifying changes.

The foregoing summaries of the Merger Agreement, New Healthpeak Charter, Articles of Amendment, New Healthpeak Bylaws and Amended and Restated Bylaws of New Healthpeak are qualified in their entirety by reference to the Merger Agreement, New Healthpeak Charter, Articles of Amendment, New Healthpeak Bylaws and Amended and Restated Bylaws of New Healthpeak, which are filed herewith as Exhibits 2.1, 3.1, 3.2, 3.3 and 3.4, respectively, and incorporated by reference herein.

**Outstanding Equity Plans, Awards and Related Arrangements**

Pursuant to the Merger Agreement, (i) at the Effective Time, each outstanding equity-based award covering shares of Old Healthpeak common stock will automatically be converted into an award covering an equal number of shares of New Healthpeak common stock on the same terms and conditions as applied to the corresponding award immediately prior to the Merger, and (ii) on February 15, 2023 (or such other date as may be determined by New Healthpeak that is at least one but not more than 10 business days following the date on which the Effective Time occurs) (the "LTIP Unit Issuance Date"), each such converted restricted stock unit award held by an employee at or above the level of Executive Vice President that the holder has elected to cancel and replace with an award of LTIP Units of Healthpeak OP (each, an "elected RSU award") will automatically be cancelled and replaced with an award covering (x) with respect to each time-vesting elected RSU award, an equal number of LTIP Units in Healthpeak OP, and (y) with respect to each performance-vesting elected RSU award, a number of LTIP Units in Healthpeak OP equal to the product obtained by multiplying the number of restricted stock units subject to such award by 2.5, which reflects the maximum number of LTIP units that may be earned under the award. Each such LTIP Unit award will be subject to the same vesting terms and conditions as applied to the corresponding restricted stock unit award immediately prior to the LTIP Unit Issuance Date and to such other terms and conditions as are set forth in the applicable award agreements governing awards of LTIP Units granted under the 2014 Plan.

Pursuant to the Merger Agreement and an Omnibus Assignment, Assumption and Amendment entered into between Old Healthpeak and New Healthpeak (the "Omnibus Assignment"), Old Healthpeak assigned to New Healthpeak, and New Healthpeak assumed from Old Healthpeak, all of Old Healthpeak's rights and obligations under (i) the 2014 Plan and all outstanding awards and award agreements thereunder, other than any future rights and obligations of Healthpeak OP with respect to any LTIP Units, (ii) the Healthpeak Properties, Inc. Non-Employee Directors Stock-for-Fees Program, (iii) the Healthpeak Properties, Inc. Executive Severance Plan, (iv) the Healthpeak Properties, Inc. Executive Change in Control Severance Plan, (v) the Healthpeak Properties, Inc. Non-Executive Change in Control Severance Plan, (vi) the Healthpeak Properties, Inc. 2006 Performance Incentive Plan (as amended through the Effective Time) and all outstanding awards and award agreements thereunder, (vii) the HCP, Inc. Second Amended and Restated Director Deferred Compensation Plan, (viii) the Healthpeak Properties, Inc. Dividend Reinvestment and Stock Purchase Plan, (ix) the Healthpeak Properties, Inc. 2022 Short-Term Incentive Plan and all outstanding awards and award agreements thereunder, (x) any other plans, policies, agreements and commitments of Old Healthpeak in effect as of immediately before the Effective Time with respect to the issuance of capital shares of Old Healthpeak, as compensation or otherwise, to employees, directors or other persons and (xi) all of Old Healthpeak's obligations with respect to the payment of an amount equal to the aggregate amount of any and all dividends or other distributions to Old Healthpeak's shareholders that were authorized and declared by Old Healthpeak but not paid prior to the Effective Time. From and after the Effective Time, all documentation pertaining to the foregoing will be deemed amended as necessary to provide that references to Old Healthpeak therein shall be read to refer to New Healthpeak. In addition, the Omnibus Assignment provides for (i) the assignment and amendment of certain provisions contained in the partnership and limited liability company agreements governing certain downREIT and other subsidiaries and any registration rights agreements entered into in connection therewith and (ii) the assignment of certain tax protective provisions.

The foregoing summary of the Omnibus Assignment is qualified in its entirety by reference to the Omnibus Assignment, which is filed herewith as Exhibit 10.4 and incorporated by reference herein.

**Forward-Looking Statements**

This Current Report on Form 8-K contains "forward-looking" statements within the meaning of federal securities laws. When the Company uses words such as "may," "will," "intend," "should," "believe," "expect," "anticipate," "project," "estimate" or similar expressions that do not relate solely to historical matters, it is making forward-looking statements. Forward-looking statements, including, but not limited to, statements regarding the impacts of the Reorganization on the Company's financial condition, business operations, financial statements and outstanding securities and the Company's ability to realize the expected benefits of Reorganization, are not guarantees of future performance and involve risks and uncertainties that may cause the Company's actual results to differ materially from the Company's expectations discussed in the forward-looking statements. This may be a result of various factors, including, but not limited to, the risk that changes in legislation or regulations may change the tax consequences of the Reorganization, and those factors discussed in Healthpeak Properties, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2022 and other reports filed from time to time with the SEC. The Company undertakes no obligation to update or revise publicly any forward-looking statements, whether because of new information, future events or otherwise, or to update the reasons why actual results could differ from those projected in any forward-looking statements.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

| | |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated February 7, 2023, by and among Healthpeak Properties, Inc., New Healthpeak, Inc. and Healthpeak Merger Sub, Inc.* |
| 3.1 | Articles of Amendment and Restatement of Healthpeak Properties, Inc. (formerly New Healthpeak, Inc.) |
| 3.2 | Articles of Amendment of Healthpeak Properties, Inc. (formerly New Healthpeak, Inc.) |
| 3.3 | Bylaws of New Healthpeak, Inc. |
| 3.4 | Amended and Restated Bylaws of Healthpeak Properties, Inc. (formerly New Healthpeak, Inc.) |
| 3.5 | Articles of Merger. |
| 4.1 | Second Supplemental Indenture, dated as of February 10, 2023, between Healthpeak OP, LLC, as issuer, Healthpeak Properties, Inc., as guarantor, and The Bank of New York Mellon Trust Company, N.A., as trustee. |
| 4.2 | Fourteenth Supplemental Indenture, dated as of February 10, 2023, between Healthpeak OP, LLC, as issuer, Healthpeak Properties, Inc., as guarantor, and The Bank of New York Mellon Trust Company, N.A., as trustee. |
| 10.1 | Operating Agreement of Healthpeak OP, LLC, dated as of February 10, 2023. |
| 10.2 | Consent and Amendment No. 1 to Second Amended and Restated Credit Agreement, dated as of February 10, 2023, by and among Healthpeak OP, LLC, Healthpeak Properties, Inc., the lenders listed therein and Bank of America, N.A., as administrative agent. |
| 10.3 | Consent and Amendment No. 1 to Term Loan Agreement, dated as of February 10, 2023, by and among Healthpeak OP, LLC, Healthpeak Properties, Inc., the lenders listed therein and Bank of America, N.A., as administrative agent. |
| 10.4 | Omnibus Assignment, Assumption and Amendment, dated February 7, 2023 by and between Healthpeak Properties, Inc. and New Healthpeak, Inc. |
| 10.5 | First Amendment to Amended and Restated Healthpeak Properties, Inc. 2014 Performance Incentive Plan. |
| 99.1 | Press release of Healthpeak Properties, Inc., dated February 10, 2023. |
| 99.2 | Frequently Asked Questions About the Reorganization into an UPREIT Structure, dated February 10, 2023. |
| 104 | Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document. |

* Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(b)(2). The Registrant agrees to furnish supplementally a copy of all omitted exhibits and schedules to the Securities and Exchange Commission upon its request.

**SIGNATURE**

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

**Healthpeak Properties, Inc.**

By: /s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

Date: February 10, 2023

**Exhibit 2.1**

***Execution Version***

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**AGREEMENT AND PLAN OF MERGER**

**by and among**

**HEALTHPEAK PROPERTIES, INC.,**

**NEW HEALTHPEAK, INC.**

**and**

**HEALTHPEAK MERGER SUB, INC.**

**Dated as of February 7, 2023**

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**AGREEMENT AND PLAN OF MERGER**

This **AGREEMENT AND PLAN OF MERGER** (this "***Agreement***") is entered into as of February 7, 2023 by and among Healthpeak Properties, Inc., a Maryland corporation (the "***Company***"), New Healthpeak, Inc., a Maryland corporation ("***Holdco***"), and Healthpeak Merger Sub, Inc., a Maryland corporation ("***Merger Sub***" and, together with the Company and Holdco, collectively the "***Parties***").

**BACKGROUND**

WHEREAS, from its formation Holdco has been, and until consummation of the Merger (as defined herein) Holdco will be, at all times a direct wholly owned subsidiary of the Company, and, as of the date hereof, Holdco also owns all of the issued and outstanding shares of capital stock of Merger Sub;

WHEREAS, the charter of Holdco (the "***Holdco Charter***") and the bylaws of Holdco (the "***Holdco Bylaws***") that will be in effect immediately following the Effective Time (as defined herein) contain, or will contain, provisions identical to the charter of the Company (the "***Company Charter***") and the Sixth Amended and Restated Bylaws of the Company (the "***Company Bylaws***"), in effect as of the date hereof and that will be in effect immediately prior to the Effective Time, respectively, other than such differences as are allowed under Section 3-106.2(b)(4) of the Maryland General Corporation Law (the "***MGCL***");

WHEREAS, the Parties intend to effect a reorganization pursuant to which Merger Sub will merge with and into the Company, with the Company being the surviving entity (the "***Merger***"). In connection with the Merger and at the Effective Time, (i) each share of capital stock of the Company outstanding immediately prior to the Effective Time will be converted automatically into one corresponding share of capital stock of Holdco, (ii) each share of capital stock of Merger Sub outstanding immediately prior to the Effective Time will be converted automatically into one corresponding share of capital stock of the Surviving Entity (as defined herein) and (iii) each share of capital stock of Holdco outstanding immediately prior to the Effective Time will be cancelled, in each case as more fully described herein. At the Effective Time, the Company will change its name as set forth herein, and, immediately following the Effective Time, Holdco will change its name to "Healthpeak Properties, Inc." (*i.e.*, the prior name of the Company);

WHEREAS, following the Effective Time, the Surviving Entity will convert (the "***Conversion***") from a Maryland corporation to a Maryland limited liability company to be named "Healthpeak OP, LLC" (the "***Operating Company***"). Upon the Conversion, Holdco (which will have changed its name to Healthpeak Properties, Inc. prior to the Conversion as contemplated by the immediately preceding recital) will be the managing member of, and will exercise exclusive control over, the Operating Company, and will initially be the sole member of the Operating Company. As used in this Agreement, the term "***Reorganization***" refers to the Merger and the Conversion collectively;

WHEREAS, a majority of the entire board of directors of each of the Company, Holdco and Merger Sub has unanimously declared advisable and approved the Merger, and Holdco, as the sole stockholder of Merger Sub, has approved the Merger. Pursuant to Section 3-106.2 of the MGCL, the Merger does not require the approval of the stockholders of the Company; and

WHEREAS, it is intended that, for U.S. federal income tax purposes (and, where applicable, state and local tax purposes), the Reorganization shall qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "***Code***"), and this Agreement shall constitute a "plan of reorganization" within the meaning of the Code and the Treasury regulations promulgated thereunder.

## AGREEMENT

NOW THEREFORE, in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

## ARTICLE 1
## THE MERGER

**Section 1.1** **Merger**. In accordance with the provisions of this Agreement, the Articles of Merger (as defined below) and Section 3-106.2 of the MGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, the separate existence of Merger Sub shall cease, and the Company shall continue as the surviving entity under the laws of the State of Maryland.

**Section 1.2** **Effective Time and Execution**. Subject to the terms and conditions of this Agreement, at a time of their choosing, the Parties shall cause the articles of merger pertaining to the Merger, substantially in the form of Exhibit A hereto (the "***Articles of Merger***"), to be executed and filed with the Maryland State Department of Assessments and Taxation in the manner provided under Maryland law. The Merger shall become effective at the effective time set forth in the Articles of Merger as filed with and accepted for record by the Maryland State Department of Assessments and Taxation (the "***Effective Time***"). The Company, as it will exist from and after the Effective Time, is herein sometimes referred to as the "***Surviving Entity***."

**Section 1.3** **Name of Surviving Entity**. At the Effective Time, the Company will amend the Company Charter as part of the Merger to change its name to "Healthpeak Properties Interim, Inc." The name of the Surviving Entity following the Merger and prior to the Conversion shall be "Healthpeak Properties Interim, Inc."

**Section 1.4** **Effect of the Merger**.

(a) The Merger shall, from and after the Effective Time, have the effects provided for in the MGCL (including, without limitation, Section 3-114 thereof), except as otherwise provided in this Agreement.

(b) Without limitation of paragraph (a) above, at the Effective Time, (i) all of the rights, privileges, powers and franchises and all property (real, personal and mixed) of the Company shall automatically vest in the Surviving Entity, (ii) all debts, liabilities and duties of the Company shall automatically attach to and become the responsibility of the Surviving Entity, (iii) all company acts, plans, policies, contracts, approvals and authorizations of the Company that were valid and effective immediately prior to the Effective Time shall be taken for all purposes as the acts, plans, policies, contracts, approvals and authorizations of the Surviving Entity and shall be effective and binding on the Surviving Entity as the same were with respect to the Company, (iv) any action or proceeding, whether civil, criminal or administrative, pending by or against the Company may be prosecuted as if the Merger had not taken place or the Surviving Entity may be substituted for the Company in any such action or proceeding and (v) any employees of the Company at the Effective Time shall be employees of the Surviving Entity.

**Section 1.5 Governing Documents**.

(a) Surviving Entity. At the Effective Time, the Company Charter as in effect immediately prior to the Effective Time shall be the charter of the Surviving Entity, except that the charter of the Surviving Entity shall be amended as of the Effective Time, as part of the Merger, to change the name of the Surviving Entity to Healthpeak Properties Interim, Inc. At the Effective Time, the Company Bylaws as in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Entity. Following the Effective Time, the Surviving Entity will undertake the Conversion.

(b) Holdco. Holdco shall amend and restate its Articles of Incorporation effective as of the Effective Time so that the Holdco Charter in effect immediately following the Effective Time is identical to the Company Charter in effect immediately prior to the Effective Time, other than such differences as are allowed under Section 3-106.2(b)(4) of the MGCL. Holdco shall further amend the Holdco Charter effective immediately following the Effective Time to change its name to "Healthpeak Properties, Inc." The Holdco Bylaws in effect immediately following the Effective Time will be identical to the Company Bylaws in effect immediately prior to the Effective Time.

**Section 1.6 Officers and Directors**. The persons serving as officers and directors of the Company immediately prior to the Effective Time shall (a) continue to hold office as officers and directors, respectively, of the Surviving Entity at and from the Effective Time until changed in accordance with the applicable organizational documents thereof and (b) be the officers and directors, respectively, of Holdco at the Effective Time and will continue to hold office as the officers and directors of Holdco from the Effective Time until the earlier of their resignation or removal and, in the case of such directors, until their successors are duly elected or appointed and qualified, all in the manner provided in the Holdco Charter and the Holdco Bylaws, or as otherwise provided by law.

**Section 1.7 Effect on Shares of Capital Stock**. At the Effective Time, by virtue of the Merger and without any action on the part of the Parties:

(a) Company Common Stock. Each share of common stock, par value $1.00 per share, of the Company ("***Company Common Stock***") issued and outstanding immediately prior to the Effective Time shall automatically convert, on a one-for-one basis, into one share of common stock, par value $1.00 per share, of Holdco ("***Holdco Common Stock***").

(b) Merger Sub Common Stock. Each share of common stock, par value $0.01 per share, of Merger Sub ("***Merger Sub Common Stock***") issued and outstanding immediately prior to the Effective Time shall automatically convert, on a one-for-one basis, into one share of common stock, par value $1.00 per share, of the Surviving Entity.

(c) Holdco Common Stock. Each share of Holdco Common Stock issued and outstanding immediately prior to the Effective Time and owned by the Company shall automatically be cancelled and cease to be issued and outstanding at the Effective Time, and no payment shall be made therefor, and the Company, by execution of this Agreement, agrees to forfeit such shares and relinquish any rights to such shares.

Immediately prior to the Effective Time, there will be no shares of stock of any class of the Company, Holdco or the Merger Sub issued and outstanding other than the Company Common Stock, the Holdco Common Stock and the Merger Sub Common Stock.

(d) Treatment of Equity Awards.

(i) Each option to acquire shares of Company Common Stock issued pursuant to the Company's Amended and Restated 2006 Performance Incentive Plan (the "***2006 Plan***") or the Company's Amended and Restated 2014 Performance Incentive Plan (the "***2014 Plan***" and, together with the 2006 Plan, the "***Company Stock Plans***") (each, a "***Company Option***") that is outstanding immediately prior to the Effective Time (whether or not then vested or exercisable) shall at the Effective Time automatically (and without any further action being required on the part of the holders thereof, the Company or Holdco) be converted into an option to acquire the same number of shares of Holdco Common Stock at the same price per share of Holdco Common Stock and subject to the same terms and conditions, including vesting and exercisability terms, as the Company Option immediately prior to the Effective Time.

(ii) Each restricted stock unit award with respect to shares of Company Common Stock granted pursuant to a Company Stock Plan (each, a "***Company RSU Award***" and, together with the Company Options, the "***Equity Awards***")) that is outstanding immediately prior to the Effective Time shall, at the Effective Time, automatically (and without any further action being required on the part of the holders thereof, the Company or Holdco) be converted into a restricted stock unit award with respect to the same number of shares of Holdco Common Stock and subject to the same terms and conditions, including vesting terms, as the Company RSU Award immediately prior to the Effective Time (each a "***Holdco RSU Award***").

(iii) Each Holdco RSU Award held by an employee of the Company or its subsidiaries at or above the level of Executive Vice President that is outstanding immediately prior to the LTIP Unit Issuance Date (as defined below) and which the holder thereof has validly elected to cancel and replace with an award of LTIP Units (as defined in the Limited Liability Company Agreement of the Operating Company) (each, a "***Cancelled Holdco RSU Award***") shall, as of the LTIP Unit Issuance Date, automatically (and without any further action being required on the part of the holders thereof, the Company or Holdco) be cancelled and replaced with an award of LTIP Units covering (A) with respect to each time-vesting Cancelled Holdco RSU Award, a number of LTIP Units equal to the number of restricted stock units subject to such time-vesting Cancelled Holdco RSU Award as of immediately prior to the LTIP Unit Issuance Date (each, a "***Time-Vesting LTIP Unit Award***"), and (B) with respect to each performance-vesting Cancelled Holdco RSU Award, a number of LTIP Units equal to the product obtained by multiplying (x) the number of restricted stock units subject to such performance-vesting Cancelled Holdco RSU Award as of immediately prior to the LTIP Unit Issuance Date, by (y) 2.5 (each, a "***Performance-Vesting LTIP Unit Award***", and together with the Time-Vesting LTIP Unit Awards, the "***LTIP Unit Awards***"). Each Performance-Vesting LTIP Unit Award shall consist of (I) a number of "base units" (as defined in the applicable LTIP Unit award agreement) equal to the product obtained by multiplying (x) the number of restricted stock units subject to such performance-vesting Cancelled Holdco RSU Award as of immediately prior to the LTIP Unit Issuance Date, by (y) two (2.0), and (II) a number of "distribution equivalent units" (as defined in the applicable LTIP Unit award agreement) equal to the product obtained by multiplying (x) the number of restricted stock units subject to such performance-vesting Cancelled Holdco RSU Award as of immediately prior to the LTIP Unit Issuance Date, by (y) 0.5. Each LTIP Unit Award shall be subject to the same vesting terms and conditions as applied to the corresponding Cancelled Holdco RSU Award immediately prior to the LTIP Unit Issuance Date and such other terms and conditions as are set forth in the time-vesting and performance-vesting award agreements, as applicable, governing awards of LTIP Units granted by the Company under the 2014 Plan. For purposes of this Agreement, "***LTIP Unit Issuance Date***" shall mean February 15, 2023 or such other date as may be determined by Holdco in its discretion that is at least one (1) business day and not more than ten (10) business days following the date on which the Effective Time occurs.

(iv) At the Effective Time, Holdco shall assume, upon the closing of the Merger without the need for any further action by any person, all agreements and other documents setting forth the terms of each Company Option or Company RSU Award (the "***Assumed Award Agreements***").

(v) At the Effective Time, Holdco shall assume, upon the closing of the Merger without the need for any further action by any person, the Company Stock Plans and shall at and after the Effective Time, sponsor, maintain and administer the Company Stock Plans in accordance with their terms.

(vi) Notwithstanding and without limiting the foregoing, the Equity Awards (including the treatment of the Equity Awards in connection with the Merger), the Assumed Award Agreements and the Company Equity Plans shall be subject to the terms and conditions set forth in that certain Omnibus Assignment, Assumption and Amendment by and between the Company and Holdco, dated as of February 7, 2023.

**Section 1.8 Dissenter's Rights**. In accordance with the provisions of Section 3-202(c)(3) of the MGCL, no rights of objecting stockholders (*i.e.* dissenter's rights) will be available to the Company's stockholders in connection with the Merger.

**Section 1.9 No Required Surrender of Stock Certificates**.

(a) At and after the Effective Time: (i) where no physical certificate representing the shares of Company Common Stock has been issued in the name of a holder thereof, a "book-entry" (*i.e.*, a computerized or manual entry) shall be made in the stock records of Holdco to evidence the issuance to such holder of the number of uncertificated shares of Holdco Common Stock into which such shares of Company Common Stock have been converted pursuant to Section 1.7, and Holdco shall cause each stockholder holding shares of Holdco Common Stock in book-entry form to be provided such information as shall be required by or necessary to comply with Maryland law; (ii) each certificate that, immediately prior to the Effective Time, represented outstanding shares of Company Common Stock (each, a "***Company Certificate***") shall be deemed for all purposes to evidence ownership of, and to represent, the number of shares of Holdco Common Stock into which the shares of Company Common Stock represented by such Company Certificate immediately prior to the Effective Time have been converted pursuant to Section 1.7.

(b) The registered holder of any Company Certificate outstanding immediately prior to the Effective Time, as such holder appears in the books and records of the Company, or of the transfer agent in respect of the Company Common Stock, immediately prior to the Effective Time, shall, until such Company Certificate is surrendered for transfer or exchange, have and be entitled to exercise any voting and other rights with respect to, and to receive any dividends or other distributions on, the shares of Holdco Common Stock into which the shares of Company Common Stock represented by any such Company Certificate have been converted pursuant to Section 1.7, subject to the provisions of Maryland law.

(c) Following the Effective Time, Holdco may, in its discretion, mail or cause to be mailed, to the persons who were registered holders of Company Certificates immediately prior to the Effective Time, a letter of transmittal, in customary form, containing instructions for use in effecting the surrender of such Company Certificates, if the holder so chooses, in exchange for a certificate (a "***Holdco Certificate***"), or, in Holdco's discretion, uncertificated shares in book-entry form, representing the number of shares of Holdco Common Stock into which the shares of Company Common Stock represented by such Company Certificate have been converted pursuant to Section 1.7.

(d) Each Holdco Certificate shall comply with all requirements set forth in Holdco's charter or bylaws and applicable law with respect to, among other things, notice of certain restrictions on ownership and transferability of the shares of Holdco Common Stock represented thereby.

**Section 1.10** **Assumption of Benefit Plans**. At the Effective Time, upon the closing of the Merger and without the need for any further action by any person, Holdco shall assume each Company Benefit Plan (as defined below). For purposes of this Agreement, "***Company Benefit Plan***" shall mean (a) each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, that the Company or any of its subsidiaries maintains, sponsors, participates in, is a party or contributes to, or with respect to which the Company or any of its subsidiaries would reasonably be expected to have any liability and (b) each other employee benefit plan, program, contract, agreement or arrangement, whether written or unwritten, including, without limitation, any cash bonus or incentive compensation arrangement, retirement or deferred compensation plan, supplemental executive retirement plan, profit sharing plan, unemployment or severance compensation plan, fringe benefit perquisite, for any current or former employee or director of, or other independent contractor or individual service provider to, the Company or any of its subsidiaries that does not constitute an "employee benefit plan" (as defined in Section 3(3) of ERISA), that the Company or any of its subsidiaries maintains, sponsors, participates in, is a party or contributes to, or with respect to which the Company or any of its subsidiaries would reasonably be expected to have any liability, but excluding any plan or arrangement to the extent that such plan or arrangement is addressed in Section 1.7(d) of this Agreement and any employment agreement or offer letter. This Section 1.10 shall have the effect of the Company transferring to Holdco, and Holdco assuming responsibility for, each of the Company Benefit Plans, along with all of the rights and obligations of the Company or any of its subsidiaries under the Company Benefit Plans, effective as of the Effective Time.

**Section 1.11** **Share Transfer Books**. At the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of shares of Company Common Stock theretofore outstanding on the records of the Company.

**Section 1.12** **Plan of Reorganization and Plan of Exchange**. This Agreement is intended to constitute a "plan of reorganization" within the meaning of Treasury Regulations Section 1.368-2(g). Each Party shall use commercially reasonable efforts to cause the Reorganization to qualify, and will not take any actions or cause any actions to be taken that would prevent the Reorganization from qualifying, as a reorganization within the meaning of Section 368(a) of the Code.

**Section 1.13** **Successor Issuer**. It is the intent of the Parties that Holdco be deemed a "successor issuer" of the Company in accordance with Rule 12g-3 under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***") solely for purposes of the Exchange Act, and in accordance with Rule 414 under the Securities Act of 1933, as amended (the "***Securities Act***") solely for purposes of the Securities Act.

## ARTICLE 2
## MISCELLANEOUS

**Section 2.1** **Descriptive Headings**. Descriptive headings in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**Section 2.2** **Counterparts**. For the convenience of the Parties, this Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall constitute a single instrument. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the Maryland Uniform Electronic Transactions Act, the MGCL and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

**Section 2.3** **Successors and Assigns**. This Agreement may not be assigned by a Party without the written consent of the other Parties. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the successors and assigns of the Parties.

**Section 2.4** **Severability**. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 2.5** **Applicable Law.** This Agreement, and any controversy or proceeding arising hereunder or in connection herewith, whether sounding in contract or tort, and whether brought at law or in equity, shall be governed by, construed and enforced in accordance with the laws of the State of Maryland without regard to any conflict of laws principles.

**Section 2.6** **Amendment and Termination**. This Agreement may be amended or supplemented in any manner and from time to time prior to the Effective Time by a written instrument duly executed and delivered by all of the Parties. This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time by action taken by the boards of directors of the Parties. In the event of the termination and abandonment of this Agreement, this Agreement shall become void and have no effect, without any liability on the part of any Party or its directors, officers or stockholders.

(*Remainder of the page intentionally left blank*)

* * * * *

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed all as of the date first written above.

**HEALTHPEAK PROPERTIES, INC.**

/s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

**NEW HEALTHPEAK, INC.**

/s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

**HEALTHPEAK MERGER SUB, INC.**

/s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

*[Signature Page to Agreement and Plan of Merger]*

**Exhibit 3.1**

**NEW HEALTHPEAK, INC.**

**ARTICLES OF AMENDMENT AND RESTATEMENT**

New Healthpeak, Inc., a Maryland corporation (the "Corporation"), having its principal office in the State of Maryland at The Corporation Trust Incorporated, 2405 York Road, Suite 201, Lutherville Timonium, Maryland 21093-2264, hereby certifies to the State Department of Assessments and Taxation of Maryland (the "Department") that:

FIRST: The Corporation desires to and does hereby amend and restate in its entirety the charter of the Corporation (the "Charter") as currently in effect pursuant to Section 2-609 of the Maryland General Corporation Law (the "MGCL").

SECOND: The following provisions are all the provisions of the Charter currently in effect and as hereinafter amended and restated:

ARTICLE I
NAME

The name of this corporation shall be New Healthpeak, Inc.

ARTICLE II
PURPOSES

The purpose for which this corporation is formed is to engage in the ownership of real property and any other lawful act or activity for which corporations may be organized under the General Corporation Law of Maryland as now or hereinafter in force.

ARTICLE III
PRINCIPAL OFFICE AND RESIDENT AGENT

The post office address of the principal office of the corporation in the State of Maryland is The Corporation Trust Incorporated, 2405 York Road, Suite 201, Lutherville Timonium, Maryland 21093-2264. The name of the resident agent of the corporation in the State of Maryland is The Corporation Trust Incorporated and the post office address is 2405 York Road, Suite 201, Lutherville Timonium, Maryland 21093-2264, but this corporation may maintain an office or offices in such other place or places as may be from time to time fixed by its Board of Directors or as may be fixed by the Bylaws of the corporation.

ARTICLE IV
CAPITAL STOCK

Section 1. The total number of shares of capital stock which the corporation shall have the authority to issue is Eight Hundred Million (800,000,000), of which Seven Hundred Fifty Million (750,000,000) shall be shares of Common Stock having a par value of $1.00 per share and Fifty Million (50,000,000) shall be shares of Preferred Stock having a par value of $1.00 per share. The aggregate par value of all of said shares shall be Eight Hundred Million Dollars ($800,000,000).

Section 2. The Board of Directors shall have authority to issue the Preferred Stock from time to time in one or more series and by resolution shall designate with respect to any series of Preferred Stock:

(1) the number of shares constituting such series and the distinctive designation thereof;

(2) the voting rights, if any, of such series;

(3) the rate of dividends payable on such series, the time or times when such dividends will be payable, the preference to, or any relation to, the payment of dividends to any other class or series of stock and whether the dividends will be cumulative or non-cumulative;

(4) whether there shall be a sinking or similar fund for the purchase of shares of such series and, if so, the terms and provisions that shall govern such fund;

(5) the rights of the holders of shares of such series upon the liquidation, dissolution or winding up of the corporation;

(6) the rights, if any, of holders of shares of such series to convert such shares into or to exchange such shares for, shares of any other class or classes or any other series of the same or of any other class or classes of stock of the corporation, the price or prices or rate or rates of exchange, with such adjustments as shall be provided, at which such shares shall be convertible or exchangeable, whether such rights of conversion or exchange shall be exercisable at the option of the holder of the shares of the corporation or upon the happening of a specified event and any other terms or conditions of such conversion or exchange; and

(7) any other preferences, powers and relative participating, optional or other special rights and qualifications, limitations or restrictions of shares of such series.

ARTICLE V
PROVISIONS FOR DEFINING, LIMITING AND REGULATING
CERTAIN POWERS OF THE CORPORATION AND
THE BOARD OF DIRECTORS AND STOCKHOLDERS

Section 1. The Board of Directors shall have the authority without stockholder approval to designate capital gain allocation to holders of any series or all series of Preferred Stock.

Section 2. The affirmative vote of the holders of not less than 90% of the outstanding shares of "voting stock" (as hereinafter defined) of the corporation shall be required for the approval or authorization of any "Business Combination" (as hereinafter defined) of the corporation with any "Related Person" (as hereinafter defined). However, such 90% voting requirement shall not be applicable if (1) the Board of Directors of the corporation by unanimous vote or written consent shall have expressly approved in advance the acquisition of outstanding shares of voting stock of the corporation that caused the Related Person to become a Related Person or shall have approved the Business Combination prior to the Related Person involved in the Business Combination having become a Related Person; or (2) the Business Combination is solely between the corporation and another corporation, one hundred percent of the voting stock of which is owned directly or indirectly by the corporation.

For purposes of this Article V, Section 2:

(i) The term "Business Combination" shall mean (a) any merger or consolidation of the corporation with or into a Related Person, (b) any sale, lease, exchange, transfer or other disposition, including without limitation a mortgage or any other security device, of all or any "Substantial Part" (as hereinafter defined) of the assets of the corporation (including without limitation any voting securities of a subsidiary) to a Related Person, (c) any merger or consolidation of a Related Person with or into the corporation, (d) any sale, lease, exchange, transfer or other disposition of all or any Substantial Part of the assets of a Related Person to the corporation, (e) the issuance of any securities (other than by way of pro rata distribution to all stockholders) of the corporation to a Related Person, and (f) any agreement, contract or other arrangement providing for any of the transactions described in this definition of Business Combination.

(ii) The term "Related Person" shall mean and include any individual, corporation, partnership or other person or entity which, together with its "Affiliates" and "Associates" (as defined on October 1, 1982 in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), "Beneficially Owns" (as defined on October 1, 1982 in Rule 13d-3 under the Exchange Act) in the aggregate 10% or more of the outstanding voting stock of the corporation, and any Affiliate or Associate of any such individual, corporation, partnership or other person or entity.

(iii) The term "Substantial Part" shall mean more than 10% of the book value of the total assets of the corporation as of the end of its most recent fiscal year ending prior to the time the determination is being made.

(iv) Without limitation, any shares of Common Stock of the corporation that any Related Person has the right to acquire pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, shall be deemed beneficially owned by the Related Person.

(v) The term "voting stock" shall mean the outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors. In a vote required by or provided for in this Article V, Section 2, each share of voting stock shall have the number of votes granted to it generally in the election of directors.

Section 3. The number of Board of Directors shall be not less than three (3) nor more than ten (10) until changed by an amendment to the Bylaws.

The number of Directors may be increased or decreased from time to time in such manner as shall be provided in the Bylaws, provided that the number shall not be reduced to less than three (3). In case of any increase in the number of Directors, the additional Directors may be elected by the stockholders at any annual or special meeting, or by the Directors as shall be provided by the Bylaws. A Director may be removed by the vote or written consent of the holders of two-thirds of the outstanding shares or by a unanimous vote of all other members of the Board of Directors. Special meetings of the stockholders may be called in a manner consistent with the Bylaws of the corporation for the purpose of removing a Director.

Section 4. If the Board of Directors shall, at any time and in good faith, be of the opinion that direct or indirect ownership of at least 9.9% or more of the voting shares of stock of the corporation has or may become concentrated in the hands of one "beneficial owner" (as defined on October 1, 1982 in Rule 13d-3 under the Exchange Act), the Board of Directors shall have the power (i) by lot or other means deemed equitable by them to call for the purchase from any stockholder of the corporation a number of voting shares sufficient, in the opinion of the Board of Directors, to maintain or bring the direct or indirect ownership of voting shares of stock of the corporation of such beneficial owner to no more than 9.9% of the outstanding voting shares of stock of the corporation, and (ii) to refuse to transfer or issue voting shares of stock of the corporation to any person whose acquisition of such voting shares would, in the opinion of the Board of Directors, result in the direct or indirect ownership of more than 9.9% of the outstanding voting shares of stock of the corporation. The purchase price for any voting shares of stock shall be equal to the fair market value of the shares reflected in the closing sales price for the shares, if then listed on a national securities exchange, or the average of the closing sales prices for the shares if then listed on more than one national securities exchange, or if the shares are not then listed on a national securities exchange, the latest bid quotation for the shares if then traded over-the-counter on the last business day immediately preceding the day on which notices of such acquisition are sent, or, if no such closing sales prices or quotations are available, then the purchase price shall be equal to the net asset value of such stock as determined by the Board of Directors in accordance with the provisions of applicable law. Payment of the purchase price shall be made in cash by the corporation at such time and in such manner as may be determined by the Board of Directors of the corporation. From and after the date fixed for purchase by the Board of Directors, the holder of any shares so called for purchase shall cease to be entitled to distributions, voting rights and other benefits with respect to such shares, excepting only the right to payment of the purchase price fixed as aforesaid. If the Board of Directors fails to grant an exemption from the ownership limitation described in this Section 4, then any transfer of shares, options, warrants or other securities convertible into voting shares that would create a beneficial owner of more than 9.9% of the outstanding shares of stock of this corporation shall be deemed void *ab initio* and the intended transferee shall be deemed never to have had an interest therein. If the foregoing provision is determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the transferee of such shares, options, warrants or other securities convertible into voting shares shall be deemed, at the option of the corporation, to have acted as agent on behalf of the corporation in acquiring such shares and to hold such shares on behalf of the corporation.

Section 5. The holders of stock of the corporation shall have no preemptive or preferential right to subscribe for or purchase any stock or securities of the corporation.

Section 6. Restrictions on Ownership and Transfer to Preserve Tax Benefits.

(a) *Definitions*. For the purposes of Section 6 of this Article V, the following terms shall have the following meanings:

"Beneficial Ownership" shall mean ownership of Common Stock by a Person who is or would be treated as an owner of such Common Stock either actually or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Own," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"Charitable Beneficiary" shall mean one or more beneficiaries of a Trust, as determined pursuant to Subsection 6(c)(vi) of this Article V.

"Code" shall mean the Internal Revenue Code of 1986, as amended. All section references to the Code shall include any successor provisions thereof as may be adopted from time to time.

"Common Stock" shall mean that Common Stock that may be issued pursuant to Article IV, Section 1, of the Articles of Amendment and Restatement.

"Constructive Ownership" shall mean ownership of Common Stock by a Person who is or would be treated as an owner of such Common Stock either actually or constructively through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Own," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

"Corporation" shall have the meaning set forth in the preamble to the Articles of Amendment and Restatement.

"Filing Date" shall mean the date and time that the Articles of Amendment and Restatement become effective.

"Individual" means an individual, a trust qualified under section 401(a) or 501(c)(17) of the Code, a portion of a trust permanently set aside for or to be used exclusively for the purposes described in section 642(c) of the Code, or a private foundation within the meaning of section 509(a) of the Code.

"IRS" means the United States Internal Revenue Service.

"Market Price" shall mean the last reported sales price reported on the New York Stock Exchange of the Common Stock on the trading day immediately preceding the relevant date, or if the Common Stock is not then traded on the New York Stock Exchange, the last reported sales price of the Common Stock on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over which the Common Stock may be traded, or if the Common Stock is not then traded over any exchange or quotation system, then the market price of the Common Stock on the relevant date as determined in good faith by the Board of Directors of the Corporation.

"Ownership Limit" shall mean 9.8% (by value or by number of shares, whichever is more restrictive) of the outstanding Common Stock of the Corporation. The number and value of shares of outstanding Common Stock of the Corporation shall be determined by the Board of Directors in good faith, which determination shall be conclusive for all purposes hereof.

"Person" shall mean an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity; but does not include an underwriter acting in a capacity as such in a public offering of shares of Common Stock provided that the ownership of such shares of Common Stock by such underwriter would not result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the Corporation failing to qualify as a REIT.

"Purported Beneficial Transferee" shall mean, with respect to any purported Transfer (or other event) which results in a transfer to a Trust, as provided in Subsection 6(b)(ii) of this Article V, the Purported Record Transferee, unless the Purported Record Transferee would have acquired or owned shares of Common Stock for another Person who is the beneficial transferee or owner of such shares, in which case the Purported Beneficial Transferee shall be such Person.

"Purported Record Transferee" shall mean, with respect to any purported Transfer (or other event) which results in a transfer to a Trust, as provided in Subsection 6(b)(ii) of this Article V, the record holder of the shares of Common Stock if such Transfer had been valid under Subsection 6(b)(i) of this Article V.

"REIT" shall mean a real estate investment trust under Sections 856 through 860 of the Code.

"Restriction Termination Date" shall mean the first day on which the Board of Directors of the Corporation determines that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT.

"Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Common Stock, including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Common Stock or (ii) the sale, transfer, assignment or other disposition of any securities (or rights convertible into or exchangeable for Common Stock), whether voluntary or involuntary, whether such transfer has occurred of record or beneficially or Beneficially or Constructively (including but not limited to transfers of interests in other entities which result in changes in Beneficial or Constructive Ownership of Common Stock), and whether such transfer has occurred by operation of law or otherwise.

"Trust" shall mean each of the trusts provided for in Subsection 6(c) of this Article V.

"Trustee" shall mean any Person unaffiliated with the Corporation, or a Purported Beneficial Transferee, or a Purported Record Transferee, that is appointed by the Corporation to serve as trustee of a Trust.

(b) *Restriction on Ownership and Transfers.*

(i) From the Filing Date and prior to the Restriction Termination Date:

(A) except as provided in Subsection 6(i) of this Article V, no Person shall Beneficially Own Common Stock in excess of the Ownership Limit;

(B) except as provided in Subsection 6(i) of this Article V, no Person shall Constructively Own Common Stock in excess of the Ownership Limit; and

(C) no Person shall Beneficially or Constructively Own Common Stock to the extent that such Beneficial or Constructive Ownership would result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or otherwise failing to qualify as a REIT (including but not limited to ownership that would result in the Corporation owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Corporation (either directly or indirectly through one or more partnerships or limited liability companies) from such tenant would cause the Corporation to fail to satisfy any of the gross income requirements of Section 856(c) of the Code).

(ii) If, during the period commencing on the Filing Date and prior to the Restriction Termination Date, any Transfer or other event occurs that, if effective, would result in any Person Beneficially or Constructively Owning Common Stock in violation of Subsection 6(b)(i) of this Article V, (i) then that number of shares of Common Stock that otherwise would cause such Person to violate Subsection 6(b)(i) of this Article V (rounded up to the nearest whole share) shall be automatically transferred to a Trust for the benefit of a Charitable Beneficiary, as described in Subsection 6(c), effective as of the close of business on the business day prior to the date of such Transfer or other event, and such Purported Beneficial Transferee shall thereafter have no rights in such shares or (ii) if, for any reason, the transfer to the Trust described in clause (i) of this sentence is not automatically effective as provided therein to prevent any Person from Beneficially or Constructively Owning Common Stock in violation of Subsection 6(b)(i) of this Article V, then the Transfer of that number of shares of Common Stock that otherwise would cause any Person to violate Subsection 6(b)(i) shall, subject to Section 9, be void *ab initio*, and the Purported Beneficial Transferee shall have no rights in such shares.

(iii) Subject to Section 9 of this Article V and notwithstanding any other provisions contained herein, during the period commencing on the Filing Date and prior to the Restriction Termination Date, any Transfer of Common Stock that, if effective, would result in the capital stock of the Corporation being beneficially owned by less than 100 Persons (determined without reference to any rules of attribution) shall be void *ab initio*, and the intended transferee shall acquire no rights in such Common Stock.

(iv) It is expressly intended that the restrictions on ownership and Transfer described in this Subsection 6(b) of Article V shall apply to restrict the rights of any members or partners in limited liability companies or partnerships to exchange their interest in such entities for Common Stock of the Company.

(c) *Transfers of Common Stock in Trust*.

(i) Upon any purported Transfer or other event described in Subsection 6(b)(ii) of this Article V, such Common Stock shall be deemed to have been transferred to the Trustee in his capacity as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the business day prior to the purported Transfer or other event that results in a transfer to the Trust pursuant to Subsection 6(b)(ii). The Trustee shall be appointed by the Corporation and shall be a Person unaffiliated with the Corporation, any Purported Beneficial Transferee, and any Purported Record Transferee. Each Charitable Beneficiary shall be designated by the Corporation as provided in Subsection 6(c)(vi) of this Article V.

(ii) Common Stock held by the Trustee shall be issued and outstanding Common Stock of the Corporation. The Purported Beneficial Transferee or Purported Record Transferee shall have no rights in the shares of Common Stock held by the Trustee. The Purported Beneficial Transferee or Purported Record Transferee shall not benefit economically from ownership of any shares held in trust by the Trustee, shall have no rights to dividends and shall not possess any rights to vote or other rights attributable to the shares of Common Stock held in the Trust.

(iii) The Trustee shall have all voting rights and rights to dividends with respect to Common Stock held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or distribution paid prior to the discovery by the Corporation that shares of Common Stock have been transferred to the Trustee shall be paid to the Trustee upon demand, and any dividend or distribution declared but unpaid shall be paid when due to the Trustee with respect to such Common Stock. Any dividends or distributions so paid over to the Trustee shall be held in trust for the Charitable Beneficiary. The Purported Record Transferee and Purported Beneficial Transferee shall have no voting rights with respect to the Common Stock held in the Trust and, subject to Maryland law, effective as of the date the Common Stock has been transferred to the Trustee, the Trustee shall have the authority (at the Trustee's sole discretion) (i) to rescind as void any vote cast by a Purported Record Transferee with respect to such Common Stock prior to the discovery by the Corporation that the Common Stock has been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Corporation has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Article V, until the Corporation has received notification that the Common Stock has been transferred into a Trust, the Corporation shall be entitled to rely on its share transfer and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of stockholders.

(iv) Within 20 days of receiving notice from the Corporation that shares of Common Stock have been transferred to the Trust, the Trustee of the Trust shall sell the shares of Common Stock held in the Trust to a person, designated by the Trustee, whose ownership of the shares of Common Stock will not violate the ownership limitations set forth in Subsection 6(b)(i). Upon such sale, the interest of the Charitable Beneficiary in the shares of Common Stock sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and to the Charitable Beneficiary as provided in this Subsection 6(c)(iv). The Purported Record Transferee shall receive the lesser of (i) the price paid by the Purported Record Transferee for the shares of Common Stock in the transaction that resulted in such transfer to the Trust (or, if the event which resulted in the transfer to the Trust did not involve a purchase of such shares of Common Stock at Market Price, the Market Price of such shares of Common Stock on the day of the event which resulted in the transfer of such shares of Common Stock to the Trust) and (ii) the price per share received by the Trustee (net of any commissions and other expenses of sale) from the sale or other disposition of the shares of Common Stock held in the Trust. Any net sales proceeds in excess of the amount payable to the Purported Record Transferee shall be immediately paid to the Charitable Beneficiary together with any dividends or other distributions thereon. If, prior to the discovery by the Corporation that shares of such Common Stock have been transferred to the Trustee, such shares of Common Stock are sold by a Purported Record Transferee then (x) such shares of Common Stock shall be deemed to have been sold on behalf of the Trust and (y) to the extent that the Purported Record Transferee received an amount for such shares of Common Stock that exceeds the amount that such Purported Record Transferee was entitled to receive pursuant to this Subsection 6(c)(iv), such excess shall be paid to the Trustee upon demand.

(v) Common Stock transferred to the Trustee shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price paid by the Purported Record Transferee for the shares of Common Stock in the transaction that resulted in such transfer to the Trust (or, if the event which resulted in the transfer to the Trust did not involve a purchase of such shares of Common Stock at Market Price, the Market Price of such shares of Common Stock on the day of the event which resulted in the transfer of such shares of Common Stock to the Trust) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer until the Trustee has sold the shares of Common Stock held in the Trust pursuant to Subsection 6(c)(iv). Upon such a sale to the Corporation, the interest of the Charitable Beneficiary in the shares of Common Stock sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee and any dividends or other distributions held by the Trustee with respect to such Common Stock shall thereupon be paid to the Charitable Beneficiary.

(vi) By written notice to the Trustee, the Corporation shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Trust such that (i) the shares of Common Stock held in the Trust would not violate the restrictions set forth in Subsection 6(b)(i) in the hands of such Charitable Beneficiary and (ii) each Charitable Beneficiary is an organization described in Sections 170(b)(1)(A), 170(c)(2) and 501(c)(3) of the Code.

(d) *Remedies For Breach*. If the Board of Directors or a committee thereof or other designees if permitted by the MGCL shall at any time determine in good faith that a Transfer or other event has taken place in violation of Subsection 6(b) of this Article V or that a Person intends to acquire, has attempted to acquire or may acquire beneficial ownership (determined without reference to any rules of attribution), Beneficial Ownership or Constructive Ownership of any shares of the Corporation in violation of Subsection 6(b) of this Article V, the Board of Directors or a committee thereof or other designees if permitted by the MGCL shall take such action as it deems advisable to refuse to give effect or to prevent such Transfer, including, but not limited to, causing the Corporation to redeem shares of Common Stock, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers (or, in the case of events other than a Transfer, ownership or Constructive Ownership or Beneficial Ownership) in violation of Subsection 6(b)(i) of this Article V, shall automatically result in the transfer to a Trust as described in Subsection 6(b)(ii) and any Transfer in violation of Subsection 6(b)(iii) shall, subject to Section 9, automatically be void *ab initio* irrespective of any action (or non-action) by the Board of Directors.

(e) *Notice of Restricted Transfer*. Any Person who acquires or attempts to acquire shares in violation of Subsection 6(b) of this Article V, or any Person who is a Purported Beneficial Transferee such that an automatic transfer to a Trust results under Subsection 6(b)(ii) of this Article V, shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer on the Corporation's status as a REIT.

(f) *Owners Required to Provide Information*. From the Filing Date and prior to the Restriction Termination Date, each Person who is a beneficial owner or Beneficial Owner or Constructive Owner of shares of Common Stock and each Person (including the stockholder of record) who is holding shares of Common Stock for a beneficial owner or Beneficial Owner or Constructive Owner shall, on demand, provide to the Corporation a completed questionnaire containing the information regarding their ownership of such shares, as set forth in the regulations (as in effect from time to time) of the U.S. Department of Treasury under the Code. In addition, each Person who is a beneficial owner or Beneficial Owner or Constructive Owner of shares of Common Stock and each Person (including the stockholder of record) who is holding shares of Common Stock for a beneficial owner or Beneficial Owner or Constructive Owner shall, on demand, be required to disclose to the Corporation in writing such information as the Corporation may request in order to determine the effect, if any, of such stockholder's actual and constructive ownership of shares of Common Stock on the Corporation's status as a REIT and to ensure compliance with the Ownership Limit, or as otherwise permitted by the Board of Directors.

(g) *Remedies Not Limited*. Nothing contained in this Article V (but subject to Section 9 of this Article V) shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders by preservation of the Corporation's status as a REIT.

(h) *Ambiguity*. In the case of an ambiguity in the application of any of the provisions of this Section 6 of this Article V, including any definition contained in Subsection 6(a), the Board of Directors shall have the power to determine the application of the provisions of this Section 6 with respect to any situation based on the facts known to it (subject, however, to the provisions of Section 9 of this Article V). In the event Section 6 requires an action by the Board of Directors and the Articles of Amendment and Restatement fail to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Section 6. Absent a decision to the contrary by the Board of Directors (which the Board may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Subsection 6(b)(ii)) acquired Beneficial or Constructive Ownership of Common Stock in violation of Subsection 6(b)(i), such remedies (as applicable) shall apply first to the shares of Common Stock which, but for such remedies, would have been actually owned by such Person, and second to shares of Common Stock which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such shares of Common Stock based upon the relative number of the shares of Common Stock held by each such Person.

(i) *Exceptions*.

(i) Subject to Subsection 6(b)(i)(C) of this Article V, the Board of Directors, in its sole discretion, may exempt a Person from the limitation on a Person Beneficially Owning shares of Common Stock in excess of the Ownership Limit if the Board determines that such exemption will not cause any Individual's Beneficial Ownership of shares of Common Stock to violate the Ownership Limit or that any such violation will not cause the Corporation to fail to qualify as a REIT under the Code.

(ii) Subject to Subsection 6(b)(i)(C) of this Article V, the Board of Directors, in its sole discretion, may exempt a Person from the limitation on a Person Constructively Owning Common Stock in excess of the Ownership Limit, as set forth in Subsection 6(b)(i)(B), of this Article V, if the Board determines that such Person does not and will not own, actually or Constructively, an interest in a tenant of the Corporation (or a tenant of any entity owned in whole or in part by the Corporation) that would cause the Corporation to own, actually or Constructively, more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant or that any such ownership would not cause the Corporation to fail to qualify as a REIT under the Code.

(iii) In granting a person an exemption under (i) or (ii) above, the Board of Directors may require such Person to make certain representations or undertakings or to agree that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Subsection 6(b) of this Article V) will result in such Common Stock being transferred to a Trust in accordance with Subsection 6(b)(ii) of this Article V. Prior to granting any exception pursuant to Subsection 6(i)(i) or (ii) of this Article V, the Board of Directors may require a ruling from the IRS, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT.

Section 7. *Legends*. Each certificate for Common Stock and Preferred Stock shall bear the following legends:

**Classes of Stock**

THE CORPORATION IS AUTHORIZED TO ISSUE CAPITAL STOCK OF MORE THAN ONE CLASS, CONSISTING OF COMMON STOCK AND ONE OR MORE CLASSES OF PREFERRED STOCK. THE BOARD OF DIRECTORS IS AUTHORIZED TO DETERMINE THE PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS OF ANY CLASS OF PREFERRED STOCK BEFORE THE ISSUANCE OF SHARES OF SUCH CLASS OF PREFERRED STOCK. THE CORPORATION WILL FURNISH, WITHOUT CHARGE, TO ANY STOCKHOLDER MAKING A WRITTEN REQUEST THEREFOR, A COPY OF THE CORPORATION'S ARTICLES OF RESTATEMENT AND A WRITTEN STATEMENT OF THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES, CONVERSION OR OTHER RIGHTS, VOTING POWERS, RESTRICTIONS, LIMITATIONS AS TO DIVIDENDS AND OTHER DISTRIBUTIONS, QUALIFICATIONS AND TERMS AND CONDITIONS OF REDEMPTION OF THE STOCK OF EACH CLASS WHICH THE CORPORATION HAS THE AUTHORITY TO ISSUE AND, IF THE CORPORATION IS AUTHORIZED TO ISSUE ANY PREFERRED OR SPECIAL CLASS IN SERIES, (i) THE DIFFERENCES IN THE RELATIVE RIGHTS AND PREFERENCES BETWEEN THE SHARES OF EACH SERIES TO THE EXTENT SET, AND (ii) THE AUTHORITY OF THE BOARD OF DIRECTORS TO SET SUCH RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES. REQUESTS FOR SUCH WRITTEN STATEMENT MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

**Restriction on Ownership and Transfer**

THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON BENEFICIAL AND CONSTRUCTIVE OWNERSHIP AND TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). SUBJECT TO CERTAIN FURTHER RESTRICTIONS AND EXCEPT AS EXPRESSLY PROVIDED IN THE CORPORATION'S CHARTER, (i) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF THE CORPORATION'S COMMON STOCK IN EXCESS OF 9.8% (BY VALUE OR BY NUMBER OF SHARES, WHICHEVER IS MORE RESTRICTIVE) OF THE OUTSTANDING COMMON STOCK OF THE CORPORATION; (ii) NO PERSON MAY BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF COMMON STOCK THAT WOULD RESULT IN THE CORPORATION BEING "CLOSELY HELD" UNDER SECTION 856(h) OF THE CODE OR OTHERWISE CAUSE THE CORPORATION TO FAIL TO QUALIFY AS A REIT; AND (iii) NO PERSON MAY TRANSFER SHARES OF COMMON STOCK IF SUCH TRANSFER WOULD RESULT IN THE CAPITAL STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS. ANY PERSON WHO BENEFICIALLY OR CONSTRUCTIVELY OWNS OR ATTEMPTS TO BENEFICIALLY OR CONSTRUCTIVELY OWN SHARES OF COMMON STOCK IN VIOLATION OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION. IF ANY OF THE RESTRICTIONS ON TRANSFER OR OWNERSHIP ARE VIOLATED, THE SHARES OF COMMON STOCK REPRESENTED HEREBY WILL BE AUTOMATICALLY TRANSFERRED TO THE TRUSTEE OF A TRUST FOR THE BENEFIT OF ONE OR MORE CHARITABLE BENEFICIARIES. IN ADDITION, THE CORPORATION MAY REDEEM SHARES UPON THE TERMS AND CONDITIONS SPECIFIED BY THE BOARD OF DIRECTORS IN ITS SOLE DISCRETION IF THE BOARD OF DIRECTORS DETERMINES THAT OWNERSHIP OR A TRANSFER OR OTHER EVENT MAY VIOLATE THE RESTRICTIONS DESCRIBED ABOVE. FURTHERMORE, UPON THE OCCURRENCE OF CERTAIN EVENTS, ATTEMPTED TRANSFERS IN VIOLATION OF THE RESTRICTIONS DESCRIBED ABOVE MAY BE VOID AB INITIO. ALL TERMS IN THIS LEGEND THAT ARE DEFINED IN THE CHARTER OF THE CORPORATION SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN THE CHARTER OF THE CORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER AND OWNERSHIP, WILL BE FURNISHED TO EACH HOLDER OF SHARES OF COMMON STOCK ON REQUEST AND WITHOUT CHARGE. REQUESTS FOR SUCH A COPY MAY BE DIRECTED TO THE SECRETARY OF THE CORPORATION AT ITS PRINCIPAL OFFICE.

Section 8. *Severability*. If any provision of this Article V or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provision shall not be affected and other applications of such provisions shall be affected only to the extent necessary to comply with the determination of such court.

Section 9. *New York Stock Exchange*. Nothing in this Article V shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange. The shares of Common Stock that are the subject of such a transaction shall continue to be subject to the provisions of this Article V after such settlement.

Section 10. *Subtitle 8*. The corporation is prohibited from electing to be subject to Section 3-803 of Subtitle 8 of Title 3 of the MGCL unless such election is first approved by the stockholders of the corporation by the affirmative vote of a majority of all the votes entitled to be cast on the matter.

ARTICLE VI
AMENDMENTS AND EXTRAORDINARY ACTIONS

Section 1. Notwithstanding any other provisions of these Articles or the Bylaws of the corporation (and notwithstanding any provision of law requiring a different proportion of the votes entitled to be cast by the stockholders in order to take or approve any such action) the affirmative vote of two-thirds of all votes entitled to be cast by the stockholders upon the matter shall be required to repeal any provision of, or adopt an amendment inconsistent with, Section 2, Section 3 or Section 4 of Article V.

Section 2. The corporation reserves the right from time to time to amend, alter or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are subject to this reservation.

Section 3. Except as specifically required in Sections 2 and 3 of Article V and in Section 1 of this Article VI of the charter of the corporation, notwithstanding any provision of law requiring a greater proportion of the votes entitled to be cast by the stockholders in order to take or approve any action, such action shall be valid and effective if taken or approved by the affirmative vote of a majority of all votes entitled to be cast by the stockholders on the matter.

ARTICLE VII
PERPETUAL EXISTENCE

The period of the existence of the corporation is to be perpetual.

ARTICLE VIII
LIMITATION ON PERSONAL LIABILITY
OF DIRECTORS AND OFFICERS

A director or officer shall not be personally liable to the corporation or its stockholders for money damages unless (i) it is proved that the person actually received an improper benefit or profit in money, property, or services, for the amount of the benefit or profit in money, property, or services actually received or (ii) a judgment or other final adjudication adverse to the person is entered in a proceeding, based on a finding in the proceeding that the person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

If the General Corporation Law of the State of Maryland is hereafter amended to authorize corporate action further limiting or eliminating the personal liability of directors or officers or expanding such liability, then the liability of directors or officers to the corporation or its stockholders shall be limited or eliminated to the fullest extent permitted by the Maryland General Corporation Law, as so amended from time to time. Any repeal or modification of this Article VIII by the stockholders of the corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director or officer of the corporation existing at the time of such repeal or modification.

THIRD: The amendment to, and restatement of, the Charter as hereinabove set forth have been duly advised by the Board of Directors of the Corporation and approved by the stockholders of the Corporation as required by law.

FOURTH: The current address of the principal office of the Corporation is as set forth in Article III of the foregoing amendment and restatement of the Charter.

FIFTH: The name and address of the Corporation's current resident agent is as set forth in Article III of the foregoing amendment and restatement of the Charter.

SIXTH: There are currently seven directors of the Corporation, and the names of those directors currently in office are as follows: Scott M. Brinker, Brian G. Cartwright, Christine N. Garvey, R. Kent Griffin, Jr., David B. Henry, Sara G. Lewis and Katherine M. Sandstrom.

SEVENTH: The total number of shares of stock of all classes which the Corporation had authority to issue immediately prior to the foregoing amendment and restatement of the Charter was 1,000, consisting of 1,000 shares of common stock, par value $1.00 per share. The aggregate par value of all shares of stock having par value was $1,000.

EIGHTH: The total number of shares of stock of all classes which the Corporation has authority to issue pursuant to the foregoing amendment and restatement of the Charter is 800,000,000, consisting of 750,000,000 shares of common stock, par value $1.00 per share, and 50,000,000 shares of preferred stock, par value $1.00 per share. The aggregate par value of all shares of stock having par value is $800,000,000.

NINTH: These Articles of Amendment and Restatement shall be effective at 9:02 a.m. (Eastern Standard Time) on February 10, 2023 (the "Effective Time").

TENTH: The undersigned Chief Financial Officer acknowledges these Articles of Amendment and Restatement to be the corporate act of the Corporation and, as to all matters or facts required to be verified under oath, the undersigned Chief Financial Officer acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment and Restatement to be signed in its name and on its behalf by its Chief Financial Officer and attested to by its Senior Vice President and Corporate Secretary on this 8th day of February, 2023.

ATTEST:

/s/ Scott A. Graziano
Scott A. Graziano
Senior Vice President and Corporate Secretary

NEW HEALTHPEAK, INC.

By: /s/ Peter A. Scott (SEAL)
Peter A. Scott
Chief Financial Officer

**Exhibit 3.2**

**NEW HEALTHPEAK, INC.**

**ARTICLES OF AMENDMENT**

NEW HEALTHPEAK, INC., a Maryland corporation (the "Corporation"), hereby certifies to the State Department of Assessments and Taxation of Maryland (the "Department") that:

**FIRST:** The Corporation desires to, and does hereby, amend the charter of the Corporation as currently in effect (the "Charter") pursuant to Sections 2-601 *et seq*. of the Maryland General Corporation Law (the "MGCL") by deleting therefrom in its entirety the existing Article I and inserting, in lieu thereof, the following new Article I:

ARTICLE I
NAME

The name of this corporation shall be Healthpeak Properties, Inc.

**SECOND:** The foregoing amendment to the Charter as set forth in these Articles of Amendment is limited to a change expressly authorized by Section 2-605 of the MGCL to be made without action by the stockholders, and was approved by a majority of the entire Board of Directors, without action by the stockholders.

**THIRD:** These Articles of Amendment shall be effective at 9:03 a.m. (Eastern Standard Time) on February 10, 2023.

**FOURTH:** The undersigned Chief Financial Officer of the Corporation acknowledges these Articles of Amendment to be the corporate act of the Corporation and, as to all matters or facts required to be verified under oath, the undersigned Chief Financial Officer acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

**IN WITNESS WHEREOF**, the Corporation has caused these Articles of Amendment to be signed in its name and on its behalf by its Chief Financial Officer, and attested to by its Senior Vice President and Corporate Secretary, on this 8th day of February, 2023.

ATTEST:

/s/ Scott A. Graziano
Name: Scott A. Graziano
Title: Senior Vice President and Corporate Secretary

NEW HEALTHPEAK, INC.

By: /s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

**Exhibit 3.3**

# BYLAWS
# OF
# NEW HEALTHPEAK, INC.,
# a Maryland Corporation (hereinafter the "Corporation")

December 13, 2022

## ARTICLE I

## OFFICES

SECTION 1. PRINCIPAL OFFICE -- The principal office of the Corporation in the State of Maryland shall be established and maintained at the office of The Corporation Trust Incorporated, 2405 York Road, Suite 201, Lutherville Timonium, Maryland, 21093-2264, and The Corporation Trust Incorporated shall be the resident agent of this Corporation.

SECTION 2. OTHER OFFICES -- The Corporation may establish such other offices, within or without the State of Maryland, at such place or places as the Board of Directors from time to time may designate, or which the business of the Corporation may require.

## ARTICLE II

## STOCKHOLDERS

SECTION 1. ANNUAL MEETINGS -- Annual meetings of stockholders for the election of directors to succeed directors whose terms are expiring and the transaction of any business within the powers of the Corporation, shall be held on a date and at a time between April 15 and May 15, inclusive, as designated by the Board of Directors at such place, within or without the State of Maryland, as the Board of Directors by resolution shall determine, and as set forth in the notice of the meeting.

SECTION 2. SPECIAL MEETINGS -- Special meetings of the stockholders, for any purpose or purposes, may be called by the Chief Executive Officer, the President, or a majority of the Board of Directors, and shall be called by the Secretary or any other officer upon written request of stockholders holding in the aggregate not less than 50% of the outstanding shares entitled to vote on the business proposed to be transacted thereat. Any such request of the stockholders shall state the purpose of the meeting and the matters proposed to be acted on at such meeting. The Secretary or other officer of the Corporation shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing notice of the proposed special meeting and, upon payment to the Corporation of such estimated costs, the Secretary or other officer of the Corporation shall give notice to each stockholder entitled to notice of the special meeting. Unless requested by stockholders entitled to cast a majority of all votes entitled to be cast at a meeting of stockholders, a special meeting need not be called to consider any matter which is substantially the same as a matter voted on at any special meeting of the stockholders of the Corporation held during the preceding twelve months. Special meetings of stockholders may be held at such time and place, within or without the State of Maryland, as shall be stated in the notice of the meeting. The notice of a special meeting shall state the nature of the business to be transacted and no other business shall be considered at the meeting.

SECTION 3. NOTICE OF MEETINGS -- Written or printed notice, stating the place, date and time of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote thereat at his address as it appears on the records of the Corporation by United States mail, postage prepaid, not less than ten (10) nor more than ninety (90) days before the date of the meeting, unless any provisions of the laws of the State of Maryland shall prescribe a differing elapsed period of time. No business other than that stated in the notice shall be transacted at any special meeting.

SECTION 4. VOTING -- At each annual meeting the stockholders entitled to vote shall elect directors to succeed the directors whose terms are expiring, and the stockholders may transact such other corporate business as may be within the powers of the Corporation, subject to Section 7 of this Article II. The vote for directors, and, upon the demand of any stockholder entitled to vote on any such matter, the vote upon any question before the meeting, shall be by ballot.

Except as otherwise provided in the Charter of the Corporation (the "Charter") with respect to directors to be elected by the holders of any class or series of preferred stock of the Corporation and in these Bylaws with respect to the filling of vacancies on the Board of Directors, each director shall be elected by a majority of the votes cast with respect to such director at any meeting of stockholders duly called and at which a quorum is present and directors are to be elected; provided, however, that the directors shall be elected by a plurality of the votes cast at a meeting of the stockholders duly called and at which a quorum is present and directors are to be elected if, in connection with such meeting (i) the Secretary of the Corporation shall have received one or more notices that a stockholder or group of stockholders has nominated or proposes to nominate a person or persons for election as a director, which notice(s) purports to be in compliance with the advance notice requirements set forth in Section 7 of this Article II of the Bylaws, the proxy access requirements set forth in Section 8 of this Article II of the Bylaws or applicable rules promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, irrespective of whether the Board of Directors thereafter determines that any such notice(s) is not in compliance with such requirements, and (ii) as of the fourteenth (14th) day preceding the date on which notice of such meeting of the stockholders is first mailed or otherwise given in accordance with applicable law to the stockholders of the Corporation, such nomination or proposed nomination has not been withdrawn by such stockholder or group of stockholders and would thereby cause the number of nominees and proposed nominees to exceed the number of directors to be elected at such meeting, as determined by the Secretary of the Corporation, irrespective of whether such nomination or proposed nomination is thereafter withdrawn by such stockholder or group of stockholders (a "Contested Election"). If the directors are to be elected by a plurality of the votes cast pursuant to the provisions of the immediately preceding sentence, stockholders shall not be permitted to vote "against" any one or more nominees but shall only be permitted to vote "for" one or more nominees or withhold their votes with respect to one or more nominees. For purposes hereof, a majority of the votes cast means the number of votes cast "for" a director nominee must exceed the number of votes cast "against" that director nominee, with abstentions and broker non-votes not counted as a vote cast either "for" or "against" that director nominee.

In the election of directors, each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to vote. Stockholders are not entitled to cumulative voting in the election of directors.

All other matters shall be decided by a majority of the votes cast, except as otherwise provided by the Charter or these Bylaws, or by the laws of the State of Maryland.

The directors may fix a day not more than ninety (90) days nor less than ten (10) days prior to the holding of any meeting of stockholders as the date as of which stockholders entitled to notice of and to vote at such meeting shall be determined; and only stockholders of record on such day shall be entitled to notice of or to vote at any such meeting.

Unless otherwise provided by the Charter or by the laws of the State of Maryland, each stockholder entitled to vote shall be entitled to one vote, in person or by proxy, for each share of stock entitled to vote held by such stockholder.

If, in any election of directors of the Corporation which is not a Contested Election, an incumbent director does not receive a majority of the votes cast and therefore is not re-elected, such incumbent director shall promptly tender his or her resignation as a director, subject to acceptance thereof by the Board, for consideration by the Nominating and Corporate Governance Committee of the Board of Directors.

The Nominating and Corporate Governance Committee will promptly consider any such tendered resignation and will make a recommendation to the Board of Directors as to whether such tendered resignation should be accepted or rejected, or whether other action should be taken with respect to such offer to resign. Any incumbent director whose tendered resignation is under consideration may not participate in any deliberation or vote of the Nominating and Corporate Governance Committee or the Board of Directors regarding such tendered resignation. The Nominating and Corporate Governance Committee and the Board of Directors may consider any factors they deem relevant in deciding whether to accept, reject or take other action with respect to any such tendered resignation. Within ninety (90) days after the date on which certification of the stockholder vote on the election of directors is made, the Board of Directors will publicly disclose its decision and rationale regarding whether to accept, reject or take other action with respect to the tendered resignation in a press release, a periodic or current report filed with the Securities and Exchange Commission or by other public announcement. If any director's tendered resignation is not accepted by the Board of Directors, such director will continue to serve until the next annual meeting of stockholders and until his or her successor is elected and qualified or his or her earlier death, resignation or removal. If any director's tendered resignation is accepted by the Board of Directors, then such director will thereupon cease to be a director of the Corporation, and the Board, in its sole discretion, may fill the resulting vacancy pursuant to the provisions of the Charter and applicable law or may decrease the size of the Board of Directors pursuant to the provisions of Section 1 of Article III of these Bylaws.

SECTION 5. QUORUM -- Except as provided in the next section hereof, any number of stockholders together holding a majority of the stock issued and outstanding and entitled to vote thereat, who shall be present in person or represented by proxy at any meeting duly called, shall constitute a quorum for the transaction of business. If, at any meeting less than a quorum shall be present or represented, the chairman of the meeting or the stockholders entitled to vote at such meeting, either in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting to the extent permitted by the laws of the State of Maryland, until the requisite amount of stock shall be present, at which time any business may be transacted which might have been transacted at the meeting as originally noticed.

SECTION 6. ACTION WITHOUT MEETING -- Any action to be taken by the stockholders may be taken without a meeting, if, prior to such action, all stockholders entitled to vote thereon shall consent in writing to such action being taken, and such consent shall be treated for all purposes as a vote at a meeting.

SECTION 7. NOMINATIONS AND STOCKHOLDER BUSINESS

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors, (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section 7(a), who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 7(a) or (iv) by any stockholder (or group of stockholders) who meets the requirements of and complies with all of the procedures set forth in Section 8 of this Article II.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 7, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than sixty (60) days from such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the ninetieth (90th) day prior to such annual meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and of the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (x) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (y) the class and number of shares of stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(3) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 7 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least seventy (70) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 7(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 7(b), who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 7(b). In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(2) of this Section 7 (together with the information and consents required pursuant to clauses (i) and (iii) of paragraph (a)(2)) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth (90th) day prior to such special meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

(c) General.

(1) Except as otherwise provided in Section 8 of this Article II, only such persons who are nominated in accordance with the procedures set forth in this Section 7 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 7. The presiding officer of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 7 and, if any proposed nomination or business is not in compliance with this Section 7, to declare that such defective nomination or proposal be disregarded.

(2) For purposes of this Section 7, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 7, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 7. Nothing in this Section 7 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

SECTION 8. PROXY ACCESS

(a) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 8, the Corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by the Board of Directors or any committee thereof, the name, together with the Required Information (defined below), of any person nominated for election (a "Stockholder Nominee") to the Board of Directors by an Eligible Stockholder (defined below) that expressly elects at the time of providing the notice required by this Section 8 (the "Notice of Proxy Access Nomination") to have such nominee included in the Corporation's proxy materials pursuant to this Section 8. For purposes of this Section 8, the "Required Information" that the Corporation will include in its proxy statement is the information provided to the Secretary of the Corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement by the regulations promulgated under the Exchange Act and, if the Eligible Stockholder so elects, a Supporting Statement (defined below). For the avoidance of doubt, nothing in this Section 8 shall limit the Corporation's ability to solicit votes against any Stockholder Nominee or include in its proxy materials the Corporation's own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to the Corporation pursuant to this Section 8. Subject to the provisions of this Section 8, the name of any Stockholder Nominee included in the Corporation's proxy statement for an annual meeting of stockholders shall also be set forth on the form of proxy distributed by the Corporation in connection with such annual meeting.

(b) To be timely, the Notice of Proxy Access Nomination must be delivered to the Secretary at the principal executive offices of the Corporation not less than one hundred twenty (120) days and not more than the one hundred fifty (150) days prior to the first anniversary of the date that the Corporation distributed its proxy statement to stockholders for the previous year's annual meeting of stockholders.

(c) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (i) two (2) or (ii) twenty percent (20%) of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 8 (the "Final Proxy Access Nomination Date") or, if such amount is not a whole number, the closest whole number below twenty percent (20%). In the event that one or more vacancies for any reason occurs on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the maximum number of Stockholder Nominees included in the Corporation's proxy materials shall be calculated based on the number of directors in office as so reduced. For purposes of determining when the maximum number of Stockholder Nominees provided for in this Section 8 has been reached, each of the following persons shall be counted as one of the Stockholder Nominees: (i) any individual nominated by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 8 whose nomination is subsequently withdrawn, (ii) any individual nominated by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 8 whom the Board of Directors decides to nominate for election to the Board of Directors and (iii) any director in office as of the Final Proxy Access Nomination Date who was included in the Corporation's proxy materials as a Stockholder Nominee for either of the two (2) preceding annual meetings of stockholders (including any individual counted as a Stockholder Nominee pursuant to the immediately preceding clause (ii)) and whom the Board of Directors decides to renominate for election to the Board of Directors. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 8 shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy statement in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 8 exceeds the maximum number of Stockholder Nominees provided for in this Section 8. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 8 exceeds the maximum number of Stockholder Nominees provided for in this Section 8, the highest ranking Stockholder Nominee who meets the requirements of this Section 8 from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials until the maximum number is reached, going in order of the amount (largest to smallest) of shares of common stock of the Corporation each Eligible Stockholder disclosed as owned in its Notice of Proxy Access Nomination. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 8 from each Eligible Stockholder has been selected, then the next highest ranking Stockholder Nominee who meets the requirements of this Section 8 from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the maximum number is reached.

(d) An "Eligible Stockholder" is a stockholder or group of no more than twenty-five (25) stockholders (counting as one stockholder, for this purpose, any two or more funds that are part of the same Qualifying Fund Group (as defined below)) that (i) has owned (as defined below) continuously for at least three (3) years (the "Minimum Holding Period") a number of shares of common stock of the Corporation that represents at least three percent (3%) of the Corporation's outstanding common stock as of the date the Notice of Proxy Access Nomination is delivered to the Secretary of the Corporation in accordance with this Section 8 (the "Required Shares"), (ii) continues to own the Required Shares through the annual meeting date and (iii) satisfies all other requirements of, and complies with all applicable procedures set forth in, this Section 8. A "Qualifying Fund Group" is a group of two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer or (C) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended. For purposes of this Section 8, an Eligible Stockholder shall be deemed to "own" only those outstanding shares of common stock of the Corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument or agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, if, in any such case, such instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. Without limiting the foregoing, to the extent not excluded by the immediately preceding sentence, an Eligible Stockholder's "short position" as defined in Rule 14e-4 under the Exchange Act shall be deducted from the shares otherwise "owned." A stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's ownership of shares shall be deemed to continue during any period in which (i) the stockholder has loaned such shares, provided that the stockholder has the power to recall such loaned shares on five (5) business days' notice and includes with the Notice of Proxy Access Nomination an agreement that it (A) will promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the Corporation's proxy materials and (B) will continue to hold such shares through the date of the annual meeting or (ii) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the common stock of the Corporation are "owned" for these purposes shall be determined by the Board of Directors or any committee thereof. For purposes of this Section 8, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

(e) To be in proper form for purposes of this Section 8, the Notice of Proxy Access Nomination must include the following:

(1) a written statement by the Eligible Stockholder setting forth and certifying as to the number of shares it owns and has owned continuously during the Minimum Holding Period, and the Eligible Stockholder's agreement to provide immediate notice if the Eligible Stockholder ceases to own any of the Required Shares prior to the date of the annual meeting;

(2) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven (7) calendar days prior to the date the Notice of Proxy Access Nomination is delivered to the Secretary of the Corporation, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide, within five (5) business days after the later of the record date for the annual meeting and the date on which notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date;

(3) a copy of the Schedule 14N that has been filed with the United States Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act;

(4) the information required by clauses (i) and (iii) of paragraph (a)(2) of Section 7 of this Article II (including the consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected);

(5) a representation that the Eligible Stockholder (i) will continue to hold the Required Shares through the annual meeting date, (ii) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have such intent, (iii) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) it is nominating pursuant to this Section 8, (iv) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (v) has not distributed and will not distribute to any stockholder of the Corporation any form of proxy for the annual meeting other than the form distributed by the Corporation, (vi) has complied and will comply with all laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting, and (vii) has provided and will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make such information, in light of the circumstances under which it was or will be made or provided, not misleading;

(6) an undertaking that the Eligible Stockholder agrees to (i) assume all liability stemming from any legal or regulatory violation arising out communications with the stockholders of the Corporation by the Eligible Stockholder, its affiliates and associates or their respective agents and representatives, either before or after providing a Notice of Proxy Access Nomination pursuant to this Section 8, or out of the facts, statements or other information that the Eligible Stockholder or its Stockholder Nominee(s) provided to the Corporation pursuant to this Section 8 or otherwise in connection with the inclusion of such Stockholder Nominee(s) in the Corporation's proxy materials pursuant to this Section 8, (ii) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 8 and (iii) file with the Securities and Exchange Commission any solicitation or other communication with the stockholders of the Corporation relating to the meeting at which its Stockholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act; and

(7) in the case of a nomination by a group of stockholders together constituting an Eligible Stockholder in which two or more funds that are part of the same Qualifying Fund Group are counted as one stockholder for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the Corporation that demonstrates that the funds are part of the same Qualifying Fund Group.

(f) In addition to the information required pursuant to Section 8(e) or any other provision of these Bylaws, the Corporation may require (i) each Stockholder Nominee to furnish any other information (A) that may reasonably be requested by the Corporation to determine whether the Stockholder Nominee would be independent under the rules and listing standards of the principal United States securities exchanges upon which the common stock of the Corporation is listed or traded, any applicable rules of the U.S. Securities and Exchange Commission or any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors (collectively, the "Independence Standards"), (B) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Stockholder Nominee or (C) that may reasonably be requested by the Corporation to determine the eligibility of such Stockholder Nominee to be included in the Corporation's proxy materials pursuant to this Section 8 or to serve as a director of the Corporation and (ii) the Eligible Stockholder to furnish any other information that may reasonably be requested by the Corporation to verify the Eligible Stockholder's continuous ownership of the Required Shares for the Minimum Holding Period and through the date of the annual meeting.

(g) The Eligible Stockholder may, at its option, provide to the Secretary of the Corporation, at the time the Notice of Proxy Access Nomination is provided, a written statement, not to exceed 500 words, in support of the Stockholder Nominee(s)' candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Stockholder (including any group of stockholders together constituting an Eligible Stockholder) in support of its Stockholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 8, the Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law or regulation.

(h) In the event that any information or communications provided by an Eligible Stockholder or a Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct in all material respects or omits a material fact necessary to make such information, in light of the circumstances under which it was made or provided, not misleading, such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any such defect in such previously provided information and of the information that is required to correct any such defect; it being understood that providing such notification shall not be deemed to cure any such defect or limit the remedies available to the Corporation relating to any such defect (including the right to omit a Stockholder Nominee from its proxy materials pursuant to this Section 8). In addition, any person providing any information pursuant to this Section 8 must deliver to the Secretary at the principal executive office of the Corporation, not later than five (5) business days after the later of the record date for the annual meeting and the date on which notice of the record date is first publicly disclosed (i) any such written updates and supplements necessary to ensure that the information previously provided or required to be provided shall be true and correct as of the record date for the annual meeting or (ii) a written certification that no such updates or supplements are necessary and that the information previously provided remains true and correct as of the record date for the annual meeting.

(i) Notwithstanding anything to the contrary contained in this Section 8, the Corporation shall not be required to include, pursuant to this Section 8, a Stockholder Nominee in its proxy materials (i) for any meeting of stockholders for which the Secretary of the Corporation receives notice that the Eligible Stockholder or any other stockholder intends to nominate one or more persons for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees set forth in Section 7 of this Article II, (ii) if such Stockholder Nominee would not be an independent director under the Independence Standards, as determined by the Board of Directors or one or more of its committees, (iii) if such Stockholder Nominee's election as a member of the Board of Directors would cause the Corporation to be in violation of these Bylaws, the Charter, the rules and listing standards of the principal United States securities exchanges upon which the common stock of the Corporation is listed or traded, or any applicable state or federal law, rule or regulation, (iv) if such Stockholder Nominee is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (v) if such Stockholder Nominee or the Eligible Stockholder who nominated such Stockholder Nominee provides any facts, statements or other information to the Corporation or its stockholders required or requested pursuant to this Section 8 that is not true and correct in all material respects or that omits a material fact necessary to make such information, in light of the circumstances in which it is made or provided, not misleading, or (vi) if such Stockholder Nominee or the Eligible Stockholder who nominated such Stockholder Nominee otherwise contravenes any of the agreements or representations made by such Stockholder Nominee or Eligible Stockholder or fails to comply with its obligations pursuant to this Section 8.

(j) Notwithstanding anything to the contrary set forth herein, if (i) the Stockholder Nominee and/or the applicable Eligible Stockholder shall have breached any of its or their obligations, agreements or representations under this Section 8, or (ii) the Stockholder Nominee shall have otherwise become ineligible for inclusion in the Corporation's proxy materials pursuant to this Section 8 or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board of Directors, any committee thereof or the presiding officer at the annual meeting of stockholders, (x) the Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (y) the Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder and (z) the Board of Directors or the presiding officer at the annual meeting of stockholders shall declare such nomination to be invalid, such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation and the named proxies will not vote any proxies received from stockholders with respect to such Stockholder Nominee. In addition, if the Eligible Stockholder (or a representative thereof) does not appear at the annual meeting to present any nomination pursuant to this Section 8, such nomination shall be declared invalid and disregarded as provided in clause (z) above.

(k) Whenever the Eligible Stockholder consists of a group of stockholders (including a group of funds that are part of the same Qualifying Fund Group), (i) each provision in this Section 8 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate their shareholdings in order to meet the three percent (3%) ownership requirement of the "Required Shares" definition), (ii) the Notice of Proxy Access Nomination must designate one member of the group for purposes of receiving communications, notices and inquiries from the Corporation and otherwise authorize such member to act on behalf of each member of the group with respect to the nomination under this Section 8 and (iii) a breach of any obligation, agreement or representation under this Section 8 by any member of such group shall be deemed a breach by the Eligible Stockholder. Whenever the Eligible Stockholder consists of a group of stockholders aggregating their shareholdings in order to meet the three percent (3%) ownership requirement of the "Required Shares" definition, (x) such ownership shall be determined by aggregating the lowest number of shares continuously owned by each such stockholder during the Minimum Holding Period and (y) the Notice of Proxy Access Nomination must indicate, for each such stockholder, such lowest number of shares continuously owned by such stockholder during the Minimum Holding Period. No person may be a member of more than one group of persons constituting an Eligible Stockholder with respect to any annual meeting. For the avoidance of doubt, a stockholder may withdraw from a group of stockholders at any time prior to the annual meeting of stockholders and if, as a result of such withdrawal, the Eligible Stockholder no longer owns the Required Shares, the nomination shall be disregarded as provided in Section 8(i).

(l) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least ten percent (10%) of the votes cast in favor of such Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 8 for the next two annual meetings of stockholders. For the avoidance of doubt, the immediately preceding sentence shall not prevent any stockholder from nominating any person to the Board of Directors pursuant to and in accordance with Section 7 of this Article II.

(m) For purposes of this Section 8, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(n) This Section 8 provides the exclusive method for a stockholder to include nominees for election to the Board of Directors in the Corporation's proxy materials.

SECTION 9. INSPECTORS -- The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If the inspectors shall not be so appointed or if any of them shall fail to appear or act, the chairman of the meeting may, and on the request of any stockholder entitled to vote thereat shall, appoint inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath to execute faithfully the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as inspector of an election of directors. Inspectors need not be stockholders.

SECTION 10. CONTROL SHARE ACQUISITION ACT -- Notwithstanding any other provision of the Charter or these Bylaws, Title 3, Subtitle 7 of the Maryland General Corporation Law (the "MGCL") (or any successor statute) shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

## ARTICLE III

## DIRECTORS

SECTION 1. NUMBER AND TERM -- At any regular meeting or at any special meeting called for that purpose, a majority of the entire Board of Directors may establish, increase or decrease the number of directors, provided, that the number thereof shall never be less than three (3), nor more than eleven (11), and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors. Notwithstanding the foregoing, upon the occurrence of a default in the payment of dividends of any class or series of preferred stock, or any other event, which will entitle the holders of any class or series of preferred stock to elect additional directors of the Corporation, the number of directors of the Corporation will thereupon be increased by the number of additional directors to be elected by the holders of such class or series of preferred stock, and such increase in the number of directors shall remain in effect for so long as the holders of such class of series of preferred stock are entitled to elect such additional directors. Directors need not be stockholders.

SECTION 2. QUORUM -- A majority of the directors shall constitute a quorum for the transaction of business. If, at any meeting of the Board, there shall be less than a quorum present, a majority of those directors present may adjourn the meeting, from time to time, until a quorum is obtained, and no further notice thereof need be given other than by announcement at said meeting which shall be so adjourned.

SECTION 3. FIRST MEETING -- The newly elected directors may hold their first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after the annual meeting of stockholders or the time and place of such meeting may be fixed by written consent of the entire Board.

SECTION 4. ELECTION OF OFFICERS -- At the first meeting, or at any subsequent meeting called for that purpose, the directors shall elect the officers of the Corporation, as more specifically set forth in ARTICLE V of these Bylaws. Such officers shall hold office until the next annual election of officers, or until their successors are elected and shall have qualified.

SECTION 5. REGULAR MEETINGS -- Regular meetings of the Board of Directors shall be held at such places and times as shall be determined, from time to time, by resolution of the Board of Directors without other notice than such resolution.

SECTION 6. SPECIAL MEETINGS -- Special meetings of the Board of Directors may be called by the Chairman, the Chief Executive Officer, the President, the Secretary or by any three (3) directors on prior notice to each director. In case such notice is mailed, it shall be given at least four (4) days prior to the time of the holding of the meeting. In case such notice is given personally, or by telephone, electronic mail, facsimile correspondence or telegram, it shall be given at least twenty-four (24) hours prior to the time of the holding of the meeting.

SECTION 7. PLACE OF MEETINGS -- The directors may hold their meetings, and have one or more offices, and keep the books of the Corporation outside the State of Maryland at any office or offices of the Corporation, or at any other place as they from time to time by resolution may determine.

SECTION 8. DISPENSING WITH NOTICE -- The transactions of any meeting of the Board of Directors which is not properly called or noticed, regardless of how called and noticed or wherever held, shall be as valid as though such transactions had occurred at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes thereof. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting need not be given to any director who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director.

SECTION 9. ACTION WITHOUT MEETING -- Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if a written consent thereto is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board of Directors or committee.

SECTION 10. TELEPHONIC MEETINGS -- Unless otherwise restricted by the Charter or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 11. GENERAL POWERS OF DIRECTORS -- The Board of Directors shall manage the business and affairs of the Corporation, and, subject to the restrictions imposed by law, exercise all the powers of the Corporation, except as conferred on or reserved to the stockholders by law or by the Charter or these Bylaws.

SECTION 12. SPECIFIC POWERS OF DIRECTORS -- Without prejudice to such general powers, it hereby is expressly declared that the directors shall have the following powers, to the extent permitted under the laws of the State of Maryland, subject to the provisions of the Charter and other provisions of these Bylaws:

(1) To make and change regulations, not inconsistent with these Bylaws, for the management of the business and affairs of the Corporation.

(2) To purchase or otherwise acquire for the Corporation any property, rights or privileges which the Corporation is authorized to acquire.

(3) To pay for any property purchased for the Corporation, either wholly or partly in money, stock, bonds, debentures or other securities of the Corporation.

(4) To borrow money and make and issue notes, bonds and other negotiable and transferable instruments, mortgages, deeds of trust and trust agreements, and to do every act and thing necessary to effectuate the same.

(5) To lease and rent real property whether in the capacity of lessor or lessee.

(6) To dispose of or transfer property, both real and personal, in any fashion or by any lawful means, including, without limitation, by lease and as security for borrowings of the Corporation.

(7) To lend money and acquire loans made by others, and to accept, in connection therewith, notes, bonds and other transferable instruments, mortgages, deeds of trust and trust agreements of others, and to do every act and thing otherwise necessary in connection therewith.

(8) To make investments from time to time with funds of the Corporation and to dispose of such investments.

(9) To remove any officer when, in their judgment, the best interests of the Corporation shall be served thereby, and, in their discretion, from time to time to devolve the powers and duties of any officer upon any other officer or person for the time being.

(10) To appoint and remove or suspend subordinate officers, agents, or factors as they may deem necessary, and to determine their duties, and to fix and from time to time to change their salaries or remuneration, and to require security as and when they think fit.

(11) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, agents and factors.

(12) To determine who shall be authorized, on behalf of the Corporation, to make and sign bills, notes, acceptances, endorsements, contracts and other instruments.

(13) To determine who shall be entitled, in the name and on behalf of the Corporation, to vote upon or to assign and transfer any shares of stock, bonds or other securities of other corporations held by this Corporation.

(14) To authorize the Corporation to enter into, and to execute and deliver, and to modify, amend or terminate, from time to time, agreements, notes, acceptances, bills of sale, documents of transfer or other documents or instruments of any kind or nature whatsoever, in furtherance of or in connection with lawful activities of the Corporation.

(15) To delegate any of the powers of the Board, in relation to the ordinary business of the Corporation, to any standing or special committee, or to any officer or agent (with power to sub-delegate), upon such terms as they deem fit.

(16) To call special meetings of the stockholders for any purpose or purposes.

SECTION 13. COMPENSATION -- Directors shall receive no stated salary for their services as directors but, by resolution of the Board, may receive fixed fees per year and/or per meeting, and expenses of attendance for attendance at each meeting.

Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, or otherwise, and receiving compensation therefor.

## ARTICLE IV

## COMMITTEES

SECTION 1. APPOINTMENTS AND POWERS -- The Board of Directors may, by resolution or resolutions passed by a majority of the entire Board of Directors, designate one or more committees, including, without limitation an Audit Committee, a Nominating and Corporate Governance Committee and a Compensation Committee, each consisting of one (1) or more directors, to serve at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of a committee who may replace any absent or disqualified member at any meeting of the committee. Such alternate members shall not be counted for purposes of determining a quorum unless so appointed, in which case they shall be counted in the place of the absent or disqualified member. The committee, to the extent provided in said resolution or resolutions or in these Bylaws and permitted under the laws of the State of Maryland, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in these Bylaws or as may be determined from time to time by resolution adopted by the Board of Directors.

SECTION 2. MINUTES -- Committees shall keep regular minutes of their proceedings, and report the same to the Board of Directors when required.

**ARTICLE V**

**OFFICERS**

SECTION 1. OFFICERS -- The officers shall be elected at the first meeting of the Board of Directors after each annual meeting of stockholders. The Board of Directors shall elect a Chief Executive Officer, a President, a Secretary and a Treasurer, and may elect one or more Vice Presidents as they may deem proper. Any person may hold two or more offices, except that no one person shall concurrently hold the offices of President and Vice-President.

The Board of Directors may elect such other officers and agents as it may deem advisable, who shall hold office for such terms and shall exercise such powers and perform such duties as shall from time to time be determined by the Board of Directors.

SECTION 2. CHIEF EXECUTIVE OFFICER -- The Chief Executive Officer shall have the general powers and duties of supervision and management usually vested in the office of Chief Executive Officer of a corporation. He shall have general supervision, direction and control of the business of the Corporation. He shall also exercise such further powers and perform such other duties as may be conferred upon him by the Bylaws or the Board of Directors from time to time. Except as the Board of Directors shall authorize the execution thereof in some other manner, he shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and he may cause the corporate seal to be affixed to any instrument or document executed on behalf of the Corporation. In the event that no other individual shall at that time have been appointed by the Board of Directors to, and hold, the office of President of the Corporation, the individual appointed by the Board to the position of Chief Executive Officer shall also, by virtue of holding such office, be deemed to hold the office of President, and any action taken by such individual in his capacity as Chief Executive Officer will also be deemed action of the President.

SECTION 3. PRESIDENT -- The President shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation. He shall have general supervision, direction and control of the business of the Corporation. He shall also exercise such further powers and perform such other duties as may be conferred upon him by the Bylaws or the Board of Directors from time to time. Except as the Board of Directors shall authorize the execution thereof in some other manner, he shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and he may cause the corporate seal to be affixed to any instrument or document executed on behalf of the Corporation. In the event that no other individual shall at that time have been appointed by the Board of Directors to, and hold, the office of President of the Corporation, the individual appointed by the Board of Directors to the office of Chief Executive Officer shall also, by virtue of holding such office, be deemed to hold the office of President, and any action taken by such individual in his capacity as Chief Executive Officer will also be deemed action of the President.

SECTION 4. VICE PRESIDENTS -- Each Vice President shall have such powers and shall perform such duties as are usually vested in the office of Vice President of a corporation. Except as the Board of Directors shall authorize the execution thereof in some other manner, he shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and he may cause the corporate seal to be affixed to any instrument or document executed on behalf of the Corporation.

SECTION 5. SECRETARY -- The Secretary shall give, or cause to be given, notice of all meetings of stockholders and the Board of Directors, and all other notices required by law or by these Bylaws, and, in case of his absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chief Executive Officer, the President, the Board of Directors, or the stockholders upon whose request the meeting is called as provided in these Bylaws. He shall record all proceedings of meetings of the stockholders and of the Board of Directors in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him by the Directors or the Chief Executive Officer or President. He shall have custody of the corporate seal, and shall have the power to affix said seal to all instruments or documents executed on behalf of the Corporation.

SECTION 6. TREASURER -- The Treasurer shall have the custody of the corporate funds and securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation. He shall deposit all monies and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the President or Chief Executive Officer, taking proper vouchers for such disbursements. He shall render to the President or Chief Executive Officer and the Board of Directors, at the regular meetings of the Board, or whenever they may request it, an accounting of all his transactions as Treasurer, and of the financial condition of the Corporation.

If required by the Board of Directors, he shall give the Corporation a bond for the faithful discharge of his duties, in such amount and with such surety as the Board shall prescribe.

SECTION 7. CHAIRMAN -- The Chairman, if one is elected, shall preside at all meetings of the Board of Directors and stockholders, and shall have and perform such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 8. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS -- Assistant Secretaries and Assistant Treasurers, if any, may be appointed by the Chief Executive Officer, the President or Vice President and shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the Secretary and by the Treasurer.

## ARTICLE VI

## RESIGNATIONS; FILLING OF VACANCIES; REMOVAL FROM OFFICE

SECTION 1. RESIGNATIONS -- Any director or officer may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and, if no time be specified, at the time of its receipt by the Board of Directors, the Chief Executive Officer, the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

SECTION 2. FILLING OF VACANCIES -- If the office of any officer or director becomes vacant, other than vacancies on the Board of Directors created by an increase in the number of directors, the remaining directors in office, although less than a quorum, may appoint, by a majority vote, any qualified person to fill such vacancy, who shall hold office, in the case of an officer, for the unexpired term of his predecessor and until his successor is elected and shall have qualified, or, in the case of a director, until the next annual meeting of stockholders and until his successor is elected and shall have qualified.

Any vacancy on the Board of Directors occurring by reason of an increase in the number of directors may be filled by action of a majority of the entire Board, for a term of office continuing only until the next annual meeting of stockholders and until his successor is elected and shall have qualified, or may be filled by the affirmative vote of the holders of a majority of the shares then entitled to vote at an election of directors.

SECTION 3. REMOVAL FROM OFFICE -- A director may be removed from office only by the stockholders or the Board of Directors of the Corporation in the manner and by the vote set forth in the Charter of the Corporation. The stockholders of the Corporation may elect a successor or successors to fill any vacancy or vacancies which result from the removal of a director or directors, and each such successor will serve for the unexpired term of the removed director.

Any officer or agent elected or appointed by the Board of Directors, may be removed by said Board whenever, in its judgment, the best interests of the Corporation shall be served thereby.

**ARTICLE VII**

**CAPITAL STOCK**

SECTION 1. STOCK CERTIFICATES AND UNCERTIFICATED SHARES -- The shares of stock in the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Every holder of shares of stock of the Corporation, other than uncertificated shares, shall be entitled to a certificate or certificates signed by the Chairman, the Chief Executive Officer, the President or a Vice President, and countersigned by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, representing and certifying to the number of shares of stock owned by such holder. The signatures on certificates of stock may be either manual or facsimile.

In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of its issue. Each certificate representing shares of the capital stock of the Corporation shall bear on its face or back such statements relating to the authority of the Corporation to issue more than one class of stock, the designations and other terms and conditions of each such class of stock and restrictions on transferability of capital stock imposed by the Corporation, or a statement that such information will be provided on request and without charge, all as and to the extent which may be required by the laws of the State of Maryland.

SECTION 2. LOST CERTIFICATES -- A new certificate of stock may be issued in place of any certificate theretofore issued by the Corporation and alleged to have been lost or destroyed, and the Board of Directors may, at its discretion, request the owner of the lost or destroyed certificate, or his legal representative, to give the Corporation a bond, in such sum as the Board of Directors may direct, but not exceeding double the value of the stock, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss of any such certificate.

SECTION 3. TRANSFER OF SHARES -- Subject to the restrictions that may be contained in the Charter, the shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized representatives.

SECTION 4. DIVIDENDS -- Subject to the provisions of the Charter and the laws of the State of Maryland, the Board of Directors may, at any regular or special meeting, declare dividends upon the capital stock of the Corporation, as and when the Board of Directors may deem expedient.

**ARTICLE VIII**

**MISCELLANEOUS**

SECTION 1. CORPORATE SEAL -- The Board of Directors shall adopt and may alter a common seal of the Corporation. Said seal shall be circular in form and shall contain the name of the Corporation, the year of its creation, and the words: “CORPORATE SEAL, MARYLAND.” It may be used by causing it or a facsimile thereof to be impressed, affixed, or otherwise reproduced.

SECTION 2. FISCAL YEAR -- The fiscal year of the Corporation shall end on the 31st day of December of each calendar year.

SECTION 3. CHECKS, DRAFTS, NOTES -- All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner, as from time to time shall be determined by resolution of the Board of Directors or, in the absence of any specific resolution of the Board of Directors, or if not otherwise provided by the Board of Directors, may be signed by the Chief Executive Officer, the President or any Vice President.

SECTION 4. CORPORATE RECORDS -- The Corporation shall keep correct and complete books of account and minutes of the proceedings of its stockholders and Board of Directors.

The Corporation shall keep and maintain at its principal office a certified copy of its Charter and all amendments thereto, a certified copy of its Bylaws and all amendments thereto, a stock ledger or duplicate stock ledger, revised annually, containing the names, alphabetically arranged, of all stockholders, their residence addresses, and the number of shares held by them, respectively. In lieu of the stock ledger or duplicate stock ledger, a statement may be filed in the principal office stating the name of the custodian of the stock ledger or duplicate stock ledger, and the present and complete post office address (including street and number, if any) where such stock ledger or duplicate stock ledger is kept.

The Board of Directors shall take all reasonable steps to assure that a full and correct annual statement of the affairs of the Corporation is prepared annually, including a balance sheet and a financial statement of operations for the preceding fiscal year which shall be certified by independent certified public accountants, and distributed to stockholders within one hundred and twenty (120) days after the close of the Corporation's fiscal year and a reasonable period of time prior to the annual meeting of stockholders. Such annual statement shall also be submitted at the annual meeting and shall be filed within twenty (20) days thereafter at the principal office of the Corporation in the State of Maryland. The Board of Directors shall also be responsible for scheduling the annual meeting of stockholders.

SECTION 5. NOTICE AND WAIVER OF NOTICE -- Whenever, pursuant to the laws of the State of Maryland or these Bylaws, any notice is required to be given, personal notice is not meant unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by statute.

Any notice required to be given may be waived, in writing, by the person or persons entitled thereto, whether before or after the time stated therein.

## ARTICLE IX

## AMENDMENTS

SECTION 1. AMENDMENTS OF BYLAWS -- The stockholders by the affirmative vote of a majority of all the votes entitled to be cast on the matter, or the directors, by the affirmative vote of a majority of the entire Board of Directors, may amend or alter any of these Bylaws. Notwithstanding the foregoing, any amendment to Section 1 of Article III of the Bylaws which increases the number of directors by more than one (1) in any twelve (12) month period or increases the total number of directors to more than ten (10), and any amendment to this Section 1 of Article IX of the Bylaws, shall require approval by the Board of Directors by unanimous vote or approval by the stockholders of the Corporation by the affirmative vote of 90% of all votes entitled to be cast.

## ARTICLE X

## INDEMNIFICATION OF OFFICERS AND DIRECTORS

SECTION 1. INDEMNIFICATION -- The Corporation shall indemnify and hold harmless, in the manner and to the fullest extent permitted by law, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or, as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, trustee, partner, member, agent or employee of another corporation, partnership, limited liability company, association, joint venture, trust, benefit plan or other enterprise (including without limitation service in the administration and management of any separate, segregated fund established for purposes of collecting and distributing voluntary employee political contributions to federal election campaigns pursuant to the Federal Election Campaign Act of 1971, as amended from time to time). To the fullest extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement and any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding and without requiring a preliminary determination as to the ultimate entitlement to indemnification. The Corporation may, with the approval of the Board of Directors, provide such indemnification and advancement of expenses as set forth in the preceding sentences of this Section 1 of this Article X of the Bylaws to agents and employees of the Corporation, other than officers and directors. The Corporation may, to the fullest extent permitted by law, purchase and maintain insurance on behalf of any officer or director or employee against any liability which may be asserted against such person.

SECTION 2. PROVISIONS NOT EXCLUSIVE -- This Article X shall not be construed as a limitation upon the power of the Corporation to indemnify any other person for any such expenses to the fullest extent permitted by law, or upon the power of the Corporation to enter into contracts or undertakings of indemnity with a director, officer, employee or agent of the Corporation, nor shall it be construed as a limitation upon any other rights to which a person seeking indemnification from the Corporation may be entitled under any agreement, the Charter of the Corporation, or vote of stockholders or disinterested directors, or otherwise, both as to any action in such person's official capacity and as to any action in another capacity while holding any office of the Corporation.

SECTION 3. RESTRICTION ON REPEAL OR MODIFICATION -- Any repeal or modification of any section of this Article X of the Bylaws by the stockholders or directors of the Corporation shall be prospective only, and shall not adversely affect any right to indemnification or advancement of expenses hereunder existing at the time of such repeal or modification.

**Exhibit 3.4**

# AMENDED AND RESTATED BYLAWS
# OF
# HEALTHPEAK PROPERTIES, INC.,
# a Maryland Corporation (hereinafter the "Corporation")

February 10, 2023

## ARTICLE I

## OFFICES

SECTION 1. PRINCIPAL OFFICE -- The principal office of the Corporation in the State of Maryland shall be established and maintained at the office of The Corporation Trust Incorporated, 2405 York Road, Suite 201, Lutherville Timonium, Maryland, 21093-2264, and The Corporation Trust Incorporated shall be the resident agent of this Corporation.

SECTION 2. OTHER OFFICES -- The Corporation may establish such other offices, within or without the State of Maryland, at such place or places as the Board of Directors from time to time may designate, or which the business of the Corporation may require.

## ARTICLE II

## STOCKHOLDERS

SECTION 1. ANNUAL MEETINGS -- Annual meetings of stockholders for the election of directors to succeed directors whose terms are expiring and the transaction of any business within the powers of the Corporation shall be held on a date and at a time designated by the Board of Directors at such place, within or without the State of Maryland, as the Board of Directors by resolution shall determine, and as set forth in the notice of the meeting.

SECTION 2. SPECIAL MEETINGS -- Special meetings of the stockholders, for any purpose or purposes, may be called by the Chief Executive Officer, the President, or a majority of the Board of Directors, and shall be called by the Secretary or any other officer upon written request of stockholders holding in the aggregate not less than 50% of the outstanding shares entitled to vote on the business proposed to be transacted thereat. Any such request of the stockholders shall state the purpose of the meeting and the matters proposed to be acted on at such meeting. The Secretary or other officer of the Corporation shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing notice of the proposed special meeting and, upon payment to the Corporation of such estimated costs, the Secretary or other officer of the Corporation shall give notice to each stockholder entitled to notice of the special meeting. Unless requested by stockholders entitled to cast a majority of all votes entitled to be cast at a meeting of stockholders, a special meeting need not be called to consider any matter which is substantially the same as a matter voted on at any special meeting of the stockholders of the Corporation held during the preceding twelve months. Special meetings of stockholders may be held at such time and place, within or without the State of Maryland, as shall be stated in the notice of the meeting. The notice of a special meeting shall state the nature of the business to be transacted and no other business shall be considered at the meeting.

SECTION 3. NOTICE OF MEETINGS -- Written or printed notice, stating the place, date and time of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote thereat at his address as it appears on the records of the Corporation by United States mail, postage prepaid, not less than ten (10) nor more than ninety (90) days before the date of the meeting, unless any provisions of the laws of the State of Maryland shall prescribe a differing elapsed period of time. No business other than that stated in the notice shall be transacted at any special meeting.

SECTION 4. VOTING -- At each annual meeting the stockholders entitled to vote shall elect directors to succeed the directors whose terms are expiring, and the stockholders may transact such other corporate business as may be within the powers of the Corporation, subject to Section 7 of this Article II. The vote for directors, and, upon the demand of any stockholder entitled to vote on any such matter, the vote upon any question before the meeting, shall be by ballot.

Except as otherwise provided in the Charter of the Corporation (the "Charter") with respect to directors to be elected by the holders of any class or series of preferred stock of the Corporation and in these Bylaws with respect to the filling of vacancies on the Board of Directors, each director shall be elected by a majority of the votes cast with respect to such director at any meeting of stockholders duly called and at which a quorum is present and directors are to be elected; provided, however, that the directors shall be elected by a plurality of the votes cast at a meeting of the stockholders duly called and at which a quorum is present and directors are to be elected if, in connection with such meeting (i) the Secretary of the Corporation shall have received one or more notices that a stockholder or group of stockholders has nominated or proposes to nominate a person or persons for election as a director, which notice(s) purports to be in compliance with the advance notice requirements set forth in Section 7 of this Article II of the Bylaws, the proxy access requirements set forth in Section 8 of this Article II of the Bylaws or applicable rules promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including Rule 14a-19, irrespective of whether the Board of Directors thereafter determines that any such notice(s) is not in compliance with such requirements, and (ii) as of the fourteenth (14th) day preceding the date on which notice of such meeting of the stockholders is first mailed or otherwise given in accordance with applicable law to the stockholders of the Corporation, such nomination or proposed nomination has not been withdrawn by such stockholder or group of stockholders and would thereby cause the number of nominees and proposed nominees to exceed the number of directors to be elected at such meeting, as determined by the Secretary of the Corporation, irrespective of whether such nomination or proposed nomination is thereafter withdrawn by such stockholder or group of stockholders (a "Contested Election"). If the directors are to be elected by a plurality of the votes cast pursuant to the provisions of the immediately preceding sentence, stockholders shall not be permitted to vote "against" any one or more nominees but shall only be permitted to vote "for" one or more nominees or withhold their votes with respect to one or more nominees. For purposes hereof, a majority of the votes cast means the number of votes cast "for" a director nominee must exceed the number of votes cast "against" that director nominee, with abstentions and broker non-votes not counted as a vote cast either "for" or "against" that director nominee.

In the election of directors, each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to vote. Stockholders are not entitled to cumulative voting in the election of directors.

All other matters shall be decided by a majority of the votes cast, except as otherwise provided by the Charter or these Bylaws, or by the laws of the State of Maryland.

The directors may fix a day not more than ninety (90) days nor less than ten (10) days prior to the holding of any meeting of stockholders as the date as of which stockholders entitled to notice of and to vote at such meeting shall be determined; and only stockholders of record on such day shall be entitled to notice of or to vote at any such meeting.

Unless otherwise provided by the Charter or by the laws of the State of Maryland, each stockholder entitled to vote shall be entitled to one vote, in person or by proxy, for each share of stock entitled to vote held by such stockholder. A holder of record of shares of stock of the Corporation may cast votes in person or by proxy that is (a) executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by applicable law, (b) compliant with Maryland law and these Bylaws and (c) filed in accordance with the procedures established by the Corporation.

Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

If, in any election of directors of the Corporation which is not a Contested Election, an incumbent director does not receive a majority of the votes cast and therefore is not re-elected, such incumbent director shall promptly tender his or her resignation as a director, subject to acceptance thereof by the Board, for consideration by the Nominating and Corporate Governance Committee of the Board of Directors.

The Nominating and Corporate Governance Committee will promptly consider any such tendered resignation and will make a recommendation to the Board of Directors as to whether such tendered resignation should be accepted or rejected, or whether other action should be taken with respect to such offer to resign. Any incumbent director whose tendered resignation is under consideration may not participate in any deliberation or vote of the Nominating and Corporate Governance Committee or the Board of Directors regarding such tendered resignation. The Nominating and Corporate Governance Committee and the Board of Directors may consider any factors they deem relevant in deciding whether to accept, reject or take other action with respect to any such tendered resignation. Within ninety (90) days after the date on which certification of the stockholder vote on the election of directors is made, the Board of Directors will publicly disclose its decision and rationale regarding whether to accept, reject or take other action with respect to the tendered resignation in a press release, a periodic or current report filed with the Securities and Exchange Commission or by other public announcement. If any director's tendered resignation is not accepted by the Board of Directors, such director will continue to serve until the next annual meeting of stockholders and until his or her successor is elected and qualified or his or her earlier death, resignation or removal. If any director's tendered resignation is accepted by the Board of Directors, then such director will thereupon cease to be a director of the Corporation, and the Board, in its sole discretion, may fill the resulting vacancy pursuant to the provisions of the Charter and applicable law or may decrease the size of the Board of Directors pursuant to the provisions of Section 1 of Article III of these Bylaws.

SECTION 5. QUORUM -- Except as provided in the next section hereof, any number of stockholders together holding a majority of the stock issued and outstanding and entitled to vote thereat, who shall be present in person or represented by proxy at any meeting duly called, shall constitute a quorum for the transaction of business. If, at any meeting less than a quorum shall be present or represented, the chairman of the meeting or the stockholders entitled to vote at such meeting, either in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting to the extent permitted by the laws of the State of Maryland, until the requisite amount of stock shall be present, at which time any business may be transacted which might have been transacted at the meeting as originally noticed.

SECTION 6. ACTION WITHOUT MEETING -- Any action to be taken by the stockholders may be taken without a meeting, if, prior to such action, all stockholders entitled to vote thereon shall consent in writing to such action being taken, and such consent shall be treated for all purposes as a vote at a meeting.

SECTION 7. NOMINATIONS AND STOCKHOLDER BUSINESS

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors, (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section 7(a), who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 7(a) or (iv) by any stockholder (or group of stockholders) who meets the requirements of and complies with all of the procedures set forth in Section 8 of this Article II.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 7, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than sixty (60) days from such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the ninetieth (90th) day prior to such annual meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director (each, a "Proposed Nominee") all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and of the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (w) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (x) the class and number of shares of stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (y) if the stockholder is proposing one or more Proposed Nominees, the information required to be included in a notice to the Corporation required by paragraph (b) of Rule 14a-19 promulgated under the Exchange Act, including a representation that such stockholder, any Proposed Nominee or any Stockholder Associated Person intends or is part of a group which intends to solicit the holders of shares of stock of the Corporation representing at least 67% of the voting power of shares of stock entitled to vote on the election of directors in support of each Proposed Nominee in accordance with Rule 14a-19 of the Exchange Act and (z) all other information regarding the stockholder giving the notice and each Stockholder Associated Person that would be required to be disclosed by the stockholder in connection with the solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act.

Such stockholder's notice shall, with respect to any Proposed Nominee, be accompanied by: (i) a written undertaking executed by the Proposed Nominee: (x) certifying that such Proposed Nominee (I) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation, (II) will serve as a director of the Corporation if elected and will notify the Corporation simultaneously with any notification to the stockholder of the Proposed Nominee's actual or potential unwillingness or inability to serve as a director and (III) does not need any permission or consent from any third party (including any employer or any other board or governing body on which such Proposed Nominee serves) to serve as a director of the Corporation, if elected, that has not been obtained, (y) attaching copies of any and all requisite permissions or consents and (z) attaching a completed Proposed Nominee questionnaire (which questionnaire shall be provided by the Corporation, upon request by the stockholder providing the notice, and shall include all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act, or would be required pursuant to the rules of any national securities exchange on which any securities of the Corporation are listed or over-the-counter market on which any securities of the Corporation are traded); and (ii) a certificate executed by the stockholder certifying that such stockholder will: (w) comply with Rule 14a-19 promulgated under the Exchange Act in connection with such stockholder's solicitation of proxies in support of any Proposed Nominee, (x) notify the Corporation as promptly as practicable of any determination by the stockholder to no longer solicit proxies for the election of any Proposed Nominee as a director at the annual meeting, (y) furnish such other or additional information as the Corporation may request for the purpose of determining whether the requirements of this Section 7 have been satisfied or of evaluating any nomination or other business described in the stockholder's notice and (z) appear in person or by proxy at the meeting to present each Proposed Nominee or to bring such business before the meeting, as applicable, and acknowledging that, if the stockholder does not so appear in person or by proxy at the meeting to present each Proposed Nominee or bring such business before the meeting, as applicable, the Corporation need not bring such Proposed Nominee or such business for a vote at such meeting and any proxies or votes cast in favor of the election of any Proposed Nominee or any proposal related to such other business need not be counted or considered.

For purposes of this Article 7, "Stockholder Associated Person" of any stockholder shall mean (i) any person acting in concert with such stockholder or another Stockholder Associated Person or who is otherwise a participant (as defined in Instruction 3 to Item 4 of Schedule 14A under the Exchange Act) in any solicitation of proxies, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depositary) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.

(3) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 7 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least seventy (70) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 7(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting and, except as contemplated by and in accordance with the next two sentences of this Section 7(b), no stockholder may nominate an individual for election to the Board of Directors or make a proposal of other business to be considered at a special meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected only (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 7(b), who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 7(b). In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(2) of this Section 7 (together with the information, certifications and consents required pursuant to paragraph (a)(2)) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth (90th) day prior to such special meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting.

(c) General.

(1) Except as otherwise provided in Section 8 of this Article II, only such persons who are nominated in accordance with the procedures set forth in this Section 7 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 7. The presiding officer of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 7 and, if any proposed nomination or business is not in compliance with this Section 7, to declare that such defective nomination or proposal be disregarded.

If any information or certification submitted pursuant to this Section 7 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders, including any certification from a Proposed Nominee, shall be inaccurate in any material respect, such information or certification may be deemed not to have been provided in accordance with this Section 7. Any such stockholder shall update and supplement its notice to the Corporation of its intent to propose a nominee for election as a director or other business at a meeting, if necessary, so that the information or certification provided or required to be provided in such notice pursuant to this Section 7 shall be true and correct as of the record date for notice of the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed to and received by, the secretary at the principal executive office of the Corporation not later than five Business Days after the record date for notice of the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight Business Days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof). Upon written request by the secretary or the Board of Directors, any stockholder or Proposed Nominee shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (i) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 7, (ii) a written confirmation by such stockholder that it continues to intend to bring such nomination or other business proposal before the meeting and, if applicable, satisfy the requirements of Rule 14a-19(a)(3) under the Exchange Act, submitted by the stockholder pursuant to this Section 7 as of an earlier date and (iii) an updated certification by each Proposed Nominee that such individual will serve as a director of the Corporation if elected. If a stockholder or Proposed Nominee fails to provide any update, supplement, written verification, written confirmation or updated certification within the period set forth in this paragraph, the information contained in such update, supplement, written verification, written confirmation or updated certification may be deemed not to have been provided in accordance with this Section 7.

(2) A stockholder proposing a Proposed Nominee shall have no right to (i) nominate a number of Proposed Nominees that exceeds the number of directors to be elected at the meeting or (ii) substitute or replace any Proposed Nominee unless such substitute or replacement is nominated in accordance with this Section 7 or Section 8 of this Article II, as applicable (including the timely provision of all information and certifications with respect to such substitute or replacement Proposed Nominee in accordance with the deadlines set forth in this Section 7 or Section 8 of this Article II, as applicable). If the Corporation provides notice to a stockholder that the number of Proposed Nominees proposed by such stockholder exceeds the number of directors to be elected at a meeting, the stockholder must provide written notice to the Corporation within five Business Days stating the names of the Proposed Nominees that have been withdrawn so that the number of Proposed Nominees proposed by such stockholder no longer exceeds the number of directors to be elected at a meeting. If any individual who is nominated in accordance with this Section 7 becomes unwilling or unable to serve on the Board of Directors, then the nomination with respect to such individual shall no longer be valid and no votes may validly be cast for such individual.

(3) Notwithstanding the foregoing provisions of this Section 7, the Corporation shall disregard any proxy authority granted in favor of, or votes for, director nominees other than the Corporation's nominees if the stockholder or Stockholder Associated Person (each, a "Soliciting Stockholder") soliciting proxies in support of such director nominees abandons the solicitation or does not (i) comply with Rule 14a-19 promulgated under the Exchange Act, including any failure by the Soliciting Stockholder to (A) provide the Corporation with any notices required thereunder in a timely manner or (B) comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act, or (ii) timely provide evidence in accordance with the following sentence that is sufficient, in the discretion of the Board of Directors, to demonstrate that such Soliciting Stockholder has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act. Upon request by the Corporation, if any Soliciting Stockholder provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act (or is not required to provide notice because the information required by Rule 14a-19(b) has been provided in a preliminary or definitive proxy statement previously filed by such Soliciting Stockholder), such Soliciting Stockholder shall deliver to the Corporation, no later than five Business Days prior to the applicable meeting of stockholders, evidence that is sufficient, in the discretion of the Board of Directors, to demonstrate that such Soliciting Stockholder has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(4) For purposes of this Section 7, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(5) Notwithstanding the foregoing provisions of this Section 7, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 7. Nothing in this Section 7 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(6) Notwithstanding anything in these Bylaws to the contrary, except as otherwise determined by the chairman of the meeting, if the stockholder giving notice as provided for in this Section 7 does not appear in person or by proxy at such annual or special meeting to present each nominee for election as a director or the proposed business, as applicable, such matter shall not be considered at the meeting.

SECTION 8. PROXY ACCESS

(a) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 8, the Corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by the Board of Directors or any committee thereof, the name, together with the Required Information (defined below), of any person nominated for election (a "Stockholder Nominee") to the Board of Directors by an Eligible Stockholder (defined below) that expressly elects at the time of providing the notice required by this Section 8 (the "Notice of Proxy Access Nomination") to have such nominee included in the Corporation's proxy materials pursuant to this Section 8. For purposes of this Section 8, the "Required Information" that the Corporation will include in its proxy statement is the information provided to the Secretary of the Corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement by the regulations promulgated under the Exchange Act and, if the Eligible Stockholder so elects, a Supporting Statement (defined below). For the avoidance of doubt, nothing in this Section 8 shall limit the Corporation's ability to solicit votes against any Stockholder Nominee or include in its proxy materials the Corporation's own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to the Corporation pursuant to this Section 8. Subject to the provisions of this Section 8, the name of any Stockholder Nominee included in the Corporation's proxy statement for an annual meeting of stockholders shall also be set forth on the form of proxy distributed by the Corporation in connection with such annual meeting.

(b) To be timely, the Notice of Proxy Access Nomination must be delivered to the Secretary at the principal executive offices of the Corporation not less than one hundred twenty (120) days and not more than the one hundred fifty (150) days prior to the first anniversary of the date that the Corporation distributed its proxy statement to stockholders for the previous year's annual meeting of stockholders.

(c) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (i) two (2) or (ii) twenty percent (20%) of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 8 (the "Final Proxy Access Nomination Date") or, if such amount is not a whole number, the closest whole number below twenty percent (20%). In the event that one or more vacancies for any reason occurs on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the maximum number of Stockholder Nominees included in the Corporation's proxy materials shall be calculated based on the number of directors in office as so reduced. For purposes of determining when the maximum number of Stockholder Nominees provided for in this Section 8 has been reached, each of the following persons shall be counted as one of the Stockholder Nominees: (i) any individual nominated by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 8 whose nomination is subsequently withdrawn, (ii) any individual nominated by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 8 whom the Board of Directors decides to nominate for election to the Board of Directors and (iii) any director in office as of the Final Proxy Access Nomination Date who was included in the Corporation's proxy materials as a Stockholder Nominee for either of the two (2) preceding annual meetings of stockholders (including any individual counted as a Stockholder Nominee pursuant to the immediately preceding clause (ii)) and whom the Board of Directors decides to renominate for election to the Board of Directors. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 8 shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy statement in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 8 exceeds the maximum number of Stockholder Nominees provided for in this Section 8. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 8 exceeds the maximum number of Stockholder Nominees provided for in this Section 8, the highest ranking Stockholder Nominee who meets the requirements of this Section 8 from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials until the maximum number is reached, going in order of the amount (largest to smallest) of shares of common stock of the Corporation each Eligible Stockholder disclosed as owned in its Notice of Proxy Access Nomination. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 8 from each Eligible Stockholder has been selected, then the next highest ranking Stockholder Nominee who meets the requirements of this Section 8 from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the maximum number is reached.

(d) An "Eligible Stockholder" is a stockholder or group of no more than twenty-five (25) stockholders (counting as one stockholder, for this purpose, any two or more funds that are part of the same Qualifying Fund Group (as defined below)) that (i) has owned (as defined below) continuously for at least three (3) years (the "Minimum Holding Period") a number of shares of common stock of the Corporation that represents at least three percent (3%) of the Corporation's outstanding common stock as of the date the Notice of Proxy Access Nomination is delivered to the Secretary of the Corporation in accordance with this Section 8 (the "Required Shares"), (ii) continues to own the Required Shares through the annual meeting date and (iii) satisfies all other requirements of, and complies with all applicable procedures set forth in, this Section 8. A "Qualifying Fund Group" is a group of two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer or (C) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended. For purposes of this Section 8, an Eligible Stockholder shall be deemed to "own" only those outstanding shares of common stock of the Corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument or agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, if, in any such case, such instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. Without limiting the foregoing, to the extent not excluded by the immediately preceding sentence, an Eligible Stockholder's "short position" as defined in Rule 14e-4 under the Exchange Act shall be deducted from the shares otherwise "owned." A stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's ownership of shares shall be deemed to continue during any period in which (i) the stockholder has loaned such shares, provided that the stockholder has the power to recall such loaned shares on five (5) business days' notice and includes with the Notice of Proxy Access Nomination an agreement that it (A) will promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the Corporation's proxy materials and (B) will continue to hold such shares through the date of the annual meeting or (ii) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the common stock of the Corporation are "owned" for these purposes shall be determined by the Board of Directors or any committee thereof. For purposes of this Section 8, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

(e) To be in proper form for purposes of this Section 8, the Notice of Proxy Access Nomination must include the following:

(1) a written statement by the Eligible Stockholder setting forth and certifying as to the number of shares it owns and has owned continuously during the Minimum Holding Period, and the Eligible Stockholder's agreement to provide immediate notice if the Eligible Stockholder ceases to own any of the Required Shares prior to the date of the annual meeting;

(2) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven (7) calendar days prior to the date the Notice of Proxy Access Nomination is delivered to the Secretary of the Corporation, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide, within five (5) business days after the later of the record date for the annual meeting and the date on which notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date;

(3) a copy of the Schedule 14N that has been filed with the United States Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act;

(4) the certifications, representations and other information required by paragraph (a)(2) of Section 7 of this Article II (including the consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected);

(5) a representation that the Eligible Stockholder (i) will continue to hold the Required Shares through the annual meeting date, (ii) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have such intent, (iii) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) it is nominating pursuant to this Section 8, (iv) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (v) has not distributed and will not distribute to any stockholder of the Corporation any form of proxy for the annual meeting other than the form distributed by the Corporation, (vi) has complied and will comply with all laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting, and (vii) has provided and will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make such information, in light of the circumstances under which it was or will be made or provided, not misleading;

(6) an undertaking that the Eligible Stockholder agrees to (i) assume all liability stemming from any legal or regulatory violation arising out communications with the stockholders of the Corporation by the Eligible Stockholder, its affiliates and associates or their respective agents and representatives, either before or after providing a Notice of Proxy Access Nomination pursuant to this Section 8, or out of the facts, statements or other information that the Eligible Stockholder or its Stockholder Nominee(s) provided to the Corporation pursuant to this Section 8 or otherwise in connection with the inclusion of such Stockholder Nominee(s) in the Corporation's proxy materials pursuant to this Section 8, (ii) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 8 and (iii) file with the Securities and Exchange Commission any solicitation or other communication with the stockholders of the Corporation relating to the meeting at which its Stockholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act; and

(7) in the case of a nomination by a group of stockholders together constituting an Eligible Stockholder in which two or more funds that are part of the same Qualifying Fund Group are counted as one stockholder for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the Corporation that demonstrates that the funds are part of the same Qualifying Fund Group.

(f) In addition to the information required pursuant to Section 8(e) or any other provision of these Bylaws, the Corporation may require (i) each Stockholder Nominee to furnish any other information (A) that may reasonably be requested by the Corporation to determine whether the Stockholder Nominee would be independent under the rules and listing standards of the principal United States securities exchanges upon which the common stock of the Corporation is listed or traded, any applicable rules of the U.S. Securities and Exchange Commission or any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors (collectively, the "Independence Standards"), (B) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Stockholder Nominee or (C) that may reasonably be requested by the Corporation to determine the eligibility of such Stockholder Nominee to be included in the Corporation's proxy materials pursuant to this Section 8 or to serve as a director of the Corporation and (ii) the Eligible Stockholder to furnish any other information that may reasonably be requested by the Corporation to verify the Eligible Stockholder's continuous ownership of the Required Shares for the Minimum Holding Period and through the date of the annual meeting.

(g) The Eligible Stockholder may, at its option, provide to the Secretary of the Corporation, at the time the Notice of Proxy Access Nomination is provided, a written statement, not to exceed 500 words, in support of the Stockholder Nominee(s)' candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Stockholder (including any group of stockholders together constituting an Eligible Stockholder) in support of its Stockholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 8, the Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law or regulation.

(h) In the event that any information or communications provided by an Eligible Stockholder or a Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct in all material respects or omits a material fact necessary to make such information, in light of the circumstances under which it was made or provided, not misleading, such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any such defect in such previously provided information and of the information that is required to correct any such defect; it being understood that providing such notification shall not be deemed to cure any such defect or limit the remedies available to the Corporation relating to any such defect (including the right to omit a Stockholder Nominee from its proxy materials pursuant to this Section 8). In addition, any person providing any information pursuant to this Section 8 must deliver to the Secretary at the principal executive office of the Corporation, not later than five (5) business days after the later of the record date for the annual meeting and the date on which notice of the record date is first publicly disclosed (i) any such written updates and supplements necessary to ensure that the information previously provided or required to be provided shall be true and correct as of the record date for the annual meeting or (ii) a written certification that no such updates or supplements are necessary and that the information previously provided remains true and correct as of the record date for the annual meeting.

(i) Notwithstanding anything to the contrary contained in this Section 8, the Corporation shall not be required to include, pursuant to this Section 8, a Stockholder Nominee in its proxy materials (i) for any meeting of stockholders for which the Secretary of the Corporation receives notice that the Eligible Stockholder or any other stockholder intends to nominate one or more persons for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees set forth in Section 7 of this Article II, (ii) if such Stockholder Nominee would not be an independent director under the Independence Standards, as determined by the Board of Directors or one or more of its committees, (iii) if such Stockholder Nominee's election as a member of the Board of Directors would cause the Corporation to be in violation of these Bylaws, the Charter, the rules and listing standards of the principal United States securities exchanges upon which the common stock of the Corporation is listed or traded, or any applicable state or federal law, rule or regulation, (iv) if such Stockholder Nominee is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (v) if such Stockholder Nominee or the Eligible Stockholder who nominated such Stockholder Nominee provides any facts, statements or other information to the Corporation or its stockholders required or requested pursuant to this Section 8 that is not true and correct in all material respects or that omits a material fact necessary to make such information, in light of the circumstances in which it is made or provided, not misleading, or (vi) if such Stockholder Nominee or the Eligible Stockholder who nominated such Stockholder Nominee otherwise contravenes any of the agreements or representations made by such Stockholder Nominee or Eligible Stockholder or fails to comply with its obligations pursuant to this Section 8.

(j) Notwithstanding anything to the contrary set forth herein, if (i) the Stockholder Nominee and/or the applicable Eligible Stockholder shall have breached any of its or their obligations, agreements or representations under this Section 8, or (ii) the Stockholder Nominee shall have otherwise become ineligible for inclusion in the Corporation's proxy materials pursuant to this Section 8 or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board of Directors, any committee thereof or the presiding officer at the annual meeting of stockholders, (x) the Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (y) the Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder and (z) the Board of Directors or the presiding officer at the annual meeting of stockholders shall declare such nomination to be invalid, such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation and the named proxies will not vote any proxies received from stockholders with respect to such Stockholder Nominee. In addition, if the Eligible Stockholder (or a representative thereof) does not appear at the annual meeting to present any nomination pursuant to this Section 8, such nomination shall be declared invalid and disregarded as provided in clause (z) above.

(k) Whenever the Eligible Stockholder consists of a group of stockholders (including a group of funds that are part of the same Qualifying Fund Group), (i) each provision in this Section 8 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate their shareholdings in order to meet the three percent (3%) ownership requirement of the "Required Shares" definition), (ii) the Notice of Proxy Access Nomination must designate one member of the group for purposes of receiving communications, notices and inquiries from the Corporation and otherwise authorize such member to act on behalf of each member of the group with respect to the nomination under this Section 8 and (iii) a breach of any obligation, agreement or representation under this Section 8 by any member of such group shall be deemed a breach by the Eligible Stockholder. Whenever the Eligible Stockholder consists of a group of stockholders aggregating their shareholdings in order to meet the three percent (3%) ownership requirement of the "Required Shares" definition, (x) such ownership shall be determined by aggregating the lowest number of shares continuously owned by each such stockholder during the Minimum Holding Period and (y) the Notice of Proxy Access Nomination must indicate, for each such stockholder, such lowest number of shares continuously owned by such stockholder during the Minimum Holding Period. No person may be a member of more than one group of persons constituting an Eligible Stockholder with respect to any annual meeting. For the avoidance of doubt, a stockholder may withdraw from a group of stockholders at any time prior to the annual meeting of stockholders and if, as a result of such withdrawal, the Eligible Stockholder no longer owns the Required Shares, the nomination shall be disregarded as provided in Section 8(i).

(l) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least ten percent (10%) of the votes cast in favor of such Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 8 for the next two annual meetings of stockholders. For the avoidance of doubt, the immediately preceding sentence shall not prevent any stockholder from nominating any person to the Board of Directors pursuant to and in accordance with Section 7 of this Article II.

(m) For purposes of this Section 8, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

SECTION 9. INSPECTORS -- The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If the inspectors shall not be so appointed or if any of them shall fail to appear or act, the chairman of the meeting may, and on the request of any stockholder entitled to vote thereat shall, appoint inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath to execute faithfully the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting or any stockholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as inspector of an election of directors. Inspectors need not be stockholders.

SECTION 10. CONTROL SHARE ACQUISITION ACT -- Notwithstanding any other provision of the Charter or these Bylaws, Title 3, Subtitle 7 of the Maryland General Corporation Law (the "MGCL") (or any successor statute) shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

## ARTICLE III

## DIRECTORS

SECTION 1. NUMBER AND TERM -- At any regular meeting or at any special meeting called for that purpose, a majority of the entire Board of Directors may establish, increase or decrease the number of directors, provided, that the number thereof shall never be less than three (3), nor more than eleven (11), and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors. Notwithstanding the foregoing, upon the occurrence of a default in the payment of dividends of any class or series of preferred stock, or any other event, which will entitle the holders of any class or series of preferred stock to elect additional directors of the Corporation, the number of directors of the Corporation will thereupon be increased by the number of additional directors to be elected by the holders of such class or series of preferred stock, and such increase in the number of directors shall remain in effect for so long as the holders of such class of series of preferred stock are entitled to elect such additional directors. Directors need not be stockholders.

SECTION 2. QUORUM -- A majority of the directors shall constitute a quorum for the transaction of business. If, at any meeting of the Board, there shall be less than a quorum present, a majority of those directors present may adjourn the meeting, from time to time, until a quorum is obtained, and no further notice thereof need be given other than by announcement at said meeting which shall be so adjourned.

SECTION 3. FIRST MEETING -- The newly elected directors may hold their first meeting for the purpose of organization and the transaction of business, if a quorum is present, immediately after the annual meeting of stockholders or the time and place of such meeting may be fixed by written consent of the entire Board.

SECTION 4. ELECTION OF OFFICERS -- At the first meeting, or at any subsequent meeting called for that purpose, the directors shall elect the officers of the Corporation, as more specifically set forth in ARTICLE V of these Bylaws. Such officers shall hold office until the next annual election of officers, or until their successors are elected and shall have qualified.

SECTION 5. REGULAR MEETINGS -- Regular meetings of the Board of Directors shall be held at such places and times as shall be determined, from time to time, by resolution of the Board of Directors without other notice than such resolution.

SECTION 6. SPECIAL MEETINGS -- Special meetings of the Board of Directors may be called by the Chairman, the Chief Executive Officer, the President, the Secretary or by any three (3) directors on prior notice to each director. In case such notice is mailed, it shall be given at least four (4) days prior to the time of the holding of the meeting. In case such notice is given personally, or by telephone, electronic mail, facsimile correspondence or telegram, it shall be given at least twenty-four (24) hours prior to the time of the holding of the meeting.

SECTION 7. PLACE OF MEETINGS -- The directors may hold their meetings, and have one or more offices, and keep the books of the Corporation outside the State of Maryland at any office or offices of the Corporation, or at any other place as they from time to time by resolution may determine.

SECTION 8. DISPENSING WITH NOTICE -- The transactions of any meeting of the Board of Directors which is not properly called or noticed, regardless of how called and noticed or wherever held, shall be as valid as though such transactions had occurred at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes thereof. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting need not be given to any director who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director.

SECTION 9. ACTION WITHOUT MEETING -- Any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting if a written consent thereto is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board of Directors or committee.

SECTION 10. TELEPHONIC MEETINGS -- Unless otherwise restricted by the Charter or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 11. GENERAL POWERS OF DIRECTORS -- The Board of Directors shall manage the business and affairs of the Corporation, and, subject to the restrictions imposed by law, exercise all the powers of the Corporation, except as conferred on or reserved to the stockholders by law or by the Charter or these Bylaws.

SECTION 12. SPECIFIC POWERS OF DIRECTORS -- Without prejudice to such general powers, it hereby is expressly declared that the directors shall have the following powers, to the extent permitted under the laws of the State of Maryland, subject to the provisions of the Charter and other provisions of these Bylaws:

(1) To make and change regulations, not inconsistent with these Bylaws, for the management of the business and affairs of the Corporation.

(2) To purchase or otherwise acquire for the Corporation any property, rights or privileges which the Corporation is authorized to acquire.

(3) To pay for any property purchased for the Corporation, either wholly or partly in money, stock, bonds, debentures or other securities of the Corporation.

(4) To borrow money and make and issue notes, bonds and other negotiable and transferable instruments, mortgages, deeds of trust and trust agreements, and to do every act and thing necessary to effectuate the same.

(5) To lease and rent real property whether in the capacity of lessor or lessee.

(6) To dispose of or transfer property, both real and personal, in any fashion or by any lawful means, including, without limitation, by lease and as security for borrowings of the Corporation.

(7) To lend money and acquire loans made by others, and to accept, in connection therewith, notes, bonds and other transferable instruments, mortgages, deeds of trust and trust agreements of others, and to do every act and thing otherwise necessary in connection therewith.

(8) To make investments from time to time with funds of the Corporation and to dispose of such investments.

(9) To remove any officer when, in their judgment, the best interests of the Corporation shall be served thereby, and, in their discretion, from time to time to devolve the powers and duties of any officer upon any other officer or person for the time being.

(10) To appoint and remove or suspend subordinate officers, agents, or factors as they may deem necessary, and to determine their duties, and to fix and from time to time to change their salaries or remuneration, and to require security as and when they think fit.

(11) To confer upon the Chief Executive Officer or the President of the Corporation the power to appoint, remove and suspend subordinate officers, agents and factors.

(12) To determine who shall be authorized, on behalf of the Corporation, to make and sign bills, notes, acceptances, endorsements, contracts and other instruments.

(13) To determine who shall be entitled, in the name and on behalf of the Corporation, to vote upon or to assign and transfer any shares of stock, bonds or other securities of other corporations held by this Corporation.

(14) To authorize the Corporation to enter into, and to execute and deliver, and to modify, amend or terminate, from time to time, agreements, notes, acceptances, bills of sale, documents of transfer or other documents or instruments of any kind or nature whatsoever, in furtherance of or in connection with lawful activities of the Corporation.

(15) To delegate any of the powers of the Board, in relation to the ordinary business of the Corporation, to any standing or special committee, or to any officer or agent (with power to sub-delegate), upon such terms as they deem fit.

(16) To call special meetings of the stockholders for any purpose or purposes.

SECTION 13. COMPENSATION -- Directors shall receive no stated salary for their services as directors but, by resolution of the Board, may receive fixed fees per year and/or per meeting, and expenses of attendance for attendance at each meeting.

Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, or otherwise, and receiving compensation therefor.

## ARTICLE IV

## COMMITTEES

SECTION 1. APPOINTMENTS AND POWERS -- The Board of Directors may, by resolution or resolutions passed by a majority of the entire Board of Directors, designate one or more committees, including, without limitation an Audit Committee, a Nominating and Corporate Governance Committee and a Compensation Committee, each consisting of one (1) or more directors, to serve at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of a committee who may replace any absent or disqualified member at any meeting of the committee. Such alternate members shall not be counted for purposes of determining a quorum unless so appointed, in which case they shall be counted in the place of the absent or disqualified member. The committee, to the extent provided in said resolution or resolutions or in these Bylaws and permitted under the laws of the State of Maryland, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in these Bylaws or as may be determined from time to time by resolution adopted by the Board of Directors.

SECTION 2. MINUTES -- Committees shall keep regular minutes of their proceedings, and report the same to the Board of Directors when required.

## ARTICLE V

## OFFICERS

SECTION 1. OFFICERS -- The officers of the Corporation shall include a Chief Executive Officer, a President, a Secretary and a Treasurer, and may include a Chairman, one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers. Any person may hold two or more offices, except that no one person shall concurrently hold the offices of President and Vice-President.

The Board of Directors may elect such other officers and agents as it may deem advisable, who shall hold office for such terms and shall exercise such powers and perform such duties as shall from time to time be determined by the Board of Directors.

The officers of the Corporation shall be elected annually by the Board of Directors, except that the Chief Executive Officer or the President may from time to time appoint one or more senior vice presidents, vice presidents, assistant secretaries, assistant treasurers or other assistant or subordinate officers. Each officer shall serve until the officer's successor is elected and qualifies or until the officer's death, or the officer's resignation or removal in the manner hereinafter provided.

SECTION 2. CHIEF EXECUTIVE OFFICER -- The Chief Executive Officer shall have the general powers and duties of supervision and management usually vested in the office of Chief Executive Officer of a corporation. He shall have general supervision, direction and control of the business of the Corporation. He shall also exercise such further powers and perform such other duties as may be conferred upon him by the Bylaws or the Board of Directors from time to time. Except as the Board of Directors shall authorize the execution thereof in some other manner, he shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and he may cause the corporate seal to be affixed to any instrument or document executed on behalf of the Corporation. In the event that no other individual shall at that time have been appointed by the Board of Directors to, and hold, the office of President of the Corporation, the individual appointed by the Board to the position of Chief Executive Officer shall also, by virtue of holding such office, be deemed to hold the office of President, and any action taken by such individual in his capacity as Chief Executive Officer will also be deemed action of the President.

SECTION 3. PRESIDENT -- The President shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation. He shall have general supervision, direction and control of the business of the Corporation. He shall also exercise such further powers and perform such other duties as may be conferred upon him by the Bylaws or the Board of Directors from time to time. Except as the Board of Directors shall authorize the execution thereof in some other manner, he shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and he may cause the corporate seal to be affixed to any instrument or document executed on behalf of the Corporation. In the event that no other individual shall at that time have been appointed by the Board of Directors to, and hold, the office of President of the Corporation, the individual appointed by the Board of Directors to the office of Chief Executive Officer shall also, by virtue of holding such office, be deemed to hold the office of President, and any action taken by such individual in his capacity as Chief Executive Officer will also be deemed action of the President.

SECTION 4. VICE PRESIDENTS -- Each Vice President shall have such powers and shall perform such duties as are usually vested in the office of Vice President of a corporation. Except as the Board of Directors shall authorize the execution thereof in some other manner, he shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and he may cause the corporate seal to be affixed to any instrument or document executed on behalf of the Corporation. One or more vice presidents may be designated as executive vice presidents, senior vice presidents or vice presidents for particular areas of responsibility.

SECTION 5. SECRETARY -- The Secretary shall give, or cause to be given, notice of all meetings of stockholders and the Board of Directors, and all other notices required by law or by these Bylaws, and, in case of his absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the Chief Executive Officer, the President, the Board of Directors, or the stockholders upon whose request the meeting is called as provided in these Bylaws. He shall record all proceedings of meetings of the stockholders and of the Board of Directors in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him by the Directors or the Chief Executive Officer or President. He shall have custody of the corporate seal, and shall have the power to affix said seal to all instruments or documents executed on behalf of the Corporation.

SECTION 6. TREASURER -- The Treasurer shall have the custody of the corporate funds and securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation. He shall deposit all monies and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors.

The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the President or Chief Executive Officer, taking proper vouchers for such disbursements. He shall render to the President or Chief Executive Officer and the Board of Directors, at the regular meetings of the Board, or whenever they may request it, an accounting of all his transactions as Treasurer, and of the financial condition of the Corporation.

If required by the Board of Directors, he shall give the Corporation a bond for the faithful discharge of his duties, in such amount and with such surety as the Board shall prescribe.

SECTION 7. CHAIRMAN -- The Chairman, if one is elected, shall preside at all meetings of the Board of Directors and stockholders, and shall have and perform such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 8. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS -- Assistant Secretaries and Assistant Treasurers, if any, may be appointed by the Chief Executive Officer, the President or the Board of Directors and shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the Secretary and by the Treasurer.

## ARTICLE VI

## RESIGNATIONS; FILLING OF VACANCIES; REMOVAL FROM OFFICE

SECTION 1. RESIGNATIONS -- Any director or officer may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and, if no time be specified, at the time of its receipt by the Board of Directors, the Chief Executive Officer, the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

SECTION 2. FILLING OF VACANCIES -- If the office of any officer or director becomes vacant, other than vacancies on the Board of Directors created by an increase in the number of directors, the remaining directors in office, although less than a quorum, may appoint, by a majority vote, any qualified person to fill such vacancy, who shall hold office, in the case of an officer, for the unexpired term of his predecessor and until his successor is elected and shall have qualified, or, in the case of a director, until the next annual meeting of stockholders and until his successor is elected and shall have qualified.

Any vacancy on the Board of Directors occurring by reason of an increase in the number of directors may be filled by action of a majority of the entire Board, for a term of office continuing only until the next annual meeting of stockholders and until his successor is elected and shall have qualified, or may be filled by the affirmative vote of the holders of a majority of the shares then entitled to vote at an election of directors.

SECTION 3. REMOVAL FROM OFFICE -- A director may be removed from office only by the stockholders or the Board of Directors of the Corporation in the manner and by the vote set forth in the Charter of the Corporation. The stockholders of the Corporation may elect a successor or successors to fill any vacancy or vacancies which result from the removal of a director or directors, and each such successor will serve for the unexpired term of the removed director.

Any officer or agent elected or appointed by the Board of Directors, may be removed by said Board whenever, in its judgment, the best interests of the Corporation shall be served thereby.

**ARTICLE VII**

**CAPITAL STOCK**

SECTION 1. STOCK CERTIFICATES AND UNCERTIFICATED SHARES -- The shares of stock in the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Every holder of shares of stock of the Corporation, other than uncertificated shares, shall be entitled to a certificate or certificates signed by the Chairman, the Chief Executive Officer, the President or a Vice President, and countersigned by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, representing and certifying to the number of shares of stock owned by such holder. The signatures on certificates of stock may be either manual or facsimile.

In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of its issue. Each certificate representing shares of the capital stock of the Corporation shall bear on its face or back such statements relating to the authority of the Corporation to issue more than one class of stock, the designations and other terms and conditions of each such class of stock and restrictions on transferability of capital stock imposed by the Corporation, or a statement that such information will be provided on request and without charge, all as and to the extent which may be required by the laws of the State of Maryland.

SECTION 2. LOST CERTIFICATES -- A new certificate of stock may be issued in place of any certificate theretofore issued by the Corporation and alleged to have been lost or destroyed, and the Board of Directors may, at its discretion, request the owner of the lost or destroyed certificate, or his legal representative, to give the Corporation a bond, in such sum as the Board of Directors may direct, but not exceeding double the value of the stock, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss of any such certificate.

SECTION 3. TRANSFER OF SHARES -- Subject to the restrictions that may be contained in the Charter, the shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized representatives.

SECTION 4. DIVIDENDS -- Subject to the provisions of the Charter and the laws of the State of Maryland, the Board of Directors may, at any regular or special meeting, declare dividends upon the capital stock of the Corporation, as and when the Board of Directors may deem expedient.

**ARTICLE VIII**

**MISCELLANEOUS**

SECTION 1. CORPORATE SEAL -- The Board of Directors shall adopt and may alter a common seal of the Corporation. Said seal shall be circular in form and shall contain the name of the Corporation, the year of its creation, and the words: “CORPORATE SEAL, MARYLAND.” It may be used by causing it or a facsimile thereof to be impressed, affixed, or otherwise reproduced.

SECTION 2. FISCAL YEAR -- The fiscal year of the Corporation shall end on the 31st day of December of each calendar year.

SECTION 3. CHECKS, DRAFTS, NOTES -- All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner, as from time to time shall be determined by resolution of the Board of Directors or, in the absence of any specific resolution of the Board of Directors, or if not otherwise provided by the Board of Directors, may be signed by the Chief Executive Officer, the President or any Vice President.

SECTION 4. CORPORATE RECORDS -- The Corporation shall keep correct and complete books of account and minutes of the proceedings of its stockholders and Board of Directors.

The Corporation shall keep and maintain at its principal office a certified copy of its Charter and all amendments thereto, a certified copy of its Bylaws and all amendments thereto, a stock ledger or duplicate stock ledger, revised annually, containing the names, alphabetically arranged, of all stockholders, their residence addresses, and the number of shares held by them, respectively. In lieu of the stock ledger or duplicate stock ledger, a statement may be filed in the principal office stating the name of the custodian of the stock ledger or duplicate stock ledger, and the present and complete post office address (including street and number, if any) where such stock ledger or duplicate stock ledger is kept.

The Board of Directors shall take all reasonable steps to assure that a full and correct annual statement of the affairs of the Corporation is prepared annually, including a balance sheet and a financial statement of operations for the preceding fiscal year which shall be certified by independent certified public accountants, and distributed to stockholders within one hundred and twenty (120) days after the close of the Corporation's fiscal year and a reasonable period of time prior to the annual meeting of stockholders. Such annual statement shall also be submitted at the annual meeting and shall be filed within twenty (20) days thereafter at the principal office of the Corporation in the State of Maryland. The Board of Directors shall also be responsible for scheduling the annual meeting of stockholders.

SECTION 5. NOTICE AND WAIVER OF NOTICE -- Whenever, pursuant to the laws of the State of Maryland or these Bylaws, any notice is required to be given, personal notice is not meant unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by statute.

Any notice required to be given may be waived, in writing, by the person or persons entitled thereto, whether before or after the time stated therein.

## ARTICLE IX

## AMENDMENTS

SECTION 1. AMENDMENTS OF BYLAWS -- The stockholders by the affirmative vote of a majority of all the votes entitled to be cast on the matter, or the directors, by the affirmative vote of a majority of the entire Board of Directors, may amend or alter any of these Bylaws. Notwithstanding the foregoing, any amendment to Section 1 of Article III of the Bylaws which increases the number of directors by more than one (1) in any twelve (12) month period or increases the total number of directors to more than ten (10), and any amendment to this Section 1 of Article IX of the Bylaws, shall require approval by the Board of Directors by unanimous vote or approval by the stockholders of the Corporation by the affirmative vote of 90% of all votes entitled to be cast.

## ARTICLE X

## INDEMNIFICATION OF OFFICERS AND DIRECTORS

SECTION 1. INDEMNIFICATION -- The Corporation shall indemnify and hold harmless, in the manner and to the fullest extent permitted by law, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or, as a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, trustee, partner, member, agent or employee of another corporation, partnership, limited liability company, association, joint venture, trust, benefit plan or other enterprise (including without limitation service in the administration and management of any separate, segregated fund established for purposes of collecting and distributing voluntary employee political contributions to federal election campaigns pursuant to the Federal Election Campaign Act of 1971, as amended from time to time). To the fullest extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement and any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding and without requiring a preliminary determination as to the ultimate entitlement to indemnification. The Corporation may, with the approval of the Board of Directors, provide such indemnification and advancement of expenses as set forth in the preceding sentences of this Section 1 of this Article X of the Bylaws to agents and employees of the Corporation, other than officers and directors. The Corporation may, to the fullest extent permitted by law, purchase and maintain insurance on behalf of any officer or director or employee against any liability which may be asserted against such person.

SECTION 2. PROVISIONS NOT EXCLUSIVE -- This Article X shall not be construed as a limitation upon the power of the Corporation to indemnify any other person for any such expenses to the fullest extent permitted by law, or upon the power of the Corporation to enter into contracts or undertakings of indemnity with a director, officer, employee or agent of the Corporation, nor shall it be construed as a limitation upon any other rights to which a person seeking indemnification from the Corporation may be entitled under any agreement, the Charter of the Corporation, or vote of stockholders or disinterested directors, or otherwise, both as to any action in such person's official capacity and as to any action in another capacity while holding any office of the Corporation.

SECTION 3. RESTRICTION ON REPEAL OR MODIFICATION -- Any repeal or modification of any section of this Article X of the Bylaws by the stockholders or directors of the Corporation shall be prospective only, and shall not adversely affect any right to indemnification or advancement of expenses hereunder existing at the time of such repeal or modification.

**Exhibit 3.5**

**ARTICLES OF MERGER**

of

**HEALTHPEAK MERGER SUB, INC.**
a Maryland corporation

with and into

**HEALTHPEAK PROPERTIES, INC.**
a Maryland corporation

Healthpeak Merger Sub, Inc., a Maryland corporation ("Merger Sub"), and Healthpeak Properties, Inc., a Maryland corporation (the "Company"), do hereby certify to the State Department of Assessments and Taxation of Maryland (the "Department") as follows:

**FIRST**: Each of Merger Sub and the Company does hereby agree to effect a merger (the "Merger"), pursuant to Section 3-106.2 of the Maryland General Corporation Law (the "MGCL"), upon the terms and conditions set forth herein and as contemplated by the Agreement and Plan of Merger, dated as of February 7, 2023 (the "Merger Agreement"), by and among the Company, New Healthpeak, Inc., a Maryland corporation ("Holdco"), and Merger Sub.

**SECOND**: Each of Merger Sub and the Company were incorporated under the laws of the State of Maryland. The Company shall survive the Merger as the successor corporation (the "Surviving Entity"). At the Effective Time (as defined herein) and pursuant to Article SIXTH hereof, the name of the Surviving Entity shall be "Healthpeak Properties Interim, Inc."

**THIRD**: The principal office of the Company in the State of Maryland is located in Baltimore County. The principal office of Merger Sub in the State of Maryland is located in Baltimore County.

**FOURTH**: Merger Sub does not own any interest in land in the State of Maryland.

**FIFTH**: The terms and conditions of the transaction set forth in these Articles of Merger were advised, authorized and approved by each corporation party to these Articles of Merger in the manner and by the vote required by its charter and the laws of the State of Maryland. The manner of approval was as follows:

(a) By unanimous written consent of the board of directors of Merger Sub adopted on or as of February 6, 2023, the Merger was declared advisable and submitted for the consideration of the sole stockholder of Merger Sub. By the written consent of the sole stockholder of Merger Sub adopted on or as of February 6, 2023, the Merger was authorized and approved.

(b) By resolutions of the board of directors of the Company adopted unanimously on or as of February 2, 2023, the Merger was declared advisable, authorized and approved. Pursuant to Section 3-106.2 of the MGCL, the approval of the Company's stockholders is not required.

**SIXTH**: At the Effective Time, in order to change the name of the Surviving Entity, the charter of the Company as in effect immediately prior to the Effective Time will be, and hereby is, amended as part of the Merger to delete Article I in its entirety and to insert, in lieu thereof, the following new Article I:

"ARTICLE I
NAME

The name of this corporation shall be Healthpeak Properties Interim, Inc."

The charter of the Company, as so amended, shall continue in full force and effect as the charter of the Surviving Entity until further amended in accordance with its terms and applicable law.

**SEVENTH**: At the Effective Time, Merger Sub shall be merged with and into the Company with the Company surviving the Merger as the Surviving Entity; and, thereupon, the separate existence of Merger Sub shall cease, the Surviving Entity shall possess any and all purposes and powers of Merger Sub; and all leases, licenses, property, rights, privileges and powers of whatever nature and description of Merger Sub shall be transferred to, vested in and devolved upon the Surviving Entity without further act or deed; and the Surviving Entity shall be liable for all of the debts, liabilities, duties and obligations of Merger Sub. Except as otherwise provided in these Articles of Merger, consummation of the Merger at the Effective Time shall have the effects set forth in Section 3-114 of the MGCL.

**EIGHTH**: (a) The total number of shares of stock of all classes or series that Merger Sub has authority to issue is 1,000 shares of common stock, par value $0.01 per share. The aggregate par value of all the shares of stock of all classes or series that Merger Sub has authority to issue is $10.00.

(b) The total number of shares of stock of all classes or series that the Company has authority to issue is 800,000,000 shares of stock, consisting of 750,000,000 shares of common stock, par value $1.00 per share, and 50,000,000 shares of preferred stock, par value $1.00 per share. The aggregate par value of all the shares of stock of all classes or series that the Company has authority to issue is $800,000,000.

(c) These Articles of Merger do not change the total number of authorized shares of stock or the number of authorized shares of stock of any class or series of the Surviving Entity.

**NINTH**: The manner and basis of converting or exchanging issued shares of stock of the merging corporations, and the treatment of any issued shares of stock of the merging corporations not to be converted or exchanged, as more fully described in the Merger Agreement, are as follows:

At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub or the Company:

(a) Each share of common stock, par value $1.00 per share, of the Company ("Company Common Stock") issued and outstanding immediately prior to the Effective Time shall automatically convert, on a one-for-one basis, into one share of common stock, par value $1.00 per share, of Holdco.

(b) Each share of common stock, par value $0.01 per share, of Merger Sub ("Merger Sub Common Stock") issued and outstanding immediately prior to the Effective Time shall automatically convert, on a one-for-one basis, into one share of common stock, par value $1.00 per share, of the Surviving Entity.

Immediately prior to the Effective Time, there will be no shares of stock of any class of the Company or Merger Sub issued and outstanding other than the Company Common Stock and the Merger Sub Common Stock.

**TENTH**: The Merger shall become effective at 9:02 a.m. (Eastern Standard Time) on February 10, 2023 (the "Effective Time").

**ELEVENTH**: These Articles of Merger may be executed in multiple counterparts with multiple signature pages, each bearing one or more signatures, but all such counterparts and signature pages shall constitute one and the same instrument.

**TWELFTH**: The undersigned Chief Financial Officer of the Company acknowledges these Articles of Merger to be the corporate act of the Company and further, as to all matters or facts required to be verified under oath, such undersigned officer acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

**THIRTEENTH**: The undersigned Chief Financial Officer of Merger Sub acknowledges these Articles of Merger to be the corporate act of Merger Sub and further, as to all matters or facts required to be verified under oath, such undersigned officer acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[*Signature page follows*]

**IN WITNESS WHEREOF**, these Articles of Merger have been duly executed on this 8th day of February, 2023 on behalf of Healthpeak Properties, Inc. by its Chief Financial Officer and attested by its Senior Vice President and Corporate Secretary, and on behalf of Healthpeak Merger Sub, Inc. by its Chief Financial Officer and attested by its Senior Vice President and Corporate Secretary.

ATTEST:

HEALTHPEAK PROPERTIES, INC.
a Maryland corporation

By: /s/ Scott A. Graziano
Name: Scott A. Graziano
Title: Senior Vice President and Corporate Secretary

By: Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

ATTEST:

HEALTHPEAK MERGER SUB, INC.
a Maryland corporation

By: /s/ Scott A. Graziano
Name: Scott A. Graziano
Title: Senior Vice President and Corporate Secretary

By: Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

**Exhibit 4.1**

**SECOND SUPPLEMENTAL INDENTURE**

**DATED AS OF FEBRUARY 10, 2023**

**BY AND AMONG**

**HEALTHPEAK OP, LLC**
**as Issuer,**

**HEALTHPEAK PROPERTIES, INC.**
**as Guarantor**

**AND**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**
**as Trustee**

**SUPPLEMENTAL TO THE INDENTURE DATED AS OF SEPTEMBER 1, 1993**

This SECOND SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**") is made and entered into as of February 10, 2023 among Healthpeak OP, LLC., a Maryland limited liability company (the "**Issuer**"), Healthpeak Properties, Inc., a Maryland corporation (the "**Guarantor**"), and The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America, as Trustee (the "**Trustee**").

**WITNESSETH THAT:**

WHEREAS, the Issuer (formerly known as Health Care Property Investors, Inc., a Maryland corporation, and subsequently as Healthpeak Properties, Inc., a Maryland corporation) and the Trustee have executed and delivered an Indenture dated as of September 1, 1993 (as amended, supplemented or otherwise modified from time to time, the "**Base Indenture**" and, together with this Supplemental Indenture, as amended, supplemented or otherwise modified from time to time, the "**Indenture**") to provide for the future issuance of the Issuer's senior debt securities (the "**Securities**") to be issued from time to time in one or more series;

WHEREAS, pursuant to that certain Agreement and Plan of Merger dated as of February 7, 2023, by and among the Issuer, New Healthpeak, Inc., a Maryland corporation ("**New Healthpeak**"), which was a direct, wholly owned subsidiary of the Issuer prior to the Merger (as defined below), and Healthpeak Merger Sub, Inc., a Maryland corporation ("**Merger Sub**"), which was a direct, wholly owned subsidiary of New Healthpeak prior to the Merger, on February 10, 2023, Merger Sub merged with and into the Issuer, with the Issuer being the surviving entity and New Healthpeak became the sole stockholder of the Issuer (the "**Merger**") and New Healthpeak inherited the name "Healthpeak Properties, Inc.";

WHEREAS, following the Merger, effective on February 10, 2023, the Issuer converted from a Maryland corporation into a Maryland limited liability company called "Healthpeak OP, LLC," and New Healthpeak became the managing member of the Issuer;

WHEREAS, prior to the date hereof, the Issuer has issued 6.750% Senior Notes due 2041 (the "**Existing Notes**") pursuant to the terms of the Base Indenture and the Existing Supplemental Indenture (as defined below);

WHEREAS, prior to the date hereof, the Issuer has entered into the First Supplemental Indenture dated January 24, 2011 in respect of the Existing Notes (the "**Existing Supplemental Indenture**");

WHEREAS, Section 801 of the Base Indenture provides that the Issuer may merge with another corporation if (i) immediately after such merger, the Issuer would not be in Default in the performance of any terms, covenants and conditions of the Base Indenture, (ii) the corporation (if other than the Issuer) formed by or surviving any such consolidation or merger, or to which sale or conveyance shall have been made, shall be a corporation organized under the laws of the United States or any State thereof; and (iii) the due and punctual payment of the principal of (and premium, if any), any interest on, and any Additional Amounts payable pursuant to the Base Indenture, with respect to, all the Securities, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of the Base Indenture to be performed or observed by the Issuer, shall be expressly assumed, by a supplemental indenture.

WHEREAS, Sections 901(1) and (7) of the Base Indenture provide that, without the consent of any Holders, the Issuer, at any time and from time to time, may enter into one or more indentures supplemental to the Base Indenture, in form satisfactory to the Trustee, to (i) to evidence the succession of another Person to the Issuer and the assumption by any such successor of the covenants and obligations of the Issuer contained in the Securities of one or more series or in the Base Indenture and (ii) cure any ambiguity, to correct or supplement any provision contained in the Base Indenture or in any indenture supplemental to the Base Indenture which may be defective or inconsistent with any other provision contained in the Base Indenture or in any supplemental to the Base Indenture; and

WHEREAS, in connection with the Merger, the Issuer and the Trustee desire to (i) amend and restate the Base Indenture as set forth on Exhibit A attached hereto, (ii) amend the Existing Supplemental Indenture to add the benefit of a guarantee provided by the Guarantor in respect of the applicable series of the Existing Notes, in accordance with the terms of the Indenture and (iii) cure an ambiguity in the Existing Supplemental Indentures resulting from the Merger.

**NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:**

**ARTICLE 1**

**AMENDMENT**

Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Base Indenture.

Section 1.1. The Base Indenture is hereby amended and restated as set forth on Exhibit A attached hereto.

Section 1.2. With respect to the Existing Notes, the Existing Supplemental Indenture is hereby amended by inserting the following as Section 303:

Securities Guarantee. The payment of principal, interest and certain other amounts on the 6.750% Senior Notes due 2041 will be fully and unconditionally guaranteed by the Guarantor on a senior unsecured basis as set out in Article Fifteen of the Base Indenture, as amended by the Second Supplemental Indenture dated as of February 10, 2023.

Section 1.3. Except as expressly provided in this Supplemental Indenture, to the extent that the Existing Supplemental Indenture modifies the Base Indenture with respect to the Existing Notes, such modifications will remain in full force and effect following the amendment and restatement provided for in Section 1.1 hereof.

**ARTICLE 2**

**MISCELLANEOUS**

Section 2.1. The recitals herein contained are made by the Issuer and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

Section 2.2. This Supplemental Indenture shall be deemed to be a contract made under the law of the State of New York and for all purposes shall be governed by and construed in accordance with the law of said State.

Section 2.3. In case any provision in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 2.4. This Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The words "execution," signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

[Signature page follows]

IN WITNESS WHEREOF, the Issuer, the Guarantor and the Trustee have caused this Supplemental Indenture to be executed in their respective corporate names as of the date first above written.

HEALTHPEAK OP, LLC, as Issuer

By: HEALTHPEAK PROPERTIES, INC., its Managing Member

By: /s/ Scott M. Brinker
Name: Scott M. Brinker
Title: President and Chief Executive Officer

HEALTHPEAK PROPERTIES, INC., as Guarantor

By: /s/ Scott M. Brinker
Name: Scott M. Brinker
Title: President and Chief Executive Officer

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: /s/ April Bradley
Name: April Bradley
Title: Vice President

[*Signature Page to Supplemental Indenture (1993 Indenture)*]

Exhibit A

Amended and Restated Indenture

[Attached.]

HEALTHPEAK OP, LLC,

as Issuer,

HEALTHPEAK PROPERTIES, INC.,

as Guarantor,

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee

# AMENDED AND RESTATED INDENTURE

Dated as of February 10, 2023

Debt Securities

This Cross Reference Sheet, showing the location in the Indenture of the provisions inserted pursuant to Section 310-318(a), inclusive, of the Trust Indenture Act of 1939, is not to be considered a part of the Indenture.

**TRUST INDENTURE ACT CROSS REFERENCE SHEET**

| Sections of Trust Indenture Act | Sections of Indenture |
|---|---|
| 310(a)(1) | 606 |
| 310(a)(2) | 606 |
| 310(a)(3) | Not applicable |
| 310(a)(4) | Not applicable |
| 310(b) | 607 |
| 311 | 603 |
| 312 | 702 |
| 313 | 70 |
| 314(a) | 704 |
| 314(b) | Not applicable |
| 314(c) | 1005 |
| 314(d) | Not applicable |
| 314(e) | 1005 |
| 315(a) | 601 |
| 315(b) | 611 |
| 315(c) | 601 |
| 315(d) | 601 |
| 315(e) | 514 |
| 316(a) | 512 and 513 |
| 316(b) | 508 |
| 317(a) | 503 and 504 |
| 317(b) | 1003 |
| 318(a) | 108 |

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AMENDED AND RESTATED INDENTURE dated as of February 10, 2023, among Healthpeak OP, LLC, a Maryland limited liability company (the "Issuer"), Healthpeak Properties, Inc., a Maryland corporation (the "Managing Member" and, in the capacity as guarantor of one or more series of Securities to be issued hereunder from time to time, the "Guarantor"; the Guarantor, together with the Issuer, the "Obligors"), and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Issuer (formerly known as Heath Care Property Investors, Inc., a Maryland corporation) and Trustee entered into the indenture dated September 1, 1993;

WHEREAS, the Guarantor, on its own behalf and on behalf of the Issuer in its capacity as the Managing Member of the Issuer, has duly authorized the execution and delivery of this Indenture by itself and the Issuer to provide for the issuance from time to time of its unsecured and unsubordinated debentures, notes or other evidences of indebtedness (the "Securities") in an unlimited aggregate principal amount, to bear such rates of interest, to mature at such time or times, to be issued from time to time in one or more series and to have such other provisions as shall be fixed as provided in this Indenture;

WHEREAS, the Guarantor has agreed to enter into this Indenture to provide its Guarantee (as defined herein) of the Issuer's obligation under the Securities; and

WHEREAS, all things necessary to make this Indenture a valid and legally binding agreement of the Issuer and the Guarantor, in accordance with its terms, have been done.

NOW, THEREFORE, that, in consideration of the premises and the purchase of the Securities by the Holders thereof and for the equal and proportionate benefit of all of the present and future Holders of the Securities, each party agrees and covenants as follows:

## ARTICLE ONE

## DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101. Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term "generally accepted accounting principles" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation; and

(4) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

Certain terms, used principally in Article Six, are defined in that Article.

"Act" when used with respect to any Holders has the meaning specified in Section 104.

"Additional Amounts" means any additional amounts which are required by a Security or by or pursuant to a Board Resolution, under circumstances specified therein, to be paid by the Issuer in respect of certain taxes imposed on certain Holders and which are owing to such Holders.

"Affiliate"; "control" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have the meanings correlative to the foregoing.

"Annualized Consolidated EBITDA" means, for any quarter, the product of Consolidated EBITDA for such period of time multiplied by four.

"Annualized Interest Expense" means, for any quarter, the Interest Expense for that quarter multiplied by four, provided that any nonrecurring item, as determined by the Issuer in good faith that is included in Interest Expense will be removed from such Interest Expense before such multiplication.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 610 to act on behalf of the Trustee to authenticate Securities of one or more series.

"Authorized Newspaper" means a newspaper of general circulation in New York, New York printed in the English language and customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays. In the event that a notice is to be published in a newspaper at a Place of Payment or other location outside of the United States, "Authorized Newspaper" shall mean a newspaper of general circulation printed in the English language selected by the Issuer and acceptable to the Trustee.

"Bankruptcy Code" means Title 11, United States Code or any similar federal or state law for the relief of debtors.

"Bearer Security" means any Security in the form established pursuant to Section 201 which is payable to the bearer thereof.

"Board of Directors" means:

(i) for any Person that is a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board of directors;

(ii) for any Person that is a partnership, the board of directors of the general partner of the partnership;

(iii) for any Person that is a limited liability company, the managing member or members thereof (if a natural person or natural persons) or, if such managing member or members are not natural persons, the board of directors or other controlling committee, as the case may be, of the managing member or members of such limited liability company duly authorized to act on behalf of such managing member or members; and

(iv) to any other Person, the board or committee of such Person serving a similar function.

"Board Resolution" means a copy of a resolution of the Managing Member, certified by the Secretary or an Assistant Secretary to have been duly adopted by the Board of Directors of the Managing Member and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Book-Entry Security" means a security evidencing all or part of a series of Debt Securities, issued to the Depositary for such series of Debt Securities in accordance with Section 303, and bearing the legend prescribed in Section 303(c).

"Business Day", except as may otherwise be provided in the form of Securities of any particular series pursuant to the provisions of this Indenture, with respect to any Place of Payment means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions or trust companies in that Place of Payment are authorized or obligated by law to close.

"Capital Base" shall mean, at any date, the sum of Tangible Net Worth and Subordinated Debt.

"Capital Lease" shall mean at any time any lease of Property which, in accordance with generally accepted accounting principles, would at such time be required to be capitalized on a balance sheet of the lessee.

"Capital Lease Obligation" shall mean at any time the amount of the liability in respect of a Capital Lease which, in accordance with generally accepted accounting principles, would at such time be required to be capitalized on a balance sheet of the lessee.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Consolidated EBITDA" means, for any period of time, the net income (loss) of the Issuer and its Subsidiaries, determined on a consolidated basis in accordance with GAAP for such period, before deductions for (without duplication):

(i) Interest Expense;

(ii) taxes;

(iii) depreciation, amortization, and all other non-cash items, as determined reasonably and in good faith by the Issuer, deducted in arriving at net income (loss);

(iv) extraordinary items, including impairment charges;

(v) non-recurring items or other unusual items, as determined reasonably and in good faith by the Issuer (including, without limitation, all prepayment penalties and all costs or fees incurred in connection with any debt financing or amendment thereto, acquisition, disposition, recapitalization or similar transaction (regardless of whether such transaction is completed));

(vi) noncontrolling interests;

(vii) income or expense attributable to transactions involving derivative instruments that do not qualify for hedge accounting in accordance with GAAP; and

(viii) gains or losses on dispositions of depreciable real estate investments, property valuation losses and impairment charges.

For purposes of calculating Consolidated EBITDA, all amounts shall be as determined reasonably and in good faith by the Issuer, and in accordance with GAAP except to the extent that GAAP is not applicable with respect to the determination of all non-cash and non-recurring items.

"Consolidated Financial Statements" means, with respect to any Person, collectively, the consolidated financial statements and notes to those financial statements, of that Person and its subsidiaries prepared in accordance with GAAP.

"Consolidated Net Tangible Assets" means the aggregate amount of assets (less applicable reserves and other properly deductible items) after deducting therefrom (i) all current liabilities and (ii) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles of the Issuer and its Subsidiaries, all as set forth on the most recent balance sheet of the Issuer and its Subsidiaries prepared in accordance with GAAP.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date hereof is located at 240 Greenwich Street, New York, New York 10286, Attention: Corporate Trust, or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer, or the principal corporate trust officer of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Issuer.

"Corporation" or "corporation" means corporations, associations, companies and business trusts.

"Coupon" means any interest coupon appertaining to a Bearer Security.

"Debt" means, as of any date (without duplication), all indebtedness and liabilities for borrowed money, secured or unsecured, of the Issuer and its Subsidiaries, including mortgages and other notes payable (including any Securities to the extent outstanding from time to time), but excluding any indebtedness, including mortgages and other notes payable, which is secured by cash, cash equivalents, or marketable securities or defeased (it being understood that cash collateral shall be deemed to include cash deposited with a trustee with respect to third party indebtedness), Intercompany Debt and all liabilities associated with customary exceptions to non-recourse indebtedness, such as for fraud, misapplication of funds, environmental indemnities, voluntary bankruptcy, collusive involuntary bankruptcy and other similar exceptions. It is understood that Debt shall not include any redeemable equity interest in the Issuer.

"Defaulted Interest" has the meaning specified in Section 307.

"Depositary" means, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Book-Entry Securities, the Person designated as Depositary by the Issuer pursuant to Section 301 until a successor Depositary shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, shall mean each such Person who is then a Depositary hereunder. "Depositary" as used with respect to the Securities of any such series shall mean the Depositary with respect to the Securities of that series.

"Dollars" or "$" or any similar reference shall mean the coin and currency of the United States, except as may otherwise be provided in the form of Securities of any particular series pursuant to the provisions of this Indenture.

"EDGAR" has the meaning assigned to it in Section 704.

"Electronic Means" means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for the use in connection with its services hereunder.

"Event of Default" means (unless otherwise specified as contemplated by Section 301) any event specified in Section 501, continued for the period of time, if any, and after the giving of notice, if any, therein designated.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Act Person" means any Person or group (within the meaning of Section 13(d)(3) of the Exchange Act), together with any Affiliates or associates thereof.

"GAAP" means generally accepted accounting principles in the United States, consistently applied, as in effect from time to time.

"Guarantee" means any guarantee of the Guarantor of the obligations of the Issuer under any Securities.

"Guarantor" means the Person named as the "Guarantor" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Guarantor" shall mean such successor Person.

"Holder", when used with respect to any Security, means in the case of a Registered Security, the Person in whose name the Security is registered in the Security Register and in the case of a Bearer Security, the bearer thereof and, when used with respect to any Coupon, means the bearer thereof.

"Incur" means, with respect to any Debt or other obligation of any Person, to create, assume, guarantee or otherwise become liable in respect of such Debt or other obligation, and"Incurrence" and ""Incurred" have the meanings correlative to the foregoing.

"Indenture" means this instrument as originally executed, or, if amended or supplemented as herein provided, as so amended or supplemented.

"Instructions" has the meaning assigned to it in Section 105.

"Interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity, and, when used with respect to a Security which provides for the payment of Additional Amounts pursuant to Section 1004, includes such Additional Amounts.

"Interest Expense" means, for any period of time, the aggregate amount of interest recorded in accordance with GAAP for such period by the Issuer and its Subsidiaries, but excluding (i) interest reserves funded from the proceeds of any loan, (ii) prepayment penalties, (iii) amortization of deferred financing costs, and (iv) non-cash swap ineffectiveness charges, in all cases as reflected in the Consolidated Financial Statements of the Guarantor.

"Interest Payment Date" means the Stated Maturity of an installment of interest on the applicable Securities.

"Issuer" means Healthpeak OP, LLC, a Maryland limited liability company, and subject to the provisions of Article Eight, shall also include its successors and assigns.

"Issuer Request" and "Issuer Order" mean, respectively, a written request or order signed in the name of the Issuer by the Chairman, the Vice Chairman, the Chief Executive Officer, the President, the Chief Financial Officer, the General Counsel, a Vice President or the Treasurer, and by a Vice President, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Issuer, and delivered to the Trustee.

"Latest Completed Quarter" means, as of any date, the then most recently ended fiscal quarter of the Guarantor for which Consolidated Financial Statements of the Guarantor have been completed, it being understood that at any time when the Guarantor is subject to the informational requirements of the Exchange Act, and in accordance therewith files annual and quarterly reports with the Commission, the term "Latest Completed Quarter" shall be deemed to refer to the fiscal quarter covered by the Guarantor's most recently filed Quarterly Report on Form 10-Q, or, in the case of the last fiscal quarter of the year, the Guarantor's Annual Report on Form 10-K.

"Liabilities" means, at any date, the items shown as liabilities on the balance sheet of the Issuer, except any items of deferred income, including capital gains.

"Lien" means (without duplication) any lien, mortgage, trust deed, deed of trust, deed to secure debt, pledge, security interest, assignment for collateral purposes, deposit arrangement, or other security agreement, excluding any right of setoff but including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and any other like agreement granting or conveying a security interest; provided that, for purposes hereof, "Lien" shall not include any mortgage that has been defeased by the Issuer or any of its Subsidiaries in accordance with the provisions thereof through the deposit of cash, cash equivalents or marketable securities (it being understood that cash collateral shall be deemed to include cash deposited with a trustee with respect to third party indebtedness).

"Managing Member" means the Person named as the "Managing Member" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Managing Member" shall mean such successor Person or Persons.

"Maturity" when used with respect to any Security means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, notice of redemption, request for repayment or otherwise.

"Non-Recourse Debt" when used with respect to any Person, means any Debt secured by, and only by, property on or with respect to which such Debt is incurred where the rights and remedies of the holder of such Debt in the event of default do not extend to assets other than the property constituting security therefor.

"Obligors" means the Person or Persons named as the "Obligors" in the first paragraph of this Indenture until a successor Person or Persons shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Obligors" shall mean such successor Person or Persons.

"Officers' Certificate" means, when used with respect to any Person, a certificate signed in the name of such Person by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the General Counsel or any Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the such Person or, if such Person is a limited liability company, then by the Chairman of the Board the Chief Executive Officer, the President, the Chief Financial Officer, the General Counsel or any Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the managing member of such Person. Each such certificate shall include the statements provided for in Section 102, if and to the extent required by the provisions thereof.

"Opinion of Counsel" means an opinion in writing signed by legal counsel, who may be an employee of, or of counsel to, the Issuer or the Managing Member, or, as applicable or as the context may require, the Guarantor or may be other counsel and who shall be acceptable to the Trustee. Each such opinion shall include the statements provided for in Section 102, if and to the extent required by the provisions thereof.

"Original Issue Discount Security" means a Security issued pursuant to this Indenture which provides for declaration of an amount less than the principal thereof to be due and payable upon acceleration pursuant to Section 502 or upon a repurchase pursuant to Section 1302.

"Outstanding" when used with respect to Securities means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Issuer) in trust or set aside and segregated in trust by the Issuer (if the Issuer shall act as its own Paying Agent) for the Holders of such Securities and any Coupons appertaining thereto, provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities which have been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Issuer;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders of Securities for quorum purposes, the principal amount of an Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be Outstanding for such purposes shall be equal to the amount of the principal thereof that could be declared to be due and payable pursuant to the terms of such Original Issue Discount Security at the time the taking of such action by the Holders of such requisite principal amount is evidenced to the Trustee as provided in Section 104(a), and, provided further, that Securities owned by the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or such other obligor, shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or such other obligor.

"Paying Agent" means any Person authorized by the Issuer to pay the principal of (and premium, if any) or interest on any Securities on behalf of the Issuer. Unless otherwise provided in or pursuant to a Board Resolution or in one or more indentures supplemental hereto, the Trustee shall be the Paying Agent with respect to the Securities of each series issued hereunder.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"Place of Payment", when used with respect to the Securities of any series, means the place or places where the principal of (and premium, if any) and interest on the Securities of that series are payable as provided pursuant to Section 301.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a lost, destroyed, mutilated or stolen Security or a Security to which a mutilated, destroyed, lost or stolen Coupon appertains shall be deemed to evidence the same debt as the lost, destroyed, mutilated or stolen Security or the Security to which a mutilated, destroyed, lost or stolen Coupon appertains.

"Real Estate Assets" means, as of any date, the real estate assets of such Person and its Subsidiaries on such date, on a consolidated basis determined in accordance with GAAP.

"Redemption Date" when used with respect to any Security to be redeemed means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price" when used with respect to any Security to be redeemed means the price at which it is to be redeemed as determined pursuant to the provisions of this Indenture.

"Registered Security" means any Security established pursuant to Section 201 which is registered in the Security Register.

"Regular Record Date" for the interest payable on a Registered Security on any Interest Payment Date means the date, if any, specified in such Security as the "Regular Record Date".

"Responsible Officer" when used with respect to the Trustee means an officer of the Trustee assigned to its Corporate Trust Office, including any Vice President, the treasurer, every trust officer, and every other officer and assistant officer to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject and, when used in reference to any act or document, also means any other person authorized to perform any act or sign any document by or pursuant to a resolution of the Board of Directors of the Trustee or the by-laws of the Trustee.

"Secured Debt" means, as of any date, that portion of the aggregate principal amount of all outstanding Debt of the Issuer and its Subsidiaries as of that date that is secured by a Lien on properties or other assets of the Issuer or any of its Subsidiaries.

"Securities Act" means the Securities Act of 1933, as amended.

"Security" or "Securities" means any Security or Securities, as the case may be, authenticated and delivered under this Indenture.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305. Unless otherwise provided in or pursuant to a Board Resolution or in one or more indentures supplemental hereto, the Trustee shall be the Security Registrar and shall maintain the Security Register with respect to the Registered Securities of each series.

"Senior Debt" means all Debt other than Non-Recourse Debt and Subordinated Debt.

"Special Record Date" for the payment of any Defaulted Interest on the Registered Securities of any series means a date fixed by the Trustee pursuant to Section 307.

"Stated Maturity" when used with respect to any Security or any installment of principal thereof or interest thereon means the date specified in such Security or a Coupon representing such installment of interest as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

"Subordinated Debt" means unsecured Debt of the Issuer which is issued or assumed pursuant to, or evidenced by, an indenture or other instrument which contains provisions for the subordination of such Debt (to which appropriate reference shall be made in the instruments evidencing such Debt if not contained therein) to the Securities (and, at the option of the Issuer, if so provided, to other Debt of the Issuer, either generally or as specifically designated).

"Subsidiary" means, with respect to any Person, a corporation, partnership association, joint venture, trust, limited liability company or other business entity which is required to be consolidated with such Person in accordance with GAAP.

"Tangible Assets" means all assets of the Issuer (including assets held subject to Capital Leases and other arrangements described in the last sentence of the definition of "Lien") except: (i) deferred assets, other than prepaid insurance, prepaid taxes and deposits; (ii) patents, copyrights, trademarks, trade names, franchises, goodwill, experimental expense and other similar intangibles; and (iii) unamortized debt discount and expense.

"Tangible Net Worth" means, with respect to the Issuer at any date, the net book value (after deducting related depreciation, obsolescence, amortization, valuation, and other proper reserves) of the Tangible Assets of the Issuer at such date minus the amount of its Liabilities at such date.

"Total Unencumbered Assets" means, as of any date, Undepreciated Real Estate Assets of the Issuer and its Subsidiaries that are not subject to any Lien which secures Debt of any of the Issuer and its Subsidiaries plus, without duplication, loan loss reserves relating thereto, accumulated depreciation thereon, plus all other assets of the Issuer and its Subsidiaries as all such amounts would appear on a consolidated balance sheet of the Issuer prepared as of such date in accordance with GAAP plus the proceeds of the Debt or Secured Debt to be Incurred; provided, however, that "Total Unencumbered Assets" does not include net real estate investments under unconsolidated joint ventures of the Issuer and its Subsidiaries and does not include goodwill.

"Trustee" means the Person named as the "Trustee" in the first paragraph of this instrument until a successor Trustee shall have become such with respect to one or more series of Securities pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" shall mean each such Person and as used with respect to the Securities of any series shall mean the Trustee with respect to the Securities of that series.

"Trust Indenture Act" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed, except as provided in Article Nine.

"Undepreciated Real Estate Assets" means, as of any date, the amount of real estate assets valued at original cost plus capital improvements.

"United States" means the United States of America (including the States and the District of Columbia), its territories and possessions and other areas subject to its jurisdiction.

"United States Alien" means any Person who, for United States federal income tax purposes, is a foreign corporation, a non-resident alien individual, a non-resident alien fiduciary of a foreign estate or trust, or a foreign partnership one or more of the members of which is, for United States federal income tax purposes, a foreign corporation, a non-resident alien individual or a non-resident alien fiduciary of a foreign estate or trust.

"Unsecured Debt" means, as of any date, that portion of the aggregate principal amount of all outstanding Debt of the Issuer and its Subsidiaries as of that date that is not Secured Debt.

"U.S. Government Obligations" means direct obligations of the United States for the payment of which its full faith and credit is pledged, or obligations of a person controlled or supervised by and acting as an agency of instrumentality of the United States and the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

"Vice President" when used with respect to any Person shall mean any Vice President of such Person whether or not designated by a number or a word or words added before or after the title "Vice President".

"The Wall Street Journal" means the newspaper of general circulation published under that name in New York, New York.

Section 102. Officers' Certificates and Opinions.

Upon any application or request by the Issuer to the Trustee to take any action under any provision of this Indenture, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 103. Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate, statement or opinion of an officer of the Issuer or the Guarantor may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate, statement or opinion of counsel may be based, insofar as it relates to factual matters or information which is in the possession of the Issuer, upon the certificate, statement or opinion of or representations by an officer or officers of the Issuer or Guarantor, unless such counsel knows that the certificate, statement or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Issuer or the Guarantor or of counsel to the Issuer or the Guarantor may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate or opinion of any independent firm of public accountants filed with the Trustee shall contain a statement that such firm is independent.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 104. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. If, but only if, Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article Fourteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Issuer or Guarantor. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments and so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee, the Issuer and the Guarantor and any agent of the Trustee, the Issuer or the Guarantor, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1406.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which shall be satisfactory to the Trustee and in accordance with such reasonable rules as the Trustee may determine; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(c) The ownership of Registered Securities and the principal amount and serial numbers of Registered Securities held by any Person, and the date of holding the same, shall be proved by the Security Register.

(d) The principal amount and serial numbers of Bearer Securities held by any Person, and the date of holding the same, may be proved by the production of such Bearer Securities or by a certificate executed, as depository, by any trust company, bank, banker or other depository reasonably acceptable to the Issuer, wherever situated, if such certificate shall be satisfactory to the Trustee, showing that at the date therein mentioned such Person had on deposit with each depository, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Securities, if such certificate or affidavit is deemed by the Trustee to be satisfactory. The Trustee and the Issuer may assume that such ownership of any Bearer Security continues until (1) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (2) such Bearer Security is produced to the Trustee by some other Person or (3) such Bearer Security is surrendered in exchange for a Registered Security, or (4) such Bearer Security is no longer Outstanding. The principal amount and serial numbers of Bearer Securities held by the Person so executing such instrument or writing and the date of holding the same may also be proved in any other manner which the Trustee deems sufficient.

(e) If the Issuer or Guarantor shall solicit from the Holders of any Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuer may, at its option, by Board Resolution, fix in advance a record date for the determination of Holders of Registered Securities entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Issuer shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of Registered Securities of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act.

(f) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee, any Security Registrar, any Paying Agent or the Issuer in reliance thereon, whether or not notation of such action is made upon such Security.

Section 105. Notices, etc., to Trustee and Issuer.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Issuer shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, with a copy to the Trustee at 333 South Hope Street, Suite 4002525, Los Angeles, CA 90071, Attention: Corporate Trust Unit, or

(2) the Issuer by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Issuer addressed to 4600 South Syracuse Street, Suite 500, Denver, Colorado 80237, Attention: General Counsel, or at such other address as may have been furnished in writing to the Trustee by the Issuer.

In addition to the foregoing, the Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (for the purposes of this Section, "Instructions") given pursuant to the Indenture and delivered using Electronic Means; provided, however, that the Issuer shall provide to the Trustee an incumbency certificate listing authorized officers and containing specimen signatures of such authorized officers, which incumbency certificate shall be amended by the Issuer whenever a person is to be added or deleted from the listing. If the Issuer elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Issuer understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an authorized officer listed on the incumbency certificate provided to the Trustee have been sent by such authorized officer. The Issuer shall be responsible for ensuring that only authorized officers transmit such Instructions to the Trustee and that the Issuer and all authorized officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Issuer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

Section 106. Notice to Holders; Waiver. Except as otherwise expressly provided herein or in the form of Securities of any particular series pursuant to the provisions of this Indenture, where this Indenture provides for notice to Holders of Securities of any event,

(1) such notice shall be sufficiently given to Holders of Registered Securities if in writing and mailed, first-class postage prepaid, or otherwise given pursuant to applicable Depositary procedures to each Holder of a Registered Security affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such Notice; and

(2) such notice shall be sufficiently given to Holders of Bearer Securities, if any, if published in an Authorized Newspaper in The City of New York and, if the Securities of such series are then listed on any stock exchange outside the United States, in an Authorized Newspaper in such city as the Issuer shall advise the Trustee that such stock exchange so requires, on a Business Day at least twice, the first such publication to be not earlier than the earliest date and not later than the latest date prescribed for the giving of such notice.

In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder of a Registered Security shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

In case by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither failure to give notice by publication to Holders of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of any notice mailed to Holders of Registered Securities as provided above.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 107. Language of Notices, etc.

Any request, demand, authorization, direction, notice, consent, election or waiver required or permitted under this Indenture shall be in the English language, except that, if the Issuer so elects, any published notice may be in an official language of the country of publication.

Section 108. Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this Indenture by any of the provisions of the Trust Indenture Act, such required provision shall control.

Section 109. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 110. Successors and Assigns.

All covenants and agreements in this Indenture by the parties hereto shall bind their respective successors and assigns, whether so expressed or not.

Section 111. Separability Clause.

In case any provision in this Indenture or in the Securities, the Guarantees or Coupons shall be invalid, illegal or unenforceable under applicable law, then the remaining provisions in this Indenture or in the Securities, the Guarantees or Coupons shall be construed as though such invalid, illegal or unenforceable provisions were not contained herein.

Section 112. Benefits of Indenture.

Nothing in this Indenture or in the Securities, the Guarantees or Coupons, express or implied, shall give to any Person, other than the parties hereto, any Security Registrar, any Paying Agent and their successors hereunder and the Holders of Securities or Coupons, any benefit or any legal or equitable right, remedy or claim under this Indenture, or under any covenant, condition or provision of the Indenture or in the Securities, the Guarantees or Coupons; all their covenants, conditions and provisions being for the sole benefit of the parties hereto and the Holders of the Securities or Coupons.

Section 113. Governing Law.

This Indenture and the Securities, the Guarantees and Coupons shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

Section 114. Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or the Securities, the Guarantees or Coupons other than a provision in the Securities which specifically states that such provision shall apply in lieu of this Section) payment of interest or any Additional Amounts or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be. Notwithstanding the foregoing, in the event that any Interest Payment Date relating to any Security whose interest rate is determined by reference to LIBID or LIBOR is not a Business Day and the next succeeding Business Day falls in the next calendar month, such Interest Payment Date will be the last Business Day in the preceding month.

Section 115. Counterparts Originals.

This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Indenture or in any other certificate, agreement or document related to this Indenture shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. Without limitation to the foregoing, and anything in this Indenture to the contrary notwithstanding, (a) any Officers' Certificate, Issuer Order, Issuer Request, Opinion of Counsel, Security, Guarantee endorsed on any Security, opinion of counsel, instrument, agreement or other document delivered pursuant to this Indenture may be executed, attested and transmitted by any of the foregoing electronic means and formats, (b) all references in Section 3.03 or elsewhere in this Indenture to the execution, attestation or authentication of any Security, any Guarantee endorsed on any Security, or any certificate of authentication appearing on or attached to any Security by means of a manual or facsimile signature shall be deemed to include signatures that are made or transmitted by any of the foregoing electronic means or formats, and (c) any requirement in the Indenture that any signature be made under a corporate seal (or facsimile thereof) shall not be applicable to the Securities or any Guarantees endorsed on any Securities.

Section 116. Submission to Jurisdiction.

The Issuer and each Guarantor hereby irrevocably submits to the jurisdiction of any New York State court sitting in the Borough of Manhattan in the City of New York or any federal court sitting in the Borough of Manhattan in the City of New York in respect of any suit, action or proceeding arising out of or relating to this Indenture, the Guarantees and the Notes, and irrevocably accepts for itself and in respect of its property, generally and unconditionally, jurisdiction of the aforesaid courts.

Section 117. Waiver of Jury Trial.

EACH OF THE ISSUER, EACH GUARANTOR AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

ARTICLE TWO

SECURITY FORMS

Section 201. Forms Generally.

The Registered Securities, if any, of each series and the Bearer Securities, if any, of each series, and the related Guarantees, if any, and the related Coupons, if any, and temporary global Securities, if any, shall be in the form established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, shall have appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined by the officers of the Issuer executing such Securities, as evidenced by their execution of such Securities.

Unless otherwise provided as contemplated by Section 301 with respect to any series of Securities, the Securities of each series shall be issuable in registered form without Coupons. If so provided as contemplated by Section 301, the Securities of a series also shall be issuable in bearer form, with or without interest Coupons attached. Unless otherwise contemplated herein, with respect to any series of Securities, the Securities of each series shall be issuable in registered form with a related Guarantee.

Section 202. Form of Trustee's Certificate of Authentication.

(a) Only such of the Securities as shall bear thereon a certificate substantially in the form of the Trustee's certificate of authentication hereinafter recited, executed by the Trustee by manual, facsimile or electronic signature, shall be valid or become obligatory for any purpose or entitle the Holder thereof to any right or benefit under this Indenture.

(b) Each Security shall be dated the date of its authentication, except as otherwise provided herein.

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

Date of
authentication: _____

The Bank of New York Mellon Trust Company, N.A., as Trustee

By:_____If an appointment of an Authenticating Agent with respect to one or more series is made pursuant to Section 610, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

Date of
authentication: _____

The Bank of New York Mellon Trust Company, N.A., as Trustee

By:[NAME OF AUTHENTICATING AGENT]
as Authenticating Agent

By:_____
Authorized Signatory

Section 203. Securities in Global Form.

If Securities of a series are issuable in global form, any such Security may provide that it shall represent the aggregate amount of Outstanding Securities from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount or changes in the rights of Holders of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein. Any instructions by the Issuer with respect to a Security in global form shall be in writing but need not comply with Section 102.

ARTICLE THREE

THE SECURITIES

Section 301. Amount Unlimited; Issuable in Series.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto:

(1) the title of the Securities and the series in which such Securities shall be included;

(2) any limit upon the aggregate principal amount or initial offering price of the Securities of such title or the Securities of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 304, 305, 306, 906 or 1107);

(3) whether Securities of the series are to be issuable as Registered Securities, Bearer Securities (with or without Coupons) or both, any restrictions applicable to the offer, sale or delivery of Bearer Securities and the terms upon which Bearer Securities of the series may be exchanged for Registered Securities of the series and vice versa;

(4) the date as of which any Bearer Securities of the series and any temporary global Security representing Outstanding Securities of the series shall be dated if other than the date of original issuance of the first Security of the series to be issued;

(5) if Securities of the series are to be issuable as Bearer Securities, whether interest in respect of any portion of a temporary Bearer Security in global form (representing all of the Outstanding Bearer Securities of the series) payable on an Interest Payment Date prior to the exchange of such temporary Bearer Security for definitive Securities of the series shall be paid to any clearing organization with respect to the portion of such temporary Bearer Security held for its account and, in such event, the terms and conditions (including any certification requirements) upon which any such interest payment received by a clearing organization will be credited to the Persons entitled to interest payable on such Interest Payment Date;

(6) the date or dates on which the principal (and premium, if any) of such Securities is payable;

(7) the rate or rates at which such Securities shall bear interest, if any, or method in which such rate or rates are determined, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the Regular Record Date for the interest payable on Registered Securities on any Interest Payment Date, whether and under what circumstances Additional Amounts on such securities shall be payable in respect of specified taxes, assessments or other governmental charges withheld or deducted and, if so, whether the Issuer has the option to redeem the affected Securities rather than pay such Additional Amounts, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(8) the place or places, if any, in addition to or other than the Borough of Manhattan, The City of New York, where the principal of (and premium, if any) and interest on or Additional Amounts, if any, payable in respect of such Securities shall be payable;

(9) the period or periods within which, the price or prices at which and the terms and conditions upon which such Securities may be redeemed, in whole or in part, at the option of the Issuer, if the Issuer is to have that option;

(10) the obligation, if any, of the Issuer to redeem or purchase such Securities pursuant to any sinking fund or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which such Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and any provisions for the remarketing of such Securities;

(11) whether the Securities of such series shall be issued in whole or in part in the form of one or more Book-Entry Securities and, in such case, the Depositary for such Book-Entry Security or Securities;

(12) the denominations in which Registered Securities of the series, if any, shall be issuable if other than denominations of $1,000 and any integral multiple thereof, and the denominations in which Bearer Securities of the series, if any, shall be issuable if other than the denomination of $5,000;

(13) if other than the principal amount thereof, the portion of the principal amount of such Securities which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502;

(14) if other than such coin or currency of the United States as at the time of payment is legal tender for payment of public or private debts, the coin or currency, including composite currencies, in which payment of the principal of (and premium, if any) or interest, if any, on, or any Additional Amounts in respect of, such Securities shall be payable;

(15) if the principal of (and premium, if any) or interest, if any, on, or any Additional Amounts in respect of, such Securities are to be payable, at the election of the Issuer or a Holder thereof, in a coin or currency, including composite currencies, other than that in which the Securities are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;

(16) if the amount of payments of principal of (and premium, if any) or interest, if any, on, or any Additional. Amounts in respect of, such Securities may be determined with reference to an index, formula or other method based on a coin or currency other than that in which the Securities are stated to be payable, the manner in which such amounts shall be determined;

(17) if the Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(18) any deletions from, modifications of or additions to the events of default or covenants of the Issuer or the Guarantor with respect to any series of Securities, whether or not such deletions, modifications or additions are consistent with the events of default or covenants set forth herein;

(19) the guarantors, if any, of the Securities of the series, and the extent of the guarantees (including provisions relating to seniority, subordination, and the release of the guarantors), if any, and any additions or changes to permit or facilitate guarantees of such Securities; and

(20) any other terms of such Securities (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and Coupons appertaining to Bearer Securities of such series, if any, shall be substantially identical except as to denomination and the rate or rates of interest, if any, and Stated Maturity, the date from which interest, if any, shall accrue, redemption or repayment provisions, if any, and except as may otherwise be provided in or pursuant to such Board Resolution and set forth in such Officers' Certificate or in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened for issuances of additional Securities of such series.

Unless otherwise established in or pursuant to an Officers' Certificate, or in one or more indentures supplemental hereto, at the option of the Issuer, interest on the Securities of any series that bears interest may be paid by mailing a check to the address of the person entitled thereto as such address shall appear in the Securities Register. Notwithstanding the foregoing, a Holder of Securities of a specified aggregate amount shall be entitled to receive payments of interest by wire transfer of immediately available funds if appropriate wire transfer instructions have been received by the Trustee on the Regular Record Date immediately preceding such Interest Payment Date.

Section 302. Denominations.

Unless other denominations and amounts may from time to time be fixed by or pursuant to a Board Resolution, the Registered Securities of each series, if any, shall be issuable in registered form without Coupons in denominations of $1,000 and any integral multiple thereof, and the Bearer Securities of each series, if any, shall be issuable in the denomination of $5,000, or in such other denominations and amounts as may from time to time be fixed by or pursuant to a Board Resolution.

Section 303. Execution, Authentication, Delivery and Dating.

(a) The Securities shall be executed on behalf of the Issuer by the manual, facsimile or electronic signature of the Chairman of the Board, Chief Executive Officer, President, Chief Financial Officer, General Counsel, Vice President or Treasurer of the Managing Member under its corporate seal reproduced thereon and attested by its Secretary or one of its Assistant Secretaries. The related Guarantees, if any, shall be executed on behalf of the Guarantor by the manual, facsimile or electronic signature of its Chairman of the Board of Directors, its Chief Executive Officer, its President, its Chief Financial Officer, its General Counsel, any of its Vice Presidents or its Treasurer. Coupons shall bear the facsimile signature or electronic signature of the Treasurer or any Assistant Treasurer of the Issuer.

Securities, Guarantees and Coupons bearing the manual, facsimile or electronic signatures of individuals who were at any time the proper officers of the Issuer or Guarantor, as applicable, shall bind the Issuer or Guarantor, as applicable, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or related Guarantees, if any, or did not hold such offices at the date of such Securities or related Guarantees, if any.

(b) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Securities of any series, together with any Guarantees or Coupons appertaining thereto, executed by the Issuer to the Trustee for authentication, together with the Board Resolution and Officers' Certificate or supplemental indenture with respect to such Securities referred to in Section 301 and an Issuer Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Issuer Order and subject to the provisions hereof shall authenticate and deliver such Securities. In authenticating Securities of any series, and accepting the additional responsibilities under this Indenture in respect of such Securities, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel stating, to the effect that

(i) that the form and terms of such Securities, related Guarantees, if any, and Coupons, if any, have been established in conformity with the provisions of this Indenture;

(ii) that all conditions precedent to the authentication and delivery of such Securities together with the related Guarantees, if any, or Coupons, if any, appertaining thereto, have been complied with and that such Securities, Guarantees and Coupons, when authenticated and delivered by the Trustee and issued by the Issuer and, if applicable, the Guarantor in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legally valid and binding obligations of the Issuer and, if applicable, the Guarantor, enforceable against the Issuer and , if applicable, the Guarantor in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law); such Opinion of Counsel need express no opinion as to the availability of equitable remedies;

(iii) that all laws and requirements in respect of the execution and delivery by the Issuer and, if applicable, the Guarantor of such Securities, related Guarantees, if any, and Coupons, if any, have been complied with; and

(iv) as to such other matters as the Trustee may reasonably request.

(c) If the Issuer shall establish pursuant to Section 301 that the Securities of a series are to be issued in whole or in part in the form of one or more Book-Entry Securities, then the Issuer shall execute and the Trustee shall, in accordance with this Section and the Issuer Order with respect to such series, authenticate and deliver one or more Book-Entry Securities in permanent form that (i) shall represent and shall be denominated in an amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by such Book-Entry Security or Securities, (ii) shall be registered, if in registered form, in the name of the Depositary for such Book-Entry Security or Securities or the nominee of such Depositary, (iii) shall be delivered by the Trustee to such Depositary or pursuant to such Depositary's instruction and (iv) shall bear a legend substantially to the following effect: "Unless and until it is exchanged in whole or in part for Securities in certificated form, this Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary".

(d) Each Depositary designated pursuant to Section 301 for a Book-Entry Security in registered form must, at the time of its designation and at all times while it serves as Depositary, be a clearing agency registered under the Exchange Act and any other applicable statute or regulation.

(e) The Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

(f) Each Registered Security shall be dated the date of its authentication. Each Bearer Security and any temporary Bearer Security in global form shall be dated as of the date specified as contemplated by Section 301.

(g) No Security, related Guarantee, if any, or Coupon appertaining thereto shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for in Section 202 or 610 executed by or on behalf of the Trustee by the manual, facsimile or electronic signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Except as permitted by Section 306 or 307, the Trustee shall not authenticate and deliver any Bearer Security unless all appurtenant Coupons for interest then matured have been detached and cancelled.

Section 304. Temporary Securities.

Pending the preparation of definitive Securities of any series, the Issuer may execute and deliver to the Trustee, and upon Issuer Order the Trustee shall authenticate and deliver, in the manner provided in Section 303, temporary Securities of such series which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form, or, if authorized, in bearer form with one or more Coupons or without Coupons and with such appropriate insertions, omissions, substitutions and other variations as the officers of the Issuer executing such Securities may determine, as evidenced by their execution of such Securities. In the case of Bearer Securities of any series, such temporary Securities may be in global form, representing all of the Outstanding Bearer Securities of such series.

Except in the case of temporary Securities in global form, which shall be exchanged in accordance with the provisions thereof, if temporary Securities of any series are issued, the Issuer will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities of such series shall be exchangeable upon request for definitive Securities of such series containing identical terms and provisions upon surrender of the temporary Securities of such series at an office or agency of the Issuer maintained for such purpose pursuant to Section 1002, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series (accompanied by any unmatured Coupons appertaining thereto) the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations of the same series containing identical terms and provisions; provided, however, that no definitive Bearer Security, except as provided pursuant to Section 301, shall be delivered in exchange for a temporary Registered Security; and provided, further, that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth therein. Unless otherwise specified as contemplated by Section 301 with respect to a temporary global Security, until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 305. Registration, Transfer and Exchange.

With respect to the Registered Securities of each series, if any, the Issuer shall cause to be kept, at an office or agency of the Issuer maintained pursuant to Section 1002, a register (herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of the Registered Securities of each series and of transfers of the Registered Securities of each series. In the event that the Trustee shall not be the Security Registrar, it shall have the right to examine the Security Register at all reasonable times.

Upon surrender for registration of transfer of any Registered Security of any series at any office or agency of the Issuer maintained for that series pursuant to Section 1002, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series of any authorized denominations, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.

If so provided with respect to Securities of a series, at the option of the Holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series containing identical terms and provisions, of any authorized denominations and aggregate principal amount, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured Coupons and all matured Coupons in default appertaining thereto. If the Holder of a Bearer Security is unable to produce any such unmatured Coupon or Coupons or matured Coupon or Coupons in default, such exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Issuer in an amount equal to the face amount of such missing Coupon or Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Issuer and the Trustee (at the written direction of the Issuer) if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any such missing Coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment: provided, however, that, except as otherwise provided in Section 1002, interest represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an office or agency located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in exchange for a Registered Security of the same series and like tenor after the close of business at such office or agency on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such office or agency on the related date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date or proposed date of payment, as the case may be (or, if such Coupon is so surrendered with such Bearer Security, such Coupon shall be returned to the person so surrendering the Bearer Security), and interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date of payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

If expressly provided with respect to the Securities of any series, at the option of the Holder, Registered Securities of such series may be exchanged for Bearer Securities upon such terms and conditions as may be provided with respect to such series.

Whenever any Securities are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Registered Security presented or surrendered for registration of transfer or for exchange or redemption shall (if so required by the Issuer or the Security Registrar for such series of Security presented) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and such Security Registrar duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange, or redemption of Securities, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 906 or 1107 not involving any transfer.

Notwithstanding any other provision of this Section, unless and until it is exchanged in whole or in part for Securities in certificated form, a Book-Entry Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

At the option of the Holder, Securities of any series (except a Book-Entry Security representing all or a portion of the Securities of such series) may be exchanged for other Securities of authorized denominations of the same series containing identical terms and provisions, of like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

If at any time the Depositary for the Securities of a series provides reasonable notice to the Issuer that it is unwilling or unable to continue as Depositary for the Securities of such series or if at any time the Depositary for the Securities of such series shall no longer be eligible under Section 303(d), the Issuer shall appoint a successor Depositary with respect to the Securities of such series. If a successor Depositary for the Securities of such series is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer's election pursuant to Section 301(11) shall no longer be effective with respect to the Securities of such series and the Issuer will execute, and the Trustee, upon receipt of an Issuer Order for the authentication and delivery of certificated Securities of such series, will authenticate and deliver Securities of such series in certificated form in an aggregate principal amount equal to the principal amount of the Book-Entry Security or Securities representing such series in exchange for such Book-Entry Security or Securities.

The Issuer may at any time and in its sole discretion determine that the Securities of any series issued in the form of one or more Book-Entry Securities shall no longer be represented by such Book-Entry Security or Securities. In such event the Issuer will execute, and the Trustee, upon receipt of an Issuer Order for the authentication and delivery of certificated Securities of such series, will authenticate and deliver, Securities of such series in certificated form and in an aggregate principal amount equal to the principal amount of the Book-Entry Security or Securities representing such series in exchange for such Book-Entry Security or Securities.

If specified by the Issuer pursuant to Section 301 with respect to a series of Securities, the Depositary for such series of Securities may surrender a Book-Entry Security for such series of Securities in exchange in whole or in part for Securities of such series in certificated form on such terms as are acceptable to the Issuer and such Depositary. Thereupon, the Issuer shall execute, and the Trustee shall authenticate and deliver, without service charge,

(i) to each Person specified by such Depositary a new Security or Securities of the same series, of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Book-Entry Security; and

(ii) to such Depositary a new Book-Entry Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Book-Entry Security and the aggregate principal amount of Securities delivered to Holders thereof.

In any exchange provided for in any of the preceding three paragraphs, the Issuer will execute and the Trustee will authenticate and deliver Securities in certificated registered form in authorized denominations.

Upon the exchange of a Book-Entry Security for Securities in certificated form, such Book-Entry Security shall be cancelled by the Trustee. Securities issued in exchange for a Book-Entry Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depositary for such Book-Entry Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Persons in whose names such Securities are so registered.

The Issuer shall not be required (i) to issue, register the transfer of or exchange any Securities of any series during a period beginning at the opening of business 15 days before the day of the selection for redemption of Securities of that series under Section 1103 and ending at the close of business on the day of such selection, (ii) to register the transfer or exchange of any Registered Security so selected for redemption in whole or in part, except in the case of any Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except, to the extent provided with respect to Securities of a series, that such a Bearer Security may be exchanged for a Registered Security of that series, provided that such Registered Security shall be immediately surrendered for redemption with written instruction for payment consistent with the provisions of this Indenture.

Section 306. Mutilated, Destroyed, Lost and Stolen Securities.

Subject to the further provisions of this Section, if any mutilated Security, a Security with a mutilated Guarantee or a Security with a mutilated Coupon appertaining to it is surrendered to the Trustee, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security or Guarantee of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons corresponding to the Coupons, if any, appertaining to the surrendered Security, and with Guarantees corresponding to the Guarantees, if any, appertaining to the surrendered Security.

Subject to the further provisions of this Section, if there be delivered to the Issuer and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security, Guarantee or Coupon, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Issuer or the Trustee that such Security, Guarantee or Coupon has been acquired by a bona fide purchaser, the Issuer shall execute and upon its request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such destroyed, lost or stolen Security or Guarantee or in exchange for the Security to which a destroyed, lost or stolen Coupon appertains with all appurtenant Coupons not destroyed, lost or stolen, a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding, with Coupons corresponding to the Coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen Coupon appertains, and with Guarantees corresponding to the Guarantees, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen Guarantee appertains.

In case any such mutilated, destroyed, lost or stolen Security or Coupon has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Security, pay such Security or Coupon; provided, however, that payment of principal of (and premium, if any) and any interest on Bearer Securities shall, except as otherwise provided in Section 1002, be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 301 or the other provisions of this Section, any interest on Bearer Securities shall be payable only upon presentation and surrender of the Coupons appertaining thereto.

Upon the issuance of any new Security under this Section, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series, with its Coupons, if any, and related Guarantees, if any, issued pursuant to this Section in lieu of any mutilated Security, related Guarantees, if any, its Coupons, if any, or any destroyed, lost or stolen Security, the related Guarantee, if any, and its Coupons shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series and their Coupons, if any, duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities, Guarantees or Coupons.

Section 307. Payment of Interest; Interest Rights Preserved.

Interest on any Registered Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall, if so provided in such Security, be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered as of the close of business on the Regular Record Date for such interest. In case a Bearer Security of any series is surrendered in exchange for a Registered Security of such series after the close of business (at an office or agency in a Place of Payment for such series) on any Regular Record Date and before the opening of business (at such office or agency) on the next succeeding Interest Payment Date, such Bearer Security shall be surrendered without the Coupon relating to such Interest Payment Date and interest will not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

Any interest on any Registered Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date for such Registered Security (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Issuer, at its election in each case, as provided in clause (1) or (2) below:

(1) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Registered Securities affected (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. Not less than 30 days prior to the date of any proposed payment of Defaulted Interest on Registered Securities, the Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Registered Security and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Issuer shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than ten days prior to the date of the proposed payment and not less than ten days after the receipt by the Trustee of the notice of the proposed payment. The Issuer shall promptly notify the Trustee of such Special Record Date and the Trustee, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given pursuant to Section 106 to each Holder of such Registered Securities at his address as it appears in the Security Register not less than ten days prior to such Special Record Date. The Trustee may, at the written direction of the Issuer, in the name and at the expense of the Issuer, cause a similar notice to be published at least once in a newspaper, customarily published in the English language on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Registered Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2). In case a Bearer Security of any series is surrendered at the office or agency in a Place of Payment for such series in exchange for a Registered Security of such series after the close of business at such office or agency on any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the Coupon relating to such proposed date of payment and Defaulted Interest will not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such Coupon when due in accordance with the provisions of this Indenture.

(2) The Issuer may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuer to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

At the option of the Issuer, interest on Registered Securities of any series that bear interest may be paid by mailing a check to the address of the person entitled thereto as such address shall appear in the Security Register.

Subject to the foregoing provisions of this Section and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 308. Persons Deemed Owners.

Prior to due presentment of a Registered Security for registration of transfer, the Issuer, the Guarantor, the Trustee and any agent of the Issuer, the Guarantor or the Trustee may treat the Person in whose name such Registered Security is registered as the owner of such Registered Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Sections 305 and 307) interest on and Additional Amounts with respect to, such Registered Security and for all other purposes whatsoever, whether or not such Registered Security be overdue, and neither the Issuer, the Trustee nor any agent of the Issuer, or the Trustee shall be affected by notice to the contrary.

The Issuer, the Guarantor, the Trustee and any agent of the Issuer, the Guarantor or the Trustee may treat the bearer of any Bearer Security and the bearer of any Coupon as the absolute owner of such Security or Coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security or Coupon be overdue, and neither the Issuer, the Trustee nor any agent of the Issuer, or the Trustee shall be affected by notice to the contrary.

Section 309. Cancellation.

All Securities and Coupons surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Coupons and Securities and Coupons surrendered directly to the Trustee for any such purpose shall be promptly cancelled by it. The Issuer may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities and Coupons held by the Trustee may be destroyed by it; provided, however, the Issuer may by an Issuer Order direct the Trustee to return to the Issuer all Securities and Coupons cancelled after the expiration of ten days following the Trustee's receipt of such Issuer Order.

Section 310. Computation of Interest.

Except as otherwise specified as contemplated by Section 301 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

## ARTICLE FOUR

## SATISFACTION AND DISCHARGE

Section 401. Satisfaction and Discharge of Indenture.

Upon the direction of the Issuer by an Issuer Order this Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and any right to receive Additional Amounts, as provided in Section 1004), and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered and all Coupons appertaining thereto (other than (i) Coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has been waived as provided in Section 305, (ii) Securities and Coupons which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) Coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date, whose surrender has been waived as provided in Section 1107, and (iv) Securities and Coupons for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(B) all such Securities and, in the case of clause (i) or (ii) below, any such Coupons appertaining thereto not theretofore delivered to the Trustee for cancellation

(i) have become due and payable;

(ii) will become due and payable at their Stated Maturity within one year; or

(iii) if redeemable at the option of the Issuer, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer;

and the Issuer, in the case of clauses (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose, lawful money of the United States, U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide not later than the opening of business on the due dates of any payment of principal (and premium, if any) and interest, and any Additional Amounts with respect thereto, or a combination thereof, in an amount sufficient to pay and discharge the entire indebtedness on such Securities and Coupons not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest, and any Additional Amounts with respect thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer; and

(3) the Issuer has delivered to the Trustee (x) in the case of satisfaction of subsection (1)(B) of this Section, a certificate signed by a nationally recognized firm of independent public accountants (who may be the independent public accountants regularly retained by the Issuer) certifying as to the sufficiency of the amounts deposited pursuant to clauses (B)(i), (B)(ii) or (B)(iii) above for payment of the principal (and premium, if any) and interest on the dates such payments are due, and (y) in the case of satisfaction of either subsection (1)(A) or (1)(B) of this Section, an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

In the event there are Securities of two or more series hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of all series as to which it is Trustee and if the other conditions thereto are met. In the event there are two or more Trustees hereunder, then the effectiveness of any such instrument shall be conditioned upon receipt of such instruments from all Trustees hereunder.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee under Section 605 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee and the Issuer under Section 402 and the last paragraph of Section 1003 shall survive. At such time as satisfaction and discharge of this Indenture shall be effective with respect to the Securities of a particular series, the Guarantor will be released from its Guarantees of the Securities of such series.

Section 402. Application of Trust Money.

Subject to the provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant to Section 401 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the Coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and any interest and Additional Amounts for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

Section 403. Satisfaction, Discharge and Defeasance of Securities of Any Series.

The Obligors shall be deemed to have paid and discharged the entire indebtedness on all the Outstanding Securities of any series and the Trustee, at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of such indebtedness, including, with respect to the Guarantor, release from its Guarantees of the Securities of such series, when

(1) either

(A) with respect to all Outstanding Securities of such series,

(i) the Issuer has deposited or caused to be deposited with the Trustee, as trust funds in trust for such purpose, an amount sufficient to pay and discharge the entire indebtedness on all Outstanding Securities of such series for principal (and premium, if any), any Additional Amounts, and interest to the Stated Maturity or any Redemption Date as contemplated by the penultimate paragraph of this Section 403, as the case may be; or

(ii) with respect to any such series of Securities which are denominated in United States dollars, the Issuer has deposited or caused to be deposited with the Trustee, as obligations in trust for such purpose, such amount of U.S. Government Obligations as will, together with the income to accrue thereon without consideration of any reinvestment thereof, be sufficient to pay and discharge the entire indebtedness on all Outstanding Securities of such series for principal (and premium, if any), any Additional Amounts, and interest to the Stated Maturity or any Redemption Date as contemplated by the penultimate paragraph of this Section 403; or

(B) the Issuer has properly fulfilled such other means of satisfaction and discharge as is specified, as contemplated by Section 401, to be applicable to the Securities of such series; and

(2) the Issuer has paid or caused to be paid all other sums payable hereunder with respect to the Outstanding Securities of such series; and

(3) the Issuer has delivered to the Trustee a certificate signed by a nationally recognized firm of independent public accountants (who may be the independent public accountants regularly retained by the Issuer) certifying as to the sufficiency of the amounts deposited pursuant to subsections (1)(A)(i) or (1)(A)(ii) of this Section for payment of the principal (and premium, if any) and interest on the dates such payments are due, an Officers' Certificate and an Opinion of Counsel, each such Certificate and Opinion stating that all conditions precedent herein provided for relating to the satisfaction and discharge of the entire indebtedness on all Outstanding Securities of any such series have been complied with; and

(4) the Issuer has delivered to the Trustee

(A) an opinion of independent counsel that the Holders of the Securities of such series will have no federal income tax consequences as a result of such deposit and termination; and

(B) if the Securities of such series are then listed on the New York Stock Exchange, an opinion of counsel that the Securities of such series will not be delisted as a result of the exercise of this option.

Any deposits with the Trustee referred to in Section 403(1)(A) above shall be irrevocable and shall be made under the terms of an escrow trust agreement in form and substance satisfactory to the Trustee. If any Outstanding Securities of such series are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory sinking fund requirement, the Issuer shall make such arrangements as are satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer.

Upon the satisfaction of the conditions set forth in this Section 403 with respect to all the Outstanding Securities of any series, the terms and conditions of such series, including the terms and conditions with respect thereto set forth in this Indenture, other than (i) the provisions of Sections 305, 306 and 1002, (ii) the right of Holders of Securities of such series to receive, from the trust fund described in this Section, payment of the principal (and premium, if any) of, the interest on and any Additional Amounts with respect to such Securities when such payments are due, and (iii) the rights, powers, duties and immunities of the Trustee hereunder, shall no longer be binding upon, or applicable to, the Issuer or the Guarantor, as applicable.

ARTICLE FIVE

REMEDIES

Section 501. Events of Default.

Unless otherwise specified as contemplated by Section 301, "Event of Default", wherever used herein with respect to Securities of any series or related Guarantee, if any, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) unless it is either inapplicable to a particular series or it is specifically deleted or modified in the Officers' Certificate or supplemental indenture, if any, under which such series of Securities is issued:

(1) default in the payment of any interest upon or any Additional Amounts payable in respect of any Security of that series when such interest or Additional Amounts becomes due and payable, and continuance of such default for a period of 30 days;

(2) default in the payment of the principal of (and premium, if any, on) any Security of that series when it becomes due and payable at Maturity;

(3) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series;

(4) default in the performance, or breach, of any covenant or warranty of the Obligors in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has been expressly included in this Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Obligors by the Trustee or to the Obligors and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(5) if any event of default as defined in any mortgage, indenture or instrument, under which there may be issued, or by which there may be secured or evidenced, any indebtedness of the Issuer (including obligations under Capitalized Leases) in an aggregate amount in excess of $50,000,000, whether such indebtedness now exists or shall hereafter be created, shall happen and shall result in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, and such acceleration shall not have been rescinded or annulled within ten days after there shall have been given, by registered or certified mail, to the Issuer by the Trustee or to the Issuer and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Securities of that series, a written notice specifying such event of default and requiring the Issuer to cause such acceleration to be rescinded or annulled.;

(6) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of an Obligor in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of an Obligor or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs, and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(7) an Obligor shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official of an Obligor or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due or shall take any corporate action in furtherance of any of the foregoing;

(8) any Guarantee is not, or is claimed by the Guarantor not to be, in full force and effect; or

(9) any other Event of Default provided with respect to Securities of that series.

Section 502. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal of all the Securities of that series, or such lesser amount as may be provided for in the Securities of that series, to be due and payable immediately, by a notice in writing to the Issuer and the Guarantor (and to the Trustee if given by the Holders), and upon such declaration such principal or such lesser amount shall become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Issuer, the Guarantor and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Issuer or Guarantor has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue installments of interest on and any Additional Amounts payable in respect of all Securities of that series,

(B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates borne by or provided for in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest and Additional Amounts at the rate or rates borne by or provided for in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which has become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Issuer covenants that if

(1) default is made in the payment of any installment of interest on or any Additional Amounts payable in respect of any Security or any related Coupon when such interest or Additional Amounts shall have become due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security at its Maturity,

the Issuer will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities and Coupons, the whole amount then due and payable on such Securities and Coupons for principal (and premium, if any) and interest and Additional Amounts, if any, with interest upon the overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon overdue installments of interest or any Additional Amounts, at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Issuer fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Issuer or any other obligor upon such Securities, Guarantees and Coupons and collect the monies adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer, the Guarantor or any other obligor upon such Securities, Guarantees and Coupons, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series and any related Coupons by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 504. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to an Obligor or any other obligor upon the Securities or the property of the Issuer, the Guarantor or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer and the Guarantor for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(i) to file and prove a claim for the whole amount or such lesser amount as may be provided for in the Securities of that series, of principal (and premium, if any) and interest and any Additional Amounts owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents or counsel) and of the Holders allowed in such judicial proceeding, and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder of Securities and Coupons to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders of Securities and Coupons, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 605.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security or Coupon any plan of reorganization, arrangement, adjustment or composition affecting the Securities, Guarantees or Coupons or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security or Coupon in any such proceeding.

Section 505. Trustee May Enforce Claims Without Possession of Securities, Guarantees or Coupons.

All rights of action and claims under this Indenture or any of the Securities, Guarantees or Coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities, Guarantees or Coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery or judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities and Coupons in respect of which such judgment has been recovered.

Section 506. Application of Money Collected.

Any monies collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such monies on account of principal (and premium, if any), interest or any Additional Amounts, upon presentation of the Securities or Coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee or the Paying Agent under Section 605;

SECOND: To the payment of the amounts then due and unpaid upon the Securities and Coupons for principal (and premium, if any) and interest and any Additional Amounts payable in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities and Coupons for principal (and premium, if any), interest and Additional Amounts, respectively; and

THIRD: To the payment of the remainder, if any, to the Issuer, its successors or assigns, or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Section 507. Limitation on Suits.

No Holder of any Security of any series or any related Coupons shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities, to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other such Holders or Holders of any other series, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 508. Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security or Coupon shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Sections 305 and 307) interest on and any Additional Amounts in respect of such Security or payment of such Coupon on the respective Stated Maturity or Maturities expressed in such Security or Coupon (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

Section 509. Restoration of Rights and Remedies.

If the Trustee or any Holder of a Security or Coupon has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case the Obligors, the Trustee and the Holders of Securities and Coupons shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 510. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities, Guarantees or Coupons in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities or Coupons is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security or Coupon to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders of Securities or Coupons may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Securities or Coupons, as the case may be.

Section 512. Control by Holders of Securities.

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series and the related Guarantees, if any, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture;

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and

(3) such direction, in the reasonable judgment of the Trustee, is not unduly prejudicial to the rights of other Holders of Securities of such series.

Section 513. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series and any related Coupons waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of (and premium, if any) or interest on or Additional Amounts payable in respect of any Security of such series, or

(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 514. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security or Coupon by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit, other than the Trustee, of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, including the Trustee, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Obligors, the Trustee or by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series, or to any suit instituted by any Holder of any Security or Coupon for the enforcement of the payment of the principal of (and premium, if any) or interest on or any Additional Amounts in respect of any Security or the payment of any Coupon on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date) or interest on any overdue principal of any Security or to the extent permitted by law, the payment of interest on any Additional Amount.

ARTICLE SIX

THE TRUSTEE

Section 601. Certain Rights of Trustee. Subject to Sections 315(a) through 315(d) of the Trust Indenture Act:

(1) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Issuer or the Guarantor mentioned herein shall be sufficiently evidenced by an Officers' Certificate and any resolution of the Board of Directors or any committee thereof (or committee of officers or other representatives of the Issuer or Guarantor, as applicable, to the extent any such committee or committees have been so authorized by the Board of Directors) may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence shall be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(4) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by or pursuant to this Indenture at the request or direction of any of the Holders of Securities of any series or any related coupons pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security and/or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine, during business hours and upon reasonable notice, the books, records and premises of the Issuer, personally or by agent or attorney;

(7) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;

(8) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(9) in no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(10) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee;

(11) the Trustee shall not be deemed to have notice of any default or Event of Default unless written notice of any event which is in fact such a default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture; and

(12) in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, actual or threatened pandemics or epidemics, disease, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 602. Not Responsible for Recitals or Issuance of the Securities. The recitals contained herein and in the Securities, except those referring or relating to the Trustee or any of its agents, and except for the Trustee's certificate of authentication, shall be taken as the statements of the Obligors and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility and Qualification on Form T-1 supplied to the Issuer are and will be true and accurate, subject to the qualifications set forth therein. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Issuer of the Securities or the proceeds thereof.

Section 603. May Hold Securities. The Trustee, any Authenticating Agent, any Security Registrar or any other Person that may be an agent of the Trustee or the Issuer, in its individual or any other capacity, may become the owner or pledgee of Securities or Coupons and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Issuer with the same rights it would have if it were not Trustee, Authenticating Agent, Security Registrar or such other Person.

Section 604. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

Section 605. Compensation and Reimbursement.

The Issuer agrees:

(1) to pay to the Trustee and the Paying Agent from time to time reasonable compensation for all services rendered by the Trustee and the Paying Agent hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee or the Paying Agent, as applicable, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee or the Paying Agent, as applicable, in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Trustee's or Paying Agent's negligence or willful misconduct; and

(3) to indemnify the Trustee and the Paying Agent and their agents for, and to hold them harmless against, any loss, liability or expense incurred without negligence or willful misconduct on their part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder; provided, that:

(i) with respect to any such claim, the Trustee and/or the Paying Agent shall have given the Issuer and the Guarantor written notice thereof promptly after the Trustee shall have knowledge thereof, but failure by the Trustee to give such notice shall not affect the Trustee's right or the Issuer's obligation to indemnify hereunder;

(ii) while maintaining absolute control over its own defense, the Trustee shall cooperate and consult with the Issuer in preparing such defense; and

(iii) notwithstanding anything to the contrary in this Section 605(3), the Issuer shall not be liable for settlement of any such claim by the Trustee entered into without the prior consent of the Issuer, which consent shall not be unreasonably withheld.

As security for the performance of the obligations of the Issuer under this Section, the Trustee shall have a lien prior to the Securities of any series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (or premium, if any) or interest on Securities.

Section 606. Corporate Trustee Required; Eligibility. (a) There shall at all times be a Trustee hereunder that is a corporation permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least $50,000,000. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

(b) The following indentures shall be considered specifically described herein for purposes of clause (i) of the proviso contained in Section 310(b)(1) of the Trust Indenture Act: First Supplemental Indenture dated as of January 24, 2011 between the Issuer and the Trustee for 6-3/4% Senior Notes due 2041.

Section 607. Resignation and Removal; Appointment of Successor. (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to Section 608.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Issuer. If the instrument of acceptance by a successor Trustee required by Section 608 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and the Issuer.

(d) If at any time:

(1) the Trustee shall fail to comply with the obligations imposed upon it under Section 310(b) of the Trust Indenture Act with respect to Securities of any series after written request therefor by the Issuer or any Holder of a Security of such series who has been a bona fide Holder of a Security of such series for at least six months; or

(2) the Trustee shall cease to be eligible under Section 606 and shall fail to resign after written request therefor by the Issuer or any such holder; or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, (i) the Issuer, by or pursuant to a Board Resolution, may remove the Trustee with respect to all Securities or the Securities of such series, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities of such series and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Issuer, by or pursuant to a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 608. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Issuer and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 608, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Issuer. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Issuer or the Holders of Securities and accepted appointment in the manner required by Section 608, the Trustee or any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Issuer shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities of such series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 608. Acceptance of Appointment by Successor. (a) Upon the appointment hereunder of any successor Trustee with respect to all Securities, such successor Trustee so appointed shall execute, acknowledge and deliver to the Issuer, the Guarantor and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the request of the Issuer or such successor Trustee, such retiring Trustee, upon payment of its charges, shall execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 1003, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 605.

(b) Upon the appointment hereunder of any successor Trustee with respect to the Securities of one or more (but not all) series, the Issuer, the Guarantor, the retiring Trustee and such successor Trustee shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Securities of that or those series to which the appointment of such successor Trustee relates other than as hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Issuer or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Securities of that or those series to which the appointment of such successor relates and subject to Section 1003 shall duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any Person appointed hereunder as a successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

(d) No Person shall accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person shall be qualified and eligible under this Article.

Section 609. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated but not delivered by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 610. Appointment of Authenticating Agent. The Trustee may appoint one or more Authenticating Agents acceptable to the Issuer with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of that or those series issued upon original issue, exchange, registration of transfer, partial redemption or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent shall be acceptable to the Issuer and, except as provided in or pursuant to this Indenture, shall at all times be a corporation that is authorized under applicable law and by its charter to act as an Authenticating Agent and has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least $20,000,000. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, provided such Corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and the Obligors. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Obligors. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Issuer and shall (i) mail written notice of such appointment pursuant to Section 106, to all Holders of Securities of the series with respect to which such Authenticating Agent shall serve, as their names and addresses appear in the Security Register and (ii) if Securities of the series are issued as Bearer Securities, publish notice of such appointment at least once in an Authorized Newspaper in the place where such successor Authenticating Agent has its principal office if such office is located outside the United States. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The provisions of Sections 308, 602 and 603 shall be applicable to each Authenticating Agent.

If all of the Securities of any series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Issuer wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested in writing (which writing need not be accompanied by or contained in an Officers' Certificate by the Issuer), shall appoint in accordance with this Section an Authenticating Agent having an office in a Place of Payment designated by the Issuer with respect to such series of Securities.

Section 611. Notice of Default. The Trustee shall, within ninety days after the occurrence of a default with respect to the Securities of any series, deliver to all holders of Securities of that series entitled to receive reports pursuant to Section 703, notice of all defaults with respect to that series known to the Trustee, unless such defaults shall have been cured or waived before the giving of such notice; provided, however, that, except in the case of default in the payment of the principal of, premium, if any, or interest on any of the Securities of such series or in the making of any sinking fund payment with respect to such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors or trustees, the executive committee, or a trust committee of directors or trustees or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of Securities of such series. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default hereunder.

Section 612. FATCA. The Issuer agrees (i) to provide the Trustee with such reasonable information as it has in its possession to enable the Trustee to determine whether any payments pursuant to the Indenture are subject to the withholding requirements described in Section 1471(b) of the US Internal Revenue Code of 1986 (the "Code") or otherwise imposed pursuant to Sections 1471 through 1474 of the Code and any regulations, or agreements thereunder or official interpretations thereof ("Applicable Law"), and (ii) that the Trustee shall be entitled to make any withholding or deduction from payments under the Indenture to the extent necessary to comply with Applicable Law, for which the Trustee shall not have any liability.

ARTICLE SEVEN

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND ISSUER

Section 701. Issuer to Furnish Trustee Names and Addresses of Holders.

The Issuer covenants and agrees that it will furnish or cause to be furnished to the Trustee a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of the Registered Securities of each Series:

(a) semiannually and not more than 15 days after each record date for the payment of interest on such Securities, as hereinabove specified, as of such record date, and

(b) at such other times as the Trustee may reasonably request in writing, within 30 days after receipt by the Issuer of any such request, such list to be as of a date not more than 15 days prior to the time such list is furnished,

provided, however, that, so long as the Trustee is the Security Registrar, no such list shall be required to be furnished.

Section 702. Preservation of Information; Communications to Holders.

The Trustee shall comply with the obligations imposed upon it pursuant to Section 312 of the Trust Indenture Act.

Every Holder of Securities or coupons, by receiving and holding the same, agrees with the Obligors and the Trustee that neither the Obligors the Trustee, any Paying Agent nor any Security Registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

Section 703. Reports by Trustee.

(a) Within 60 days after May 15 of each year commencing with the first May 15 following the first issuance of Securities, if required by Section 313(a) of the Trust Indenture Act, the Trustee shall transmit, pursuant to Section 313(c) of the Trust Indenture Act, a brief report dated as of such May 15 with respect to any of the events specified in said Section 313(a) which may have occurred since the later of the immediately preceding May 15 and the date of this Indenture.

(b) The Trustee shall transmit the reports required by Section 313(b) of the Trust Indenture Act and Section 611 hereof at the times specified therein.

(c) Reports pursuant to this Section shall be transmitted in the manner and to the Persons required by Sections 313(c) and 313(d) of the Trust Indenture Act.

Section 704. Reports by the Guarantor.

The Issuer shall:

(a) file with or deliver to the Trustee, within 15 days after the Guarantor is required to file the same with the Commission, copies of the annual and quarterly reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) that the Guarantor may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Guarantor is not required to file information, documents or reports with the Commission pursuant to either Section 13 or Section 15(d) of the Exchange Act, then the Guarantor will file with or deliver to the Trustee and the Commission, in accordance with any other rules and regulations that may be prescribed from time to time by the Commission, such annual and quarterly reports and supplementary and periodic information, documents and reports that may be required pursuant to Section 13 of the Exchange Act, in respect of a security listed and registered on a national securities exchange, as may be prescribed from time to time by the Commission in such rules and regulations; or

(b) if at any time the Guarantor is not subject to Section 13 or 15(d) of the Exchange Act and the Guarantor is not providing annual and quarterly reports and supplementary and periodic information, documents and reports to the Commission and the Trustee pursuant to Section 10.02(a) of this Indenture, the Guarantor will, at its option, either (i) post on a publicly available website or (ii) post on IntraLinks or any comparable password protected online data system requiring user identification and a confidentiality acknowledgement (a "Confidential Datasite"), within 15 days of the filing date that would be applicable to a non-accelerated filer at that time pursuant to applicable Commission rules and regulations, the quarterly and audited annual financial statements and accompanying disclosure described in Item 303 of Regulation S-K ("management's discussion and analysis of financial condition and results of operations") that would be required to be contained in annual reports on Form 10-K and quarterly reports on Form 10-Q, respectively, required to be filed with the Commission if the Guarantor were subject to Section 13(a) or 15(d) of the Exchange Act. If the Guarantor elects to furnish such reports via a Confidential Datasite, access to the Confidential Datasite will be provided promptly upon request to Holders and beneficial owners of, and bona fide potential investors in, the Securities as well as securities analysts and market makers and no such request for access to the Confidential Datasite will be unreasonably denied;

(c) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(d) transmit to the Holders within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (a), (b) and (c) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Any such report, information or document that the Guarantor files with or furnishes to the Commission through the EDGAR shall be deemed filed with the Trustee for purposes of Section 10.02(a), (b) and (c) this Indenture at the time of such filing or furnishing through EDGAR. Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such will not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officers' Certificate).

## ARTICLE EIGHT

## CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE

Section 801. Obligors May Consolidate, etc., on Certain Terms.

Nothing contained in this Indenture or in any of the Securities, the Guarantees or Coupons shall prevent any consolidation or merger of an Obligor with or into any other corporation or corporations (whether or not affiliated with such Obligor) or successive consolidations or mergers in which such Obligor or its successor or successors shall be a party or parties, or shall prevent any sale or conveyance of the property of such Obligor as an entirety, or substantially as an entirety, to any other corporation (whether or not affiliated with such Obligor) authorized to acquire and operate the same; provided, however, and such Obligor hereby covenants and agrees, that any such consolidation, merger, sale or conveyance shall be upon the conditions that (a) immediately after such consolidation, merger, sale or conveyance the corporation (whether such Obligor or such other corporation) formed by or surviving any such consolidation or merger, or to which such sale or conveyance shall have been made, shall not be in default in the performance or observance of any of the terms, covenants and conditions of this Indenture to be kept or performed by such Obligor; (b) the corporation (if other than such Obligor) formed by or surviving any such consolidation or merger, or to which sale or conveyance shall have been made, shall be a corporation organized under the laws of the United States or any State thereof; and (c) the due and punctual payment of the principal of (and premium, if any), any interest on, and any Additional Amounts payable pursuant to Section 1004 with respect to, all the Securities, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be performed or observed by such Obligor, shall be expressly assumed, by supplemental indenture complying with the requirements of Article Nine, satisfactory in form to the Trustee, executed and delivered to the Trustee by the corporation formed by such consolidation, or into which such Obligor shall have been merged, or by the corporation which shall have acquired such property. If at any time there be any consolidation or merger or sale or conveyance or lease of property to which the covenant of this Section is applicable, then in any such event the successor corporation will promptly deliver to the Trustee:

(1) an Officers' Certificate stating that as of the time immediately after the effective date of any such transaction the covenants of the applicable Obligor contained in this Section have been complied with and the successor corporation is not in default under the provisions of the Indenture; and

(2) an Opinion of Counsel stating that such covenants have been complied with and that any instrument or instruments executed in the performance of such covenants comply with the requirements thereof.

Section 802. Rights and Duties of Successor Corporation.

In case of any such consolidation, merger, sale, lease or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the applicable Obligor, with the same effect as if it had been named herein as the party of the first part, and the predecessor corporation, except in the event of a lease, shall be relieved of any further obligation under this Indenture and the Securities, the Guarantees and Coupons. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the applicable Obligor, any or all of the Securities, the Guarantees and Coupons issuable hereunder which theretofore shall not have been signed by the applicable Obligor and delivered to the Trustee; and, upon the order of such successor corporation, instead of such Obligor, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities, Guarantees or Coupons which previously shall have been signed and delivered by the officers of such applicable Obligor to the Trustee for authentication, and any Securities, Guarantees and Coupons which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities, Guarantees and Coupons so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities, the Guarantees and Coupons theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities, Guarantees and Coupons had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Securities, the Guarantees and Coupons thereafter to be issued as may be appropriate.

Section 803. Officers' Certificate and Opinion of Counsel.

The Trustee, subject to the provisions of Section 601, may receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, lease or conveyance, and any such assumption, complies with the provisions of this Article.

ARTICLE NINE

SUPPLEMENTAL INDENTURES

Section 901. Supplemental Indentures without Consent of Holders.

Without the consent of any Holders of Securities or Coupons, the Obligors, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Issuer, and the assumption by any such successor of the covenants and obligations of the Issuer contained in the Securities of one or more series or in the Indenture;

(2) to change or eliminate any provisions of the Indenture with respect to all or any series of the Securities not then outstanding (and, if such change is applicable to fewer than all such series of the Securities, specifying the series to which such change is applicable), and to specify the rights and remedies of the Trustee and the holders of such Securities in connection therewith;

(3) to add to the covenants of the Obligors for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Obligors;

(4) to evidence the succession of another Person to the Guarantor and the assumption by any such successor of the covenants of the Guarantor herein and in the Securities or to add guarantors or co-obligors with respect to any series of Securities or to release guarantors from their guarantees of Securities in accordance with the terms of the applicable series of Securities;

(5) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal (or premium, if any) on Registered Securities or of principal (or premium, if any) or any interest on Bearer Securities, to permit Registered Securities to be exchanged for Bearer Securities or to permit the issuance of Securities in uncertificated form, provided any such action shall not adversely affect the interests of the Holders of Securities of any series or any related Coupons in any material respect;

(6) to establish the form or terms of Securities of any series as permitted by Sections 201 and 301;

(7) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 608(b);

(8) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture and which shall not adversely affect the interests of the Holders of Securities of any series or any related Coupons;

(9) to add to, delete from or revise the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of Securities, as herein set forth;

(10) to secure the Securities pursuant to Section 1006; or

(11) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act or under any similar federal statute hereafter enacted and to add to this Indenture such other provisions as may be expressly required under the Trust Indenture Act.

Section 902. Supplemental Indentures with Consent of Holders.

With the consent of the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Obligors and the Trustee, the Obligors, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto or any applicable Guarantee for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any applicable Guarantee or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental Indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any Additional Amounts payable in respect thereof, or any premium payable upon the redemption thereof, or change the obligation of the Issuer to pay Additional Amounts pursuant to Section 1004 (except as contemplated by Section 801(1) and permitted by Section 901(1)), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502, or change the coin or currency in which any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date),

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or reduce the requirements of Section 1404 for quorum or voting,

(3) modify or affect in any manner adverse to the Holders of the Securities the terms and conditions of the obligations of the Guarantor in respect of the payments of principal and premium, if any, and Interest; or

(4) modify any of the provisions of this Section, or Section 513, or Section 1007, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture or the applicable Guarantee which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 903. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trust created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 904. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder and of any Coupons appertaining thereto shall be bound thereby.

Section 905. Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

Section 906. Reference in Securities to Supplemental Indentures.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Issuer, to any such supplemental indenture may be prepared and executed by the Obligors and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

ARTICLE TEN

COVENANTS

Section 1001. Payment of Principal, Premium, if any, and Interest.

The Issuer covenants and agrees for the benefit of the Holders of each series of Securities that it will duly and punctually pay the principal of (and premium, if any), interest on and any Additional Amounts payable in respect of the Securities of that series in accordance with the terms of such series of Securities, any Coupons appertaining thereto and this Indenture. Any interest due on and any Additional Amounts payable in respect of Bearer Securities on or before Maturity, other than Additional Amounts, if any, payable as provided in Section 1004 in respect of principal of (or premium, if any, on) such a Security, shall be payable only upon presentation and surrender of the several Coupons for such interest installments as are evidenced thereby as they severally mature.

Section 1002. Maintenance of Office or Agency.

The Issuer will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series (but not Bearer Securities, except as otherwise provided below, unless such Place of Payment is located outside the United States) may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer in respect of the Securities of that series and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Issuer will maintain, subject to any laws or regulations applicable thereto, an office or agency in a Place of Payment for such series which is located outside the United States where Securities of such series and the related Coupons may be presented and surrendered for payment (including payment of any Additional Amounts payable on Securities of such series pursuant to Section 1004); provided, however, that if the Securities of such series are listed on The Stock Exchange of the United Kingdom and the Republic of Ireland or the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Issuer will maintain a Paying Agent in London, Luxembourg or any other required city located outside the United States, as the case may be, so long as the Securities of such series are listed on such exchange. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of that series and the related Coupons may be presented and surrendered for payment (including payment of any Additional Amounts payable on Bearer Securities of that series pursuant to Section 1004) at the place specified for the purpose pursuant to Section 301, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

Except as otherwise provided in the form of Bearer Security of any particular series pursuant to the provisions of this Indenture, no payment of principal, premium or interest on Bearer Securities shall be made at any office or agency of the Issuer in the United States or by United States Dollar check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; provided, however, payment of principal of and any premium and interest in United States dollars (including Additional Amounts payable in respect thereof) on any Bearer Security may be made at the Corporate Trust Office of The Bank of New York in the Borough of Manhattan, The City of New York if (but only if) payment of the full amount of such principal, premium, interest or Additional Amounts at all offices outside the United States maintained for the purpose by the Issuer in accordance with this Indenture is illegal or effectively precluded by exchange controls or other similar restrictions.

The Issuer may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless otherwise set forth in a Board Resolution or indenture supplemental hereto with respect to a series of Securities, the Issuer hereby designates as the Place of Payment for each series of Securities the Borough of Manhattan, The City of New York, and initially appoints The Bank of New York at its Corporate Trust Office as the Issuer's office or agency for each of such purposes in such city.

Section 1003. Money for Securities Payments to Be Held in Trust.

If the Issuer shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of (and premium, if any), or interest on, any of the Securities of that series, segregate and hold in trust for the benefit of the Person entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

Whenever the Issuer shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of (and premium, if any), or interest on, any Securities of that series, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Issuer will promptly notify the Trustee of its action or failure so to act.

The Issuer will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Issuer (or any other obligor upon the Securities of that series) in the making of any payment of principal (and premium, if any) or interest on the Securities of that series; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Issuer or such Paying Agent, such sums to be held by the Trustee upon the same terms as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Except as otherwise provided in the form of Securities of any particular series pursuant to the provisions of this Indenture, any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of (and premium, if any) or interest on any Security of any series and remaining unclaimed for three years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Issuer on Issuer Request, or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Security or any Coupon appertaining thereto shall thereafter, as an unsecured general creditor, look only to the Issuer and the Guarantor for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in an Authorized Newspaper in each Place of Payment or to be mailed to Holders of Registered Securities, or both, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication or mailing nor shall it be later than two years after such principal (and premium, if any) or interest has become due and payable, any unclaimed balance of such money then remaining will be repaid to the Issuer.

Section 1004. Additional Amounts.

If the Securities of a series provide for the payment of Additional Amounts, the Issuer will pay to the Holder of any Security of any series or any Coupon appertaining thereto Additional Amounts as provided therein. Whenever in this Indenture there is mentioned, in any context, the payment of the principal of (or premium, if any) or interest on, or in respect of, any Security of any series or any related Coupon or the net proceeds received on the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided for in this Section to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to the provisions of this Section and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

If the Securities of a series provide for the payment of Additional Amounts, at least ten days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series will not bear interest prior to Maturity, the first day on which a payment of principal (and premium, if any) is made), and at least ten days prior to each date of payment of principal (and premium, if any) or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Issuer will furnish the Trustee and the Issuer's principal Paying Agent or Paying Agents, if other than the Trustee, with an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal (and premium, if any) or interest on the Securities of that series shall be made to Holders of Securities of that series or the related Coupons who are United States Aliens without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of that series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities or Coupons and the Issuer will pay to the Trustee or such Paying Agent the Additional Amounts required by this Section. The Issuer covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them in reliance on any Officers' Certificate furnished pursuant to this Section.

Section 1005. Statement as to Compliance; Notice of Certain Defaults.

The Issuer will, so long as any Securities are Outstanding:

(a) deliver to the Trustee, forthwith upon becoming aware of any default or defaults in the performance of any covenant, agreement or condition contained in this Indenture, an Officers' Certificate specifying such default or defaults,

(b) deliver to the Trustee, forthwith upon becoming aware of any default or defaults under clause (5) of Section 501, an Officers' Certificate specifying such default or defaults, and

(c) deliver to the Trustee within 90 days after the end of each fiscal year of the Issuer, which on the date hereof ends December 31, an Officers' Certificate stating that:

(1) a review of the activities of the Issuer during such year and of performance under this Indenture has been made under his supervision; and

(2) to the best of his knowledge, based on such review, the Obligors have fulfilled all their obligations under this Indenture throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

Section 1006. Payment of Taxes and Other Charges.

The Issuer will, and, at any time when the Issuer shall have a Subsidiary or Subsidiaries, will cause each Subsidiary to, pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any property belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might became a lien or charge upon any property of the Issuer or such Subsidiary, provided that neither the Issuer nor any Subsidiary shall be required to pay any tax, assessment, charge, levy or claim, the payment of which is being contested in good faith and by proper proceedings.

Section 1007. Maintenance of Insurance.

The Issuer will maintain, or cause to be maintained, insurance with responsible companies on all properties of the Issuer or, at any time when the Issuer shall have a Subsidiary or Subsidiaries, of the Issuer and each Subsidiary, and on all properties subject to mortgages owned by the Issuer or any Subsidiary, and against all tort claims which may be incurred by the Issuer or any Subsidiary, all to the extent and in such amounts and against such risks as are usually covered by insurance policies carried by owners of similar enterprises.

Section 1008. Limitations on Incurrence of Obligations for Borrowed Money.

(a) The Issuer shall not, and shall not permit any of its Subsidiaries to, Incur any Debt if, immediately after giving effect to the Incurrence of such additional Debt and any other Debt Incurred since the end of the Latest Completed Quarter and the application of the net proceeds therefrom, the aggregate principal amount of all outstanding Debt would exceed 60% of the sum of (without duplication) (i) Total Assets as of the end of the Latest Completed Quarter and (ii) the purchase price of any Real Estate Assets or mortgages receivable acquired or to be acquired in exchange for proceeds of any securities offering, and the amount of any securities offering proceeds received (to the extent such proceeds were not used to acquire Real Estate Assets or mortgages receivable or to reduce Debt), since the end of the Latest Completed Quarter.

(b) the Issuer shall not, and shall not permit any of its Subsidiaries to, Incur any Secured Debt if, immediately after giving effect to the Incurrence of such additional Secured Debt and any other Secured Debt Incurred since the end of the Latest Completed Quarter and the application of the net proceeds therefrom, the aggregate principal amount of all outstanding Secured Debt would exceed 40% of the sum of (without duplication) (i) Total Assets as of the end of the Latest Completed Quarter and (ii) the purchase price of any Real Estate Assets or mortgages receivable acquired or to be acquired in exchange for proceeds of any securities offering, and the amount of any securities offering proceeds received (to the extent such proceeds were not used to acquire Real Estate Assets or mortgages receivable or to reduce Debt), since the end of the Latest Completed Quarter.

(c) The Issuer shall not, and shall not permit any of its Subsidiaries to, Incur any Debt if, immediately after giving effect to the Incurrence of such additional Debt and any other Debt Incurred since the end of the Latest Completed Quarter and the application of the net proceeds therefrom, the ratio of Annualized Consolidated EBITDA to Annualized Interest Expense for the Latest Completed Quarter would be less than 1.50 to 1.00 on a pro forma basis and calculated on the assumption (without duplication) that:

(1) the additional Debt and any other Debt Incurred by the Issuer or any of its Subsidiaries since the first day of the Latest Completed Quarter to the date of determination, which was outstanding at the date of determination, had been Incurred at the beginning of that period and continued to be outstanding throughout that period, and the application of the net proceeds of such Debt, including to refinance other Debt, had occurred at the beginning of such period; provided that in determining the amount of Debt so Incurred, the amount of Debt under any revolving credit facility shall be computed based upon the average daily balance of such Debt during such period;

(2) the repayment or retirement of any other Debt repaid or retired by the Issuer or any of its Subsidiaries since the first day of the Latest Completed Quarter to the date of determination had occurred at the beginning of that period; provided that in determining the amount of Debt so repaid or retired, the amount of Debt under any revolving credit facility shall be computed based upon the average daily balance of such Debt during such period; and

(3) in the case of any acquisition or disposition of any asset or group of assets (including, without limitation, by merger, or stock or asset purchase or sale) or the placement of any assets in service or removal of any assets from service by the Issuer or any of its Subsidiaries since the first day of the Latest Completed Quarter to the date of determination, the acquisition, disposition, placement in service or removal from service and any related repayment or refinancing of Debt had occurred as of the first day of such period, with the appropriate adjustments to Annualized Consolidated EBITDA and Annualized Interest Expense with respect to the acquisition, disposition, placement in service or removal from service being included in that pro forma calculation.

Section 1009. Waiver of Certain Covenants.

The Issuer may omit in any particular instance to comply with any term, provision or condition set forth in Section 1005 with respect to the Securities of any series if before the time for such compliance the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Issuer and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 1010. Maintenance of Total Unencumbered Assets.

The Issuer and its Subsidiaries shall maintain at all times Total Unencumbered Assets of not less than 150% of the aggregate principal amount of all outstanding Unsecured Debt.

ARTICLE ELEVEN

REDEMPTION OF SECURITIES

Section 1101. Applicability of Article.

Redemption of Securities of any series at the option of the Issuer as permitted or required by the terms of such Securities shall be made in accordance with the terms of such Securities and this Article.

Section 1102. Election to Redeem; Notice to Trustee.

The election of the Issuer to redeem any Securities shall be evidenced by a Board Resolution. In case of any redemption at the election of the Issuer of all or less than all of the Securities of any series with the same issue date, interest rate and Stated Maturity, the Issuer shall, at least 45 days prior to the Redemption Date fixed by the Issuer (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

Section 1103. Selection by Trustee of Securities to be Redeemed.

If less than all the Securities of any series with the same issue date, interest rate and Stated Maturity are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the Outstanding Securities of such series not previously called for redemption, by lot or other such method which may provide for the selection for redemption of portions of the principal amount of Registered Securities of such series; provided, however, that no such partial redemption shall reduce the portion of the principal amount of a Registered Security of such series not redeemed to less than the minimum denomination for a Security of that series established pursuant to Section 302.

The Trustee shall promptly notify the Issuer and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal of such Securities which has been or is to be redeemed.

Section 1104. Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 106, not less than 30 nor more than 60 days prior to the Redemption Date, unless a shorter period is specified in the Securities to be redeemed, to the Holders of Securities to be redeemed. Failure to give notice by mailing in the manner herein provided to the Holder of any Registered Securities designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other Securities or portion thereof.

Any notice that is mailed to the Holder of any Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not such Holder receives the notice.

All notices of redemption shall state:

(1) the Redemption Date;

(2) the Redemption Price;

(3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Securities to be redeemed;

(4) in case any Registered Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the Holder of such Security will receive, without charge, a new Registered Security or Registered Securities of authorized denominations for the principal amount thereof remaining unredeemed;

(5) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed, and, if applicable, that interest thereon shall cease to accrue on and after said date;

(6) the place or places where such Securities, together, in the case of Bearer Securities with all Coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price; and

(7) that the redemption is for a sinking fund, if such is the case.

A notice of redemption published as contemplated by Section 106 need not identify particular Registered Securities to be redeemed.

Notice of redemption of Securities to be redeemed at the election of the Issuer shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer.

Section 1105. Deposit of Redemption Price.

On or prior to any Redemption Date, the Issuer shall deposit with the Trustee or with a Paying Agent (or, if the Issuer is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on and any Additional Amounts with respect thereto, all the Securities or portions thereof which are to be redeemed on that date.

Section 1106. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest and the Coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all Coupons, if any, appertaining thereto maturing after the Redemption Date, such security shall be paid by the Issuer at the Redemption Price, together with accrued interest (and any Additional Amounts) to the Redemption Date; provided, however, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only upon presentation and surrender of Coupons for such interest (at an office or agency located outside the United States except as otherwise provided in Section 1002), and provided, further, that installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the Regular Record Dates according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant Coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing Coupons, or the surrender of such missing Coupon or Coupons may be waived by the Issuer and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing Coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; provided, however, that interest (and any Additional Amounts) represented by Coupons shall be payable only upon presentation and surrender of those Coupons at an office or agency located outside of the United States except as otherwise provided in Section 1002.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

Section 1107. Securities Redeemed in Part.

Any Registered Security which is to be redeemed only in part shall be surrendered at any office or agency of the Issuer maintained for that purpose pursuant to Section 1002 (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Registered Security or Securities of the same series, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE TWELVE

SINKING FUNDS

Section 1201. Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise permitted or required by any form of Security of such series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of such series is herein referred to as an "optional sinking fund payment". If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

Section 1202. Satisfaction of Sinking Fund Payments with Securities.

The Issuer may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series to be made pursuant to the terms of such Securities as provided for by the terms of such series (1) deliver Outstanding Securities of such series (other than any of such Securities previously called for redemption or any of such Securities in respect of which cash shall have been released to the Issuer), together in the case of any Bearer Securities of such series with all unmatured Coupons appertaining thereto, and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Issuer pursuant to the terms of such series of Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, provided that such series of Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities of any series in lieu of cash payments pursuant to this Section 1202, the principal amount of Securities of such series to be redeemed in order to exhaust the aforesaid cash payment shall be less than $100,000, the Trustee need not call Securities of such series for redemption, except upon Issuer Request, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall at the request of the Issuer from time to time pay over and deliver to the Issuer any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Issuer to the Trustee of Securities of that series purchased by the Issuer having an unpaid principal amount equal to the cash payment requested to be released to the Issuer.

Section 1203. Redemption of Securities for Sinking Fund.

Not less than 60 days prior to each sinking fund payment date for any series of Securities, the Issuer will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that series pursuant to Section 1202, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so credited and not theretofore delivered. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Issuer shall thereupon be obligated to pay the amount therein specified. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Issuer in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

## ARTICLE THIRTEEN

## REPAYMENT AT THE OPTION OF HOLDERS

Section 1301. Applicability of Article.

Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with the terms of the Securities of such series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their Stated Maturity, for purposes of Section 309, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Issuer, at its option, shall deliver or surrender the same to the Trustee with a directive that such Securities be cancelled. Notwithstanding anything to the contrary contained in this Article Thirteen, in connection with any repayment of Securities, the Issuer may arrange for the purchase of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Holders of such Securities on or before the close of business on the repayment date an amount not less than the repayment price payable by the Issuer on repayment of such Securities, and the obligation of the Issuer to pay the repayment price of such Securities shall be satisfied and discharged to the extent such payment is so paid by such purchasers.

## ARTICLE FOURTEEN

## MEETINGS OF HOLDERS OF SECURITIES

Section 1401. Purposes for Which Meetings May Be Called.

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such series.

Section 1402. Call, Notice and Place of Meetings.

(a) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1401, to be held at such time and at such place in the Borough of Manhattan, The City of New York, or, if Securities of such series were issued as Bearer Securities, in London, as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Issuer, pursuant to a Board Resolution, or the Holders of at least 10% in principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1401, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Issuer or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, or, if Securities of such series were issued as Bearer Securities, in London for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

Section 1403. Persons Entitled to Vote at Meetings.

To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel, any representatives of the Issuer and its counsel and any representatives of the Guarantor and its counsel.

Section 1404. Quorum; Action.

The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series; provided, however, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of a series, the Persons entitled to vote 66-2/3% in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than ten days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than ten days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1402(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Securities of such series which shall constitute a quorum.

Except as limited by the proviso to Section 902, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in principal amount of the Outstanding Securities of that series; provided, however, that, except as limited by the proviso to Section 902, any resolution with respect to any consent or waiver which this Indenture expressly provides may be given by the Holders of not less than 66-2/3% in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly convened and at which a quorum is present as aforesaid only by the affirmative vote of the Holders of 66-2/3% in principal amount of the Outstanding Securities of that series; and provided, further, that, except as limited by the proviso to Section 902, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of that series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Securities of such series and the related Coupons, whether or not present or represented at the meeting.

Section 1405. Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of any series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuer or by Holders of Securities as provided in Section 1402(b), in which case the Issuer or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(c) At any meeting each Holder of a Security of such series or proxy shall be entitled to one vote for each $1,000 principal amount of Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(d) Any meeting of Holders of Securities of any series duly called pursuant to Section 1402 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting; and the meeting may be held as so adjourned without further notice.

Section 1406. Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Holders of Securities of any series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1402 and, if applicable, Section 1404. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Issuer or the Guarantor, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

## ARTICLE FIFTEEN

## GUARANTEES

Section 1501. Applicability of Article; Guarantee.

(a) All Securities previously issued under the Indenture and that remain Outstanding as of February 10, 2023 shall have the benefit of the Guarantees as set forth in this Article Fifteen, and, if the Issuer elects to issue any series of Securities on any date after February 10, 2023 with the benefit of the Guarantees as set forth in this Article then the provisions of this Article Fifteen (with such modifications thereto as may be specified pursuant to Section 301 with respect to any series of Securities issued after February 10, 2023), will be applicable to such Securities. Each reference in this Article Fifteen to a "Security" or "the Securities" refers to the Securities of the particular series as to which provision has been made for such Guarantees (including, for the avoidance of doubt, all Securities which have been previously issued under the Indenture and that remain Outstanding as of February 10, 2023). If more than one series of Securities as to which such provision has been made are Outstanding at any time, the provisions of this Article Fifteen shall be applied separately to each such series.

(b) Subject to this Article Fifteen, the Guarantor fully and unconditionally guarantees to the Trustee and to each Holder of a Security of any series issued with the benefit of Guarantees and which Security has been authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, such Security or the obligations of the Issuer hereunder or thereunder, that:

(1) the principal of, premium, if any, and interest on such Security will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on such Security, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Securities of that series or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantor will be obligated to pay the same immediately. The Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(c) The Guarantor hereby agrees that its obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Securities of any series issued with the benefit of Guarantees or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities of that series with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor, other than payment in full of all obligations under the Securities of that series. The Guarantor in respect of a series of Securities hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer in respect of that series, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Guarantee will not be discharged except by complete performance of the obligations contained in such Securities and this Indenture.

(d) If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantor or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantor, any amount paid by either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(e) The Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Five hereof for the purposes of its Guarantee notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article Five hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purpose of its Guarantee.

Section 1502. Limitation on Guarantor Liability. The Guarantor, and by its acceptance of Securities of any series issued with the benefit of Guarantees, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of the Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantor hereby irrevocably agree that the obligations of the Guarantor will, after giving effect to any maximum amount and all other contingent and fixed liabilities of the Guarantor that are relevant under such laws, result in the obligations of the Guarantor under its Guarantee not constituting a fraudulent transfer or conveyance.

Section 1503. Execution and Delivery of Guarantee. For all Securities issued after February 10, 2023 as to which the Issuer elects to issue with the benefit of the Guarantees as provided herein, to evidence its Guarantee set forth in Section 1501 in respect of Securities of a series issued with the benefit of Guarantees, the Guarantor hereby agrees that a notation of such Guarantee substantially in the form as shall be established in one or more indentures supplemental hereto, will be endorsed by an officer of the Guarantor on each Security of that series authenticated and delivered by the Trustee and that this Indenture will be executed on behalf of the Guarantor by one of its officers.

The Guarantor hereby agrees that its Guarantee set forth in Section 1501 will remain in full force and effect notwithstanding any failure to endorse on each Security of that series a notation of such Guarantee.

If an officer whose signature is on this Indenture or on the Guarantee no longer holds that office at the time the Trustee authenticates the Security of that series on which a Guarantee is endorsed, such Guarantee will be valid nevertheless.

The delivery of any Security of a series issued with the benefit of Guarantees by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantor (including, for the avoidance of doubt, all Securities which have been previously issued, and authenticated by the Trustee, and which remain Outstanding as of February 10, 2023).

ARTICLE SIXTEEN

MISCELLANEOUS PROVISIONS

Section 1601. Securities in Foreign Currencies.

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any series in which not all of such Securities are denominated in the same currency, or (ii) any distribution to Holders of Securities, in the absence of any provision to the contrary in the form of Security of any particular series, any amount in respect of any Security denominated in a currency other than United States dollars shall be treated by the Trustee (based on information and a determination provided it by the Paying Agent) for any such action or distribution as that amount of United States dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Registered Securities of such series (if any) for such action, determination of rights or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such action, determination of rights or distribution) as the Issuer may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

Section 1602. Sanctions Representations.

(1) The Issuer and the Guarantor represent that neither the Issuer nor the Guarantor nor, to the knowledge of the Issuer and the Guarantor, any of their respective affiliates, subsidiaries, directors or officers are the subject of any sanctions enforced by the U.S. Government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively "Sanctions"); and

(2) Each of the Issuer and the Guarantor covenants that it will not directly or indirectly use any funds received pursuant to this Indenture, (i) to fund or facilitate any activities of or business with any Person who, at the time of such funding, is the subject of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any Person (in each case, except to the extent permitted for a Person required to comply with such Sanctions).

ARTICLE SEVENTEEN

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 1701. Incorporators, Stockholders, Officers and Directors of Obligors Exempt from Individual Liability.

No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, employee, officer or director, as such, past, present or future, of the applicable Obligor or of any successor corporation, either directly or through such Obligor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, as such, of such Obligor or of any successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statue, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom are hereby expressly waived and released as a condition of, and as consideration for, the execution of this Indenture and the issue of such Securities.

* * * * *

**Exhibit 4.2**

**FOURTEENTH SUPPLEMENTAL INDENTURE**

**DATED AS OF FEBRUARY 10, 2023**

**BY AND AMONG**

**HEALTHPEAK OP, LLC**
**as Issuer,**

**HEALTHPEAK PROPERTIES, INC.**
**as Guarantor**

**AND**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**
**as Trustee**

**SUPPLEMENTAL TO THE INDENTURE DATED AS OF NOVEMBER 19, 2012**

This FOURTEENTH SUPPLEMENTAL INDENTURE (this "**Supplemental Indenture**") is made and entered into as of February 10, 2023 among Healthpeak OP, LLC., a Maryland limited liability company (the "**Issuer**"), Healthpeak Properties, Inc., a Maryland corporation (the "**Guarantor**"), and The Bank of New York Mellon Trust Company, N.A., a national banking association duly organized and existing under the laws of the United States of America, as Trustee (the "**Trustee**").

**WITNESSETH THAT:**

WHEREAS, the Issuer (formerly known as HCP, Inc., a Maryland corporation, and subsequently as Healthpeak Properties, Inc., a Maryland corporation) and the Trustee have executed and delivered an Indenture dated as of November 19, 2012 (as amended, supplemented or otherwise modified from time to time, the "**Base Indenture**" and, together with this Supplemental Indenture, as amended, supplemented or otherwise modified from time to time, the "**Indenture**") to provide for the future issuance of the Issuer's senior debt securities (the "**Securities**") to be issued from time to time in one or more series;

WHEREAS, pursuant to that certain Agreement and Plan of Merger dated as of February 7, 2023, by and among the Issuer, New Healthpeak, Inc., a Maryland corporation ("**New Healthpeak**"), which was a direct, wholly owned subsidiary of the Issuer prior to the Merger (as defined below), and Healthpeak Merger Sub, Inc., a Maryland corporation ("**Merger Sub**"), which was a direct, wholly owned subsidiary of New Healthpeak prior to the Merger, on February 10, 2023, Merger Sub merged with and into the Issuer, with the Issuer being the surviving entity and New Healthpeak became the sole stockholder of the Issuer (the "**Merger**") and New Healthpeak inherited the name "Healthpeak Properties, Inc.";

WHEREAS, following the Merger, effective on February 10, 2023, the Issuer converted from a Maryland corporation into a Maryland limited liability company called "Healthpeak OP, LLC," and New Healthpeak became the managing member of the Issuer;

WHEREAS, prior to the date hereof, the Issuer has issued 3.400% Senior Notes due 2025 (the "**3.400% 2025 Notes**"), 4.000% Senior Notes due 2025 (the "**4.000% 2025 Notes**"), 3.250% Senior Notes due 2026 (the "**2026 Notes**"), 1.350% Senior Notes due 2027 (the "**2027 Notes**"), 2.125% Senior Notes due 2028 (the "**2028 Notes**"), 3.500% Senior Notes due 2029 (the "**2029 Notes**"), 3.000% Senior Notes due 2030 (the "**2030 Notes**"), 2.875% Senior Notes due 2031 (the "**2031 Notes**"), and 5.250% Senior Notes due 2032 (the "**2032 Notes**" and, together with the 3.400% 2025 Notes, 4.000% 2025 Notes, 2026 Notes, 2027 Notes, 2028 Notes, 2029 Notes, 2030 Notes and 2031 Notes, the "**Existing Notes**") pursuant to the terms of the Base Indenture and the applicable Existing Supplemental Indenture (as defined below);

WHEREAS, prior to the date hereof, the Issuer has entered into the Fifth Supplemental Indenture dated January 21, 2015 in respect of the 3.400% 2025 Notes (the "**January 2015 Supplemental Indenture**"), the Sixth Supplemental Indenture dated May 20, 2015 in respect of the 4.000% 2025 Notes (the "**May 2015 Supplemental Indenture**"), the Eighth Supplemental Indenture dated July 5, 2019 in respect of the 2026 Notes and the 2029 Notes (the "**July 2019 Supplemental Indenture**"), the Ninth Supplemental Indenture dated November 21, 2019 in respect of the 2030 Notes (the "**November 2019 Supplemental Indenture**"), the Tenth Supplemental Indenture dated June 23, 2020 in respect of the 2031 Notes (the "**June 2020 Supplemental Indenture**"), the Eleventh Supplemental Indenture dated July 12, 2021 in respect of the 2027 Notes (the "**July 2021 Supplemental Indenture**"), the Twelfth Supplemental Indenture dated November 24, 2021 in respect of the 2028 Notes (the "**November 2021 Supplemental Indenture**"), and the Thirteenth Supplemental Indenture dated January 17, 2023 in respect of the 2032 Notes (the "**January 2023 Supplemental Indenture**" and, together with the January 2015 Supplemental Indenture, May 2015 Supplemental Indenture, July 2019 Supplemental Indenture, November 2019 Supplemental Indenture, June 2020 Supplemental Indenture, July 2021 Supplemental Indenture and November 2021 Supplemental Indenture, the "**Existing Supplemental Indentures**");

WHEREAS, Section 6.04 of the Base Indenture provides that the Issuer may merge with another entity if (i) the Issuer is the continuing entity and (ii) immediately after such merger, the Issuer would not be in Default in the performance of any covenant or condition of the Base Indenture and no Event of Default would have occurred and be continuing;

WHEREAS, Sections 14.01(h), (j) and (k) of the Base Indenture provide that, without the consent of any Holders, the Issuer, at any time and from time to time, may enter into one or more indentures supplemental to the Base Indenture, in form satisfactory to the Trustee, to (i) make any change in any series of Securities that does not adversely affect in any material respect the rights of the Holders of such Securities, (ii) add a guarantor with respect to any series of Securities and (iii) cure any ambiguity or inconsistency or to correct or supplement any provision contained in the Base Indenture or in any indenture supplemental to the Base Indenture which may be defective or inconsistent with any other provision contained in the Base Indenture or in any supplemental to the Base Indenture; and

WHEREAS, in connection with the Merger, the Issuer and the Trustee desire to (i) amend and restate the Base Indenture as set forth on Exhibit A attached hereto, (ii) amend each of the Existing Supplemental Indentures to add the benefit of a guarantee provided by the Guarantor in respect of the applicable series of the Existing Notes, in accordance with the terms of the Indenture and (iii) cure an ambiguity in the Existing Supplemental Indentures resulting from the Merger.

**NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:**

**ARTICLE 1**

**AMENDMENT**

Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Base Indenture.

Section 1.1. The Base Indenture is hereby amended and restated as set forth on Exhibit A attached hereto.

Section 1.2. With respect to the applicable series of Existing Notes, each of the January 2015 Supplemental Indenture and the May 2015 Supplemental Indenture is hereby amended by inserting the following as Section 2.17, and each of the July 2019 Supplemental Indenture, the November 2019 Supplemental Indenture, the June 2020 Supplemental Indenture, the July 2021 Supplemental Indenture, the November 2021 Supplemental Indenture and the January 2023 Supplemental Indenture is hereby amended by inserting the following as Section 2.11:

> Securities Guarantee. The payment of principal, interest and certain other amounts on the Notes will be fully and unconditionally guaranteed by the Guarantor on a senior unsecured basis as set out in Article XVI of the Base Indenture, as amended by the Fourteenth Supplemental Indenture dated as of February 10, 2023.

Section 1.3. As used in Section 4.3 of the July 2019 Supplemental Indenture and Section 3.3 of each of the November 2019 Supplemental Indenture, the June 2020 Supplemental Indenture, the July 2021 Supplemental Indenture, the November 2021 Supplemental Indenture and the January 2023 Supplemental Indenture, the term "the Company" shall be understood to mean "Healthpeak Properties, Inc."

Section 1.4. As used in the defined term "Latest Completed Quarter" in each of the Existing Supplemental Indentures, the term "the Company" shall be understood to mean "Healthpeak Properties, Inc."

Section 1.5. Except as expressly provided in this Supplemental Indenture, to the extent that any Existing Supplemental Indenture modifies the Base Indenture with respect to any particular series of Existing Notes, such modifications will remain in full force and effect following the amendment and restatement provided for in Section 1.1 hereof.

**ARTICLE 2**

**MISCELLANEOUS**

Section 2.1. The recitals herein contained are made by the Issuer and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

Section 2.2. This Supplemental Indenture shall be deemed to be a contract made under the law of the State of New York and for all purposes shall be governed by and construed in accordance with the law of said State.

Section 2.3. In case any provision in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 2.4. This Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The words "execution," signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

[Signature page follows]

IN WITNESS WHEREOF, the Issuer, the Guarantor and the Trustee have caused this Supplemental Indenture to be executed in their respective corporate names as of the date first above written.

HEALTHPEAK OP, LLC, as Issuer

By: HEALTHPEAK PROPERTIES, INC., its Managing Member

By: /s/ Scott M. Brinker
Name: Scott M. Brinker
Title: President and Chief Executive Officer

HEALTHPEAK PROPERTIES, INC., as Guarantor

By: /s/ Scott M. Brinker
Name: Scott M. Brinker
Title: President and Chief Executive Officer

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By: /s/ April Bradley
Name: April Bradley
Title: Vice President

[*Signature Page to Supplemental Indenture (1993 Indenture)*]

Exhibit A

Amended and Restated Indenture

[Attached.]

**HEALTHPEAK OP, LLC,**
as Issuer,

**HEALTHPEAK PROPERTIES, INC.,**
as Guarantor,

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**
as Trustee

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# AMENDED AND RESTATED INDENTURE

Dated as of
February 10, 2023

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**DEBT SECURITIES**

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*This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

AMENDED AND RESTATED INDENTURE dated as of February 10, 2023, among Healthpeak OP, LLC, a Maryland limited liability company (the "Issuer"), Healthpeak Properties, Inc., a Maryland corporation (the "Managing Member" and, in the capacity as guarantor of one or more series of Securities to be issued hereunder from time to time, the "Guarantor"; the Guarantor, together with the Issuer, the "Obligors"), and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (the "Trustee").

**WITNESSETH:**

WHEREAS, the Issuer (formerly known as HCP, Inc., a Maryland corporation) and Trustee entered into the indenture dated November 19, 2012;

WHEREAS, the Guarantor, on its own behalf and on behalf of the Issuer in its capacity as the Managing Member of the Issuer, has duly authorized the execution and delivery of this Indenture by itself and the Issuer to provide for the issuance of unsecured debentures, notes, bonds or other evidences of indebtedness (the "Securities") in an unlimited aggregate principal amount to be issued from time to time in one or more series as provided in this Indenture;

WHEREAS, the Guarantor has agreed to enter into this Indenture to provide its Guarantee (as defined herein) of the Issuer's obligation under the Securities; and

WHEREAS, all things necessary to make this Indenture a valid and legally binding agreement of the Issuer and the Guarantor, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That, in consideration of the premises and the purchase of the Securities by the Holders thereof and for the equal and proportionate benefit of all of the present and future Holders of the Securities, each party agrees and covenants as follows:

## ARTICLE I
## DEFINITIONS

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(b) unless otherwise defined in this Indenture or the context otherwise requires, all terms used herein without definition which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(d) references to "Article" or "Section" or other subdivision herein are references to an Article, Section or other subdivision of this Indenture, unless the context otherwise requires.

Section 1.01 Definitions.

Unless the context otherwise requires, the terms defined in this Section 1.01 shall for all purposes of this Indenture have the meanings hereinafter set forth:

**Affiliate**: The term "Affiliate," with respect to any specified Person shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

**Authenticating Agent**: The term "Authenticating Agent" shall have the meaning assigned to it in Section 11.09.

**Board of Directors**: The term "Board of Directors" shall mean:

(i) for any Person that is a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board of directors;

(ii) for any Person that is a partnership, the board of directors of the general partner of the partnership;

(iii) for any Person that is a limited liability company, the managing member or members thereof (if a natural person or natural persons) or, if such managing member or members are not natural persons, the board of directors or other controlling committee, as the case may be, of the managing member or members of such limited liability company duly authorized to act on behalf of such managing member or members; and

(iv) to any other Person, the board or committee of such Person serving a similar function.

**Board Resolution**: The term "Board Resolution" shall mean a copy of a resolution or resolutions certified by the Secretary or an Assistant Secretary of the Managing Member to have been duly adopted by the Board of Directors (or by a committee of the Board of Directors to the extent that any such other committee has been authorized by the Board of Directors to establish or approve the matters contemplated) and to be in full force and effect on the date of such certification and delivered to the Trustee.

**Business Day**: The term "Business Day," when used with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment or such other location are authorized or obligated by law or executive order to close.

**Capital Stock**: The term "Capital Stock" shall mean:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person,

but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

**Code**: The term "Code" shall mean the Internal Revenue Code of 1986, as amended.

**Corporate Trust Office**: The term "Corporate Trust Office," or other similar term, shall mean the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date hereof is located at 240 Greenwich Street, New York, NY 10286, Attention: Corporate Trust Unit, or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer, or the principal corporate trust officer of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Issuer).

**Currency**: The term "Currency" shall mean U.S. Dollars or Foreign Currency.

**Debt**: The term "Debt" shall mean, as of any date (without duplication), all indebtedness and liabilities for borrowed money, secured or unsecured, of the Issuer and its Subsidiaries, including mortgages and other notes payable (including any Securities to the extent outstanding from time to time), but excluding any indebtedness, including mortgages and other notes payable, which is secured by cash, cash equivalents, or marketable securities or defeased (it being understood that cash collateral shall be deemed to include cash deposited with a trustee with respect to third party indebtedness), Intercompany Debt and all liabilities associated with customary exceptions to non-recourse indebtedness, such as for fraud, misapplication of funds, environmental indemnities, voluntary bankruptcy, collusive involuntary bankruptcy and other similar exceptions. It is understood that the term "Debt" shall not include any redeemable equity interest in the Issuer.

**Default**: The term "Default" shall have the meaning assigned to it in Section 11.03.

**Defaulted Interest**: The term "Defaulted Interest" shall have the same meaning assigned to it in Section 3.08(b).

**Depositary**: The term "Depositary" shall mean, with respect to the Securities of any series issuable in whole or in part in the form of one or more Global Securities, each Person designated as Depositary by the Issuer pursuant to Section 3.01 until one or more successor Depositaries shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depositary" shall mean or include each Person who is then a Depositary hereunder, and if at any time there is more than one such Person, "Depositary" as used with respect to the Securities of any such series shall mean the Depositary with respect to the Securities of that series.

**Designated Currency**: The term "Designated Currency" shall have the same meaning assigned to it in Section 3.12.

**Discharged**: The term "Discharged" shall have the meaning assigned to it in Section 12.03.

**DTC**: The term "DTC" shall mean The Depository Trust Company, Inc. and its successors.

**EDGAR**: The term "EDGAR" shall have the meaning assigned to it in Section 10.02.

**Electronic Means**: The term "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for the use in connection with its services hereunder.

**Event of Default**: The term "Event of Default" shall have the meaning specified in Section 7.01.

**Exchange Act**: The term "Exchange Act" shall mean the United States Securities Exchange Act of 1934, and the rules and regulations promulgated by the SEC thereunder and any statute successor thereto, in each case as amended from time to time.

**Exchange Rate**: The term "Exchange Rate" shall have the meaning assigned to it in Section 7.01.

**Floating Rate Security**: The term "Floating Rate Security" shall mean a Security that provides for the payment of interest at a variable rate determined periodically by reference to an interest rate index specified pursuant to Section 3.01.

**Foreign Currency**: The term "Foreign Currency" shall mean a currency issued by the government of any country other than the United States or a composite currency, the value of which is determined by reference to the values of the currencies of any group of countries.

**GAAP**: The term "GAAP" shall mean generally accepted accounting principles in the United States, consistently applied, as in effect from time to time.

**Global Security**: The term "Global Security" shall mean any Security that evidences all or part of a series of Securities, issued in fully-registered certificated form to the Depositary for such series in accordance with Section 3.03 and bearing the legend prescribed in Section 3.03(g).

**Guarantee**: The term "Guarantee" shall mean any guarantee of the Guarantor of the obligations of the Issuer under any Securities.

**Guarantor**: The term "Guarantor" shall mean the Person named as the "Guarantor" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Guarantor" shall mean such successor Person.

**Holder; Holder of Securities**: The terms "Holder" and "Holder of Securities" are defined under "Securityholder; Holder of Securities; Holder."

**Indenture**: The term "Indenture" or "this Indenture" shall mean this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term "Indenture" shall also include the terms of particular series of Securities established as contemplated by Section 3.01; provided, however, that if at any time more than one Person is acting as Trustee under this Indenture due to the appointment of one or more separate Trustees for any one or more separate series of Securities, "Indenture" shall mean, with respect to such series of Securities for which any such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities for which such Person is Trustee established as contemplated by Section 3.01, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such person had become such Trustee, but to which such person, as such Trustee, was not a party; provided, further that in the event that this Indenture is supplemented or amended by one or more indentures supplemental hereto which are only applicable to certain series of Securities, the term "Indenture" for a particular series of Securities shall only include the supplemental indentures applicable thereto.

**Individual Securities**: The term "Individual Securities" shall mean the individual Securities in definitive form registered in the name or names of Persons other than a Depositary for Global Securities or a nominee or nominees thereof.

**Instructions**: The term "Instructions" shall have the meaning assigned to it in Section 17.03.

**Intercompany Debt**: The term "Intercompany Debt" means, as of any date, Debt to which the only parties are the Issuer and any of its Subsidiaries as of such date; *provided*, however, that with respect to any such Debt of which the Issuer is the borrower, such Debt is subordinate in right of payment to the Securities.

**Interest**: The term "interest" shall mean, unless the context otherwise requires, interest payable on any Securities, and with respect to an Original Issue Discount Security that by its terms bears interest only after Maturity, interest payable after Maturity.

**Interest Payment Date**: The term "Interest Payment Date" shall mean, with respect to any Security, the Stated Maturity of an installment of interest on such Security.

**Issuer**: The term "Issuer" shall mean the Person named as the "Issuer" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Issuer" shall mean such successor Person.

**Issuer Order**: The term "Issuer Order" shall mean a written order signed in the name of the Issuer by the Guarantor by any of the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, the General Counsel, any Vice President, the Treasurer, any Assistant Treasurer, the Controller, any Assistant Controller, the Corporate Secretary or any Assistant Corporate Secretary of the Guarantor and delivered to the Trustee.

**Lien**: The term "Lien" shall mean (without duplication) any lien, mortgage, trust deed, deed of trust, deed to secure debt, pledge, security interest, assignment for collateral purposes, deposit arrangement, or other security agreement, excluding any right of setoff but including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and any other like agreement granting or conveying a security interest; *provided,* that, for purposes hereof, the term "Lien" shall not include any mortgage that has been defeased by the Issuer or any of its Subsidiaries in accordance with the provisions thereof through the deposit of cash, cash equivalents or marketable securities (it being understood that cash collateral shall be deemed to include cash deposited with a trustee with respect to third party indebtedness).

**Managing Member**. The term "Managing Member" means the Person named as the "Managing Member" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Managing Member" shall mean such successor Person or Persons.

**Mandatory Sinking Fund Payment**: The term "Mandatory Sinking Fund Payment" shall have the meaning assigned to it in Section 5.01(b).

**Maturity**: The term "Maturity," with respect to any Security, shall mean the date on which the principal of such Security shall become due and payable as therein and herein provided, whether at the Stated Maturity thereof, upon acceleration, call for redemption or otherwise.

**Members**: The term "Members" shall have the meaning assigned to it in Section 3.03(i).

**Obligors**: The term "Obligors" shall mean the Person or Persons named as the "Obligors" in the first paragraph of this Indenture until a successor Person or Persons shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Obligors" shall mean such successor Person or Persons.

**Officer's Certificate**: The term "Officer's Certificate" shall mean, when used with respect to any Person, a certificate signed in the name of such Person by any of the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, the General Counsel, any Vice President, the Treasurer, any Assistant Treasurer, the Controller, any Assistant Controller, the Corporate Secretary or any Assistant Corporate Secretary of such Person or, if such Person is a limited liability company, then by the Chairman of the Board or President or any Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the managing member of such Person and, in either case, delivered to the Trustee. Each such certificate shall include the statements provided for in Section 17.01 if and to the extent required by the provisions of such Section.

**Opinion of Counsel**: The term "Opinion of Counsel" shall mean an opinion in writing reasonably acceptable to the Trustee signed by one or more legal counsel, who may be an employee of or of counsel to the Issuer, or the Managing Member, or, as applicable or as the context may require, the Guarantor, and that meets the requirements provided for in Section 17.01.

**Optional Sinking Fund Payment**: The term "Optional Sinking Fund Payment" shall have the meaning assigned to it in Section 5.01(b).

**Original Issue Discount Security**: The term "Original Issue Discount Security" shall mean any Security that is issued with "original issue discount" within the meaning of Section 1273(a) of the Code and the regulations thereunder, or any successor provision, and any other Security designated by the Issuer as issued with original issue discount for United States federal income tax purposes.

**Outstanding**: The term "Outstanding," when used with respect to Securities means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(a) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Securities or portions thereof for which payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Issuer) in trust or set aside and segregated in trust by the Issuer (if the Issuer shall act as its own Paying Agent) for the Holders of such Securities or Securities as to which the Obligors' obligations have been Discharged; provided, however, that if such Securities or portions thereof are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(c) Securities that have been paid pursuant to Section 3.07(b) or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to a Responsible Officer of the Trustee proof satisfactory to it that such Securities are held by a protected purchaser in whose hands such Securities are valid obligations of the Issuer; provided, however, that in determining whether the Holders of the requisite principal amount of Securities of a series Outstanding have performed any action hereunder, Securities owned by the Issuer or any other obligor upon the Securities of such series or any Affiliate of the Issuer or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such action, only Securities of such series that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act with respect to such Securities and that the pledgee is not the Issuer or any other obligor upon such Securities or any Affiliate of the Issuer or of such other obligor. In determining whether the Holders of the requisite principal amount of Outstanding Securities of a series have performed any action hereunder, the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding for such purpose shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof pursuant to Section 7.02 and the principal amount of a Security denominated in a Foreign Currency that shall be deemed to be Outstanding for such purpose shall be the amount calculated pursuant to Section 3.11(b).

**Paying Agent**: The term "Paying Agent" shall have the meaning assigned to it in Section 6.02(a).

**Person**: The term "Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

**Place of Payment**: The term "Place of Payment" shall mean, when used with respect to the Securities of any series, the place or places where the principal of and premium, if any, and interest on the Securities of that series are payable as specified pursuant to Section 3.01.

**Predecessor Security**: The term "Predecessor Security" shall mean, with respect to any Security, every previous Security evidencing all or a portion of the same Debt as that evidenced by such particular Security, and, for the purposes of this definition, any Security authenticated and delivered under Section 3.07 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same Debt as the lost, destroyed or stolen Security.

**Record Date**: The term "Record Date" shall mean, with respect to any interest payable on any Security on any Interest Payment Date, any date specified in or pursuant to this Indenture or such Security as the record date for the payment of interest pursuant to Section 3.01.

**Redemption Date**: The term "Redemption Date" shall mean, when used with respect to any Security to be redeemed, in whole or in part, the date fixed for such redemption by or pursuant to this Indenture and the terms of such Security, which, in the case of a Floating Rate Security, unless otherwise specified pursuant to Section 3.01, shall be an Interest Payment Date only.

**Redemption Price**: The term "Redemption Price," when used with respect to any Security to be redeemed, in whole or in part, shall mean the price at which it is to be redeemed pursuant to the terms of the applicable Security and this Indenture.

**Register**: The term "Register" shall have the meaning assigned to it in Section 3.05(a).

**Registrar**: The term "Registrar" shall have the meaning assigned to it in Section 3.05(a).

**Responsible Officers**: The term "Responsible Officers" of the Trustee hereunder shall mean any vice president, assistant secretary, senior associate, associate, trust officer or any other officer associated with the corporate trust department of the Trustee customarily performing functions similar to those performed by any of the above designated officers, and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

**SEC**: The term "SEC" shall mean the United States Securities and Exchange Commission, as constituted from time to time.

**Security**: The term "Security" or "Securities" shall have the meaning stated in the recitals and shall more particularly mean one or more of the Securities duly authenticated by the Trustee and delivered pursuant to the provisions of this Indenture.

**Security Custodian**: The term "Security Custodian" shall mean the custodian with respect to any Global Security appointed by the Depositary, or any successor Person thereto, and shall initially be the Trustee.

**Securityholder; Holder of Securities; Holder**: The term "Securityholder" or "Holder of Securities" or "Holder," shall mean the Person in whose name Securities shall be registered in the Register kept for that purpose hereunder.

**Senior Debt**: The term "Senior Debt" means the principal of (and premium, if any) and unpaid interest on (x) Debt of the Issuer, whether outstanding on the date hereof or thereafter created, incurred, assumed or guaranteed, for money borrowed other than (a) any Debt of the Issuer which when incurred, and without respect to any election under Section 1111(b) of the Federal Bankruptcy Code, was without recourse to the Issuer, (b) any Debt of the Issuer to any of its Subsidiaries, (c) Debt to any employee of the Issuer, (d) any liability for taxes, (e) Trade Payables and (f) any Debt of the Issuer which is expressly subordinate in right of payment to any other Debt of the Issuer, and (y) renewals, extensions, modifications and refundings of any such Debt. For purposes of the foregoing and the definition of "Senior Debt," the phrase "subordinated in right of payment" means debt subordination only and not lien subordination, and accordingly, (i) unsecured indebtedness shall not be deemed to be subordinated in right of payment to secured indebtedness merely by virtue of the fact that it is unsecured, and (ii) junior liens, second liens and other contractual arrangements that provide for priorities among Holders of the same or different issues of indebtedness with respect to any collateral or the proceeds of collateral shall not constitute subordination in right of payment. This definition may be modified or superseded by a supplemental indenture.

**Special Record Date**: The term "Special Record Date" shall have the meaning assigned to it in Section 3.08(b)(i).

**Stated Maturity**: The term "Stated Maturity" when used with respect to any Security or any installment of interest thereon, shall mean the date specified in such Security or pursuant to Section 3.01 hereof with respect to such Security as the fixed date on which the principal (or any portion thereof) of or premium, if any, on such Security or such installment of interest is due and payable.

**Subsidiary**: The term "Subsidiary" shall mean, with respect to any Person, a corporation, partnership association, joint venture, trust, limited liability company or other business entity which is required to be consolidated with such Person in accordance with GAAP.

**Successor Company**: The term "Successor Company" shall have the meaning assigned to it in Section 3.06(i).

**Trade Payables**: The term "Trade Payables" means accounts payable or any other Debt or monetary obligations to trade creditors created or assumed by the Issuer or any Subsidiary of the Issuer in the ordinary course of business (including guarantees thereof or instruments evidencing such liabilities).

**Trust Indenture Act; TIA**: The term "Trust Indenture Act" or "TIA" shall mean the Trust Indenture Act of 1939, as amended, and the rules and regulations thereunder as in effect on the date of this Indenture, except as provided in Section 14.06 and except to the extent any amendment to the Trust Indenture Act expressly provides for application of the Trust Indenture Act as in effect on another date.

**Trustee**: The term "Trustee" shall mean the Person named as the "Trustee" in the first paragraph of this Indenture until a successor Trustee shall have become such with respect to one or more series of Securities pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

**U.S. Dollars**: The term "U.S. Dollars" shall mean such currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts.

**U.S. Government Obligations**: The term "U.S. Government Obligations" shall have the meaning assigned to it in Section 12.03.

**United States**: The term "United States" shall mean the United States of America (including the States and the District of Columbia), its territories and its possessions and other areas subject to its jurisdiction.

## ARTICLE II
## FORMS OF SECURITIES

Section 2.01 Terms of the Securities.

(a) The Securities of each series and the related Guarantees, if any, shall be substantially in the form set forth in an Officer's Certificate or in one or more indentures supplemental hereto, and shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as the Issuer may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange on which any series of the Securities may be listed or of any automated quotation system on which any such series may be quoted, or to conform to usage, all as determined by any of the officers executing such Securities as conclusively evidenced by their execution of such Securities.

(b) The terms and provisions of the Securities shall constitute, and are hereby expressly made, a part of this Indenture, and, to the extent applicable, the Issuer and the Trustee, by their execution and delivery of this Indenture expressly agree to such terms and provisions and to be bound thereby.

Section 2.02 Form of Trustee's Certificate of Authentication.

(a) Only such of the Securities as shall bear thereon a certificate substantially in the form of the Trustee's certificate of authentication hereinafter recited, executed by the Trustee by manual, facsimile or electronic signature, shall be valid or become obligatory for any purpose or entitle the Holder thereof to any right or benefit under this Indenture.

(b) Each Security shall be dated the date of its authentication, except that any Global Security shall be dated as of the date specified as contemplated in Section 3.01(q).

(c) The form of the Trustee's certificate of authentication to be borne by the Securities shall be substantially as follows:

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Date of
authentication: _____

The Bank of New York Mellon Trust Company, N.A., as Trustee

By: _____
Authorized Signatory

Section 2.03 Form of Trustee's Certificate of Authentication by an Authenticating Agent. If at any time there shall be an Authenticating Agent appointed with respect to any series of Securities, then the Trustee's Certificate of Authentication by such Authenticating Agent to be borne by Securities of each such series shall be substantially as follows:

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Date of
authentication: _____

The Bank of New York Mellon Trust Company, N.A., as Trustee

:

By: [NAME OF AUTHENTICATING AGENT]
as Authenticating Agent

By: _____
Authorized Signatory

**ARTICLE III**
**THE DEBT SECURITIES**

Section 3.01 Amount Unlimited; Issuable in Series. The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series. The title and terms of each series of Securities shall be as set forth in or determined pursuant to an Officer's Certificate or in one or more indentures supplemental hereto, prior to the issuance of Securities of any series, which shall set forth such of the following as are applicable to the Securities of such series:

(a) the title of the Securities of the series (which shall distinguish the Securities of such series from the Securities of all other series, except to the extent that additional Securities of an existing series are being issued);

(b) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 3.04, 3.06, 3.07, 4.06, or 14.05);

(c) the dates on which or periods during which the Securities of the series may be issued, and the dates on, or the range of dates within, which the principal of and premium, if any, on the Securities of such series are or may be payable or the method by which such date or dates shall be determined or extended;

(d) the rate or rates at which the Securities of the series shall bear interest, if any, or the method by which such rate or rates shall be determined, whether such interest shall be payable in cash or additional Securities of the same series or shall accrue and increase the aggregate principal amount outstanding of such series (including if such Securities were originally issued at a discount), the date or dates from which such interest shall accrue, or the method by which such date or dates shall be determined, the Interest Payment Dates on which any such interest shall be payable, and the Record Dates for the determination of Holders to whom interest is payable on such Interest Payment Dates or the method by which such date or dates shall be determined, the right, if any, to extend or defer interest payments and the duration of such extension or deferral;

(e) if other than U.S. Dollars, the Foreign Currency in which Securities of the series shall be denominated or in which payment of the principal of, premium, if any, or interest on the Securities of the series shall be payable and any other terms concerning such payment;

(f) if the amount of payment of principal of, premium, if any, or interest on the Securities of the series may be determined with reference to an index, formula or other method including, but not limited to, an index based on a Currency or Currencies other than that in which the Securities are stated to be payable, the manner in which such amounts shall be determined;

(g) if the principal of, premium, if any, or interest on Securities of the series are to be payable, at the election of the Issuer or a Holder thereof, in a Currency other than that in which the Securities are denominated or stated to be payable without such election, the period or periods within which, and the terms and conditions upon which, such election may be made and the time and the manner of determining the exchange rate between the Currency in which the Securities are denominated or payable without such election and the Currency in which the Securities are to be paid if such election is made;

(h) the place or places, if any, in addition to or instead of the Corporate Trust Office of the Trustee where the principal of, premium, if any, and interest on Securities of the series shall be payable, and where Securities of any series may be presented for registration of transfer, exchange or conversion, and the place or places where notices and demands to or upon the Issuer in respect of the Securities of such series may be made;

(i) the price or prices at which, the period or periods within which or the date or dates on which, and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Issuer, if the Issuer is to have that option;

(j) the obligation or right, if any, of the Issuer to redeem, purchase or repay Securities of the series pursuant to any sinking fund, amortization or analogous provisions or at the option of a Holder thereof and the price or prices at which, the period or periods within which or the date or dates on which, the Currency or Currencies in which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(k) if other than denominations of $2,000 and any integral multiple of $1,000 in excess thereof, the denominations in which Securities of the series shall be issuable;

(l) if other than the principal amount thereof, the portion of the principal amount of the Securities of the series which shall be payable upon acceleration of the Maturity thereof pursuant to Section 7.02 (to the extent not otherwise specified in such section);

(m) the guarantors, if any, of the Securities of the series, and the extent of the guarantees (including provisions relating to seniority, subordination, and the release of the guarantors), if any, and any additions or changes to permit or facilitate guarantees of such Securities;

(n) whether the Securities of the series are to be issued as Original Issue Discount Securities and the amount of discount with which such Securities may be issued;

(o) if the provisions of Article XII hereof shall not be applicable with respect to the Securities of such series; or any addition to or change in the provisions of Article XII and, if the Securities of any series are payable in a Currency other than U.S. Dollars, the Currency or the nature of the government obligations to be deposited with the Trustee pursuant to Section 12.08;

(p) whether the Securities of the series are to be issued in whole or in part in the form of one or more Global Securities and, in such case, the Depositary for such Global Security or Global Securities;

(q) the date as of which any Global Security of the series shall be dated if other than the original issuance of the first Security of the series to be issued;

(r) if the Securities of the series are to be convertible into or exchangeable for any securities or property of any Person (including the Issuer), the terms and conditions upon which such Securities will be so convertible or exchangeable, and any additions or changes, if any, to permit or facilitate such conversion or exchange;

(s) whether the Securities of such series are subject to subordination and the terms of such subordination (for purposes of clarity, it is hereby understood and agreed that, unless the Securities of such series are expressly stated to be subject to subordination, Article XV shall not be applicable with respect to the Securities of such series);

(t) whether the Securities of such series are to be secured and the terms of such security;

(u) any restriction or condition on the transferability of the Securities of such series;

(v) any addition or change in the provisions related to compensation and reimbursement of the Trustee which applies to Securities of such series;

(w) any addition or change in the provisions related to supplemental indentures set forth in Sections 14.01, 14.02 and 14.04 which applies to Securities of such series;

(x) provisions, if any, granting special rights to Holders upon the occurrence of specified events;

(y) any addition to or change in the Events of Default which applies to any Securities of the series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 7.02 and any addition or change in the provisions set forth in Article VII which applies to Securities of the series;

(z) any addition to or change in the covenants set forth in Article VI which applies to Securities of the series; and

(aa) any other terms of the Securities of such series (which terms shall not be inconsistent with the provisions of the TIA, but may modify, amend, supplement or delete any of the terms of this Indenture with respect to such series).

(bb) All Securities of any one series shall be substantially identical, except as to denomination and except as may otherwise be provided herein or set forth in an Officer's Certificate or in one or more indentures supplemental hereto. Unless otherwise specified with respect to the Securities of any series pursuant to this Section 3.01, the Issuer may, at its option, at any time and from time to time, re-open any series of Securities previously issued under this Indenture and issue additional Securities of such series, all of which together shall constitute a single series of Securities under this Indenture; provided that, unless otherwise specified pursuant to this Section 3.01 with respect to a series of Securities, no additional Securities of any series may be issued if an Event of Default has occurred and is continuing with respect to such series. Any such re-opening and the terms thereof (including, without limitation, the principal amount of the additional Securities of such series to be so issued) shall be set forth in an Officer's Certificate or one or more indentures supplemental hereto delivered to the Trustee prior to the issuance of any such additional Securities of such series.

Section 3.02 Denominations. In the absence of any specification pursuant to Section 3.01 with respect to Securities of any series, the Securities of such series shall be issuable only as Securities in denominations of $2,000 and any integral multiple of $1,000 in excess thereof, and shall be payable only in U.S. Dollars.

Section 3.03 Execution, Authentication, Delivery and Dating.

(a) The Securities shall be executed in the name and on behalf of the Issuer by the manual, facsimile or electronic signature of the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Financial Officer, the General Counsel, any Vice Presidents or Treasurer of the Managing Member. The related Guarantees, if any, shall be executed on behalf of the Guarantor by the manual, facsimile or electronic signature of its Chairman of the Board of Directors, its Chief Executive Officer, its President, its Chief Financial Officer, its General Counsel, any of its Vice Presidents or its Treasurer. If the Person whose signature is on a Security or Guarantee no longer holds that office at the time the Security or Guarantee, as applicable, is authenticated and delivered, the Security or Guarantee, as applicable, shall nevertheless be valid.

(b) At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Securities of any series, together with any Guarantees appertaining thereto, executed by the Issuer to the Trustee for authentication, together with an Issuer Order for the authentication and delivery of such Securities and, if required pursuant to Section 3.01, a supplemental indenture or Officer's Certificate setting forth the terms of the Securities of a series. The Trustee shall thereupon authenticate and deliver such Securities without any further action by the Issuer. The Issuer Order shall specify the amount of Securities to be authenticated and the date on which the original issue of Securities is to be authenticated.

(c) In authenticating the first Securities of any series and accepting the additional responsibilities under this Indenture in relation to such Securities the Trustee shall receive, and (subject to Section 11.02) shall be fully protected in relying upon an Officer's Certificate and an Opinion of Counsel, each prepared in accordance with Section 17.01 stating that the conditions precedent, if any, provided for in the Indenture have been complied with. The Opinion of Counsel shall also state that the Securities and the related Guarantees, if any, have been duly authorized by all necessary corporate action on the part of the Issuer and the Guarantor, as applicable, duly executed and delivered to the extent such execution and delivery are governed by the laws of the State of New York and are valid and binding obligations of the Issuer and, if applicable, the Guarantor, enforceable against the Issuer and the Guarantor, as applicable, in accordance with their terms under the laws of the State of New York. The Opinion of Counsel shall further state that the form and terms of the Securities and the related Guarantees, if any, have been established in conformity with this Indenture.

(d) The Trustee shall have the right to decline to authenticate and deliver the Securities under this Section 3.03 if the issue of the Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

(e) Each Security and related Guarantee, if any, shall be dated the date of its authentication, except as otherwise provided pursuant to Section 3.01 with respect to the Securities of such series.

(f) If the Issuer shall establish pursuant to Section 3.01 that the Securities of a series are to be issued in whole or in part in the form of one or more Global Securities, then the Issuer shall execute and the Trustee shall authenticate and deliver one or more Global Securities that (i) shall represent an aggregate amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by such Global Securities, (ii) shall be registered, if in registered form, in the name of the Depositary for such Global Security or Global Securities or the nominee of such Depositary, (iii) shall be delivered by the Trustee to such Depositary or pursuant to such Depositary's instruction and (iv) shall bear a legend substantially to the following effect:

"THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE ISSUER, THE TRUSTEE AND ANY AGENT THEREOF AS OWNER AND HOLDER OF THIS SECURITY FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF [THE DEPOSITARY] TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF [THE NOMINEE OF THE DEPOSITARY] OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF [THE DEPOSITARY] (AND ANY PAYMENT HEREON IS MADE TO [THE NOMINEE OF THE DEPOSITARY] OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF [THE DEPOSITARY]), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, [THE NOMINEE OF THE DEPOSITARY], HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY, OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY, OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY."

The aggregate principal amount of each Global Security may from time to time be increased or decreased by adjustments made on the records of the Security Custodian, as provided in this Indenture.

(g) Each Depositary designated pursuant to Section 3.01 for a Global Security in registered form must, at the time of its designation and at all times while it serves as such Depositary, be a clearing agency registered under the Exchange Act and any other applicable statute or regulation.

(h) Members of, or participants in, the Depositary ("Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depositary or by the Security Custodian under such Global Security, and the Depositary may be treated by the Issuer, the Trustee, the Paying Agent and the Registrar and any of their agents as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee, the Paying Agent or the Registrar or any of their agents from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Members, the operation of customary practices of the Depositary governing the exercise of the rights of an owner of a beneficial interest in any Global Security. The Holder of a Global Security may grant proxies and otherwise authorize any Person, including Members and Persons that may hold interests through Members, to take any action that a Holder is entitled to take under this Indenture or the Securities.

(i) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in one of the forms provided for herein duly executed by the Trustee or by an Authenticating Agent by manual, facsimile or electronic signature of an authorized signatory of the Trustee or such Authenticating Agent, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

Section 3.04 Temporary Securities.

(a) Pending the preparation of definitive Securities of any series, the Issuer may execute, and upon Issuer Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise reproduced, in any authorized denominations, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities. Any such temporary Security may be in the form of one or more Global Securities, representing all or a portion of the Outstanding Securities of such series. Every such temporary Security shall be executed by the Issuer and shall be authenticated and delivered by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Security or Securities in lieu of which it is issued.

(b) If temporary Securities of any series are issued, the Issuer will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of such temporary Securities at the office or agency of the Issuer in a Place of Payment for such series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations and of like tenor. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

(c) Upon any exchange of a portion of a temporary Global Security for a definitive Global Security or for the Individual Securities represented thereby pursuant to this Section 3.04 or Section 3.06, the temporary Global Security shall be endorsed by the Trustee to reflect the reduction of the principal amount evidenced thereby, whereupon the principal amount of such temporary Global Security shall be reduced for all purposes by the amount so exchanged and endorsed.

Section 3.05 Registrar and Paying Agent.

(a) The Issuer will keep, at an office or agency to be maintained by it in a Place of Payment where Securities may be presented for registration or presented and surrendered for registration of transfer or of exchange, and where Securities of any series that are convertible or exchangeable may be surrendered for conversion or exchange, as applicable (the "Registrar"), a security register for the registration and the registration of transfer or of exchange of the Securities (the registers maintained in such office and in any other office or agency of the Issuer in a Place of Payment being herein sometimes collectively referred to as the "Register"), as in this Indenture provided, which Register shall at all reasonable times be open for inspection by the Trustee. Such Register shall be in written form or in any other form capable of being converted into written form within a reasonable time. The Issuer may have one or more co-Registrars; the term "Registrar" includes any co-registrar.

(b) The Issuer shall enter into an appropriate agency agreement with any Registrar or co-Registrar not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of each such agent. If the Issuer fails to maintain a Registrar for any series, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 11.01. The Issuer or any Affiliate thereof may act as Registrar, co-Registrar or transfer agent.

(c) The Issuer hereby appoints the Trustee at its Corporate Trust Office as Registrar in connection with the Securities and this Indenture, until such time as another Person is appointed as such.

Section 3.06 Transfer and Exchange.

(a) Transfer.

(i) Upon surrender for registration of transfer of any Security of any series at the Registrar the Issuer shall execute, and the Trustee or any Authenticating Agent shall authenticate and deliver, in the name of the designated transferee, one or more new Securities of the same series for like aggregate principal amount of any authorized denomination or denominations. The transfer of any Security shall not be valid as against the Issuer or the Trustee unless registered at the Registrar at the request of the Holder, or at the request of his, her or its attorney duly authorized in writing.

(ii) Notwithstanding any other provision of this Section, unless and until it is exchanged in whole or in part for the Individual Securities represented thereby, a Global Security representing all or a portion of the Securities of a series may not be transferred except as a whole by the Depositary for such series to a nominee of such Depositary or by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by such Depositary or any such nominee to a successor Depositary for such series or a nominee of such successor Depositary.

(b) Exchange.

(i) At the option of the Holder, Securities of any series (other than a Global Security, except as set forth below) may be exchanged for other Securities of the same series for like aggregate principal amount of any authorized denomination or denominations, upon surrender of the Securities to be exchanged at the Registrar.

(ii) Whenever any Securities are so surrendered for exchange, the Issuer shall execute, and the Trustee or an Authenticating Agent shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(c) Exchange of Global Securities for Individual Securities. Except as provided below, owners of beneficial interests in Global Securities will not be entitled to receive Individual Securities.

(i) Individual Securities shall be issued to all owners of beneficial interests in a Global Security in exchange for such interests if: (A) at any time the Depositary for the Securities of a series provides reasonable notice to the Issuer that it is unwilling or unable to continue as Depositary for the Securities of such series or if at any time the Depositary for the Securities of such series shall no longer be eligible under Section 3.03(h) and, in each case, a successor Depositary is not appointed by the Issuer within 90 days of such notice or of the Issuer becoming aware of such ineligibility, as the case may be, or (B) the Issuer executes and delivers to the Trustee and the Registrar an Officer's Certificate stating that such Global Security shall be so exchangeable. In connection with the exchange of an entire Global Security for Individual Securities pursuant to this subsection (c), such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee, upon receipt of an Issuer Order for the authentication and delivery of Individual Securities of such series, will authenticate and deliver to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Individual Securities of authorized denominations.

(ii) The owner of a beneficial interest in a Global Security will be entitled to receive an Individual Security in exchange for such interest if an Event of Default has occurred and is continuing. Upon receipt by the Security Custodian and Registrar of instructions from the Holder of a Global Security directing the Security Custodian and Registrar to (x) issue one or more Individual Securities in the amounts specified to the owner of a beneficial interest in such Global Security and (y) debit or cause to be debited an equivalent amount of beneficial interest in such Global Security, subject to the rules and regulations of the Depositary:

(A) the Security Custodian and Registrar shall notify the Issuer and the Trustee of such instructions, identifying the owner and amount of such beneficial interest in such Global Security;

(B) the Issuer shall promptly execute and the Trustee, upon receipt of an Issuer Order for the authentication and delivery of Individual Securities of such series, shall authenticate and deliver to such beneficial owner Individual Securities in an equivalent amount to such beneficial interest in such Global Security; and

(C) the Security Custodian and Registrar shall decrease such Global Security by such amount in accordance with the foregoing. In the event that the Individual Securities are not issued to each such beneficial owner promptly after the Registrar has received a request from the Holder of a Global Security to issue such Individual Securities, the Issuer expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 7.07 hereof, the right of any beneficial Holder of Securities to pursue such remedy with respect to the portion of the Global Security that represents such beneficial Holder's Securities as if such Individual Securities had been issued.

(iii) If specified by the Issuer pursuant to Section 3.01 with respect to a series of Securities, the Depositary for such series of Securities may surrender a Global Security for such series of Securities in exchange in whole or in part for Individual Securities of such series on such terms as are acceptable to the Issuer and such Depositary. Thereupon, the Issuer shall execute, and the Trustee shall authenticate and deliver, without service charge,

(A) to each Person specified by such Depositary a new Individual Security or new Individual Securities of the same series, of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security; and

(B) to such Depositary a new Global Security in a denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Individual Securities delivered to Holders thereof.

(iv) In any exchange provided for in clauses (i) through (iii), the Issuer will execute and the Trustee will authenticate and deliver Individual Securities in registered form in authorized denominations.

(v) Upon the exchange in full of a Global Security for Individual Securities, such Global Security shall be canceled by the Trustee. Individual Securities issued in exchange for a Global Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depositary for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Persons in whose names such Securities are so registered.

(d) All Securities issued upon any registration of transfer or exchange of Securities shall be valid obligations of the Issuer evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered for such registration of transfer or exchange.

(e) Every Security presented or surrendered for registration of transfer, or for exchange or payment shall (if so required by the Issuer, the Trustee or the Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Issuer, the Trustee and the Registrar, duly executed by the Holder thereof or by his, her or its attorney duly authorized in writing.

(f) No service charge will be made for any registration of transfer or exchange of Securities. The Issuer or the Trustee may require payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than those expressly provided in this Indenture to be made at the Issuer's own expense or without expense or charge to the Holders and other than those made pursuant to Sections 3.04, 4.06 or 14.05 hereof.

(g) The Issuer shall not be required to (i) register, transfer or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the transmission of a notice of redemption of Securities of such series selected for redemption under Section 4.03 and ending at the close of business on the day of such transmission, or (ii) register, transfer or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

(h) In case a successor Issuer ("Successor Company") has executed an indenture supplemental hereto with the Trustee pursuant to Section 6.04, any of the Securities theretofore authenticated or delivered may, from time to time, at the request of the Successor Company, be exchanged for other Securities executed in the name of the Successor Company with such changes in phraseology and form as may be appropriate, but otherwise identical to the Securities surrendered for such exchange and of like principal amount; and the Trustee, upon Issuer Order of the Successor Company, shall authenticate and deliver Securities as specified in such order for the purpose of such exchange. If Securities shall at any time be authenticated and delivered in any new name of a Successor Company pursuant to this Section 3.06 in exchange or substitution for or upon registration of transfer of any Securities, such Successor Company, at the option of the Holders but without expense to them, shall provide for the exchange of all Securities at the time Outstanding for Securities authenticated and delivered in such new name.

(i) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(j) Neither the Trustee nor any agent of the Trustee shall have any responsibility for any actions taken or not taken by the Depositary.

Section 3.07 Mutilated, Destroyed, Lost and Stolen Securities.

(a) If (i) any mutilated Security or a Security with a mutilated Guarantee is surrendered to the Trustee at its Corporate Trust Office or (ii) the Issuer and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security or Guarantee, and there is delivered to the Issuer and the Trustee security or indemnity satisfactory to them to save each of them and any Paying Agent harmless, and neither the Issuer nor the Trustee receives notice that such Security or Guarantee has been acquired by a protected purchaser, then the Issuer shall execute and upon Issuer Order the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security or Guarantee, a new Security of the same series and of like tenor, form, terms and principal amount, bearing a number not contemporaneously outstanding, with Guarantees corresponding to the Guarantees, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen Guarantee appertains, such that neither gain nor loss in interest shall result from such exchange or substitution.

(b) In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Security, pay the amount due on such Security in accordance with its terms.

(c) Upon the issuance of any new Security under this Section, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in respect thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(d) Every new Security of any series issued pursuant to this Section shall constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

(e) The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or Guarantees.-

Section 3.08 Payment of Interest; Interest Rights Preserved.

(a) Interest on any Security that is payable and is punctually paid or duly provided for on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more Predecessor Securities) is registered at the close of business on the Record Date for such interest notwithstanding the cancellation of such Security upon any transfer or exchange subsequent to the Record Date. Payment of interest on Securities shall be made at the Corporate Trust Office (except as otherwise specified pursuant to Section 3.01) or, at the option of the Issuer, by check mailed to the address of the Person entitled thereto as such address shall appear in the Register or, in accordance with arrangements satisfactory to the Trustee, by wire transfer to an account designated by the Holder.

(b) Any interest on any Security that is payable but is not punctually paid or duly provided for on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Record Date by virtue of his, her or its having been such a Holder, and such Defaulted Interest may be paid by the Issuer, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "Special Record Date"), which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 calendar days and not less than 10 calendar days prior to the date of the proposed payment and not less than 10 calendar days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holders of such Securities at their addresses as they appear in the Register, not less than 10 calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (ii).

(ii) The Issuer may make payment of any Defaulted Interest on Securities in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuer to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

(c) Subject to the provisions set forth herein relating to Record Dates, each Security delivered pursuant to any provision of this Indenture in exchange or substitution for, or upon registration of transfer of, any other Security shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 3.09 Cancellation. Unless otherwise specified pursuant to Section 3.01 for Securities of any series, all Securities surrendered for payment, redemption, registration of transfer or exchange or credit against any sinking fund or otherwise shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for cancellation and shall be promptly canceled by it and, if surrendered to the Trustee, shall be promptly canceled by it. The Issuer may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Issuer may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. The Trustee shall dispose of all canceled Securities held by it in accordance with its then customary procedures and deliver a certificate of such disposal to the Issuer upon its request therefor. The acquisition of any Securities by the Issuer shall not operate as a redemption or satisfaction of the Debt represented thereby unless and until such Securities are surrendered to the Trustee for cancellation.

Section 3.10 Computation of Interest. Except as otherwise specified pursuant to Section 3.01 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11 Currency of Payments in Respect of Securities.

(a) Except as otherwise specified pursuant to Section 3.01 for Securities of any series, payment of the principal of and premium, if any, and interest on Securities of such series will be made in U.S. Dollars.

(b) For purposes of any provision of the Indenture where the Holders of Outstanding Securities may perform an action that requires that a specified percentage of the Outstanding Securities of all series perform such action and for purposes of any decision or determination by the Trustee of amounts due and unpaid for the principal of and premium, if any, and interest on the Securities of all series in respect of which moneys are to be disbursed ratably, the principal of and premium, if any, and interest on the Outstanding Securities denominated in a Foreign Currency will be the amount in U.S. Dollars based upon exchange rates, determined as specified pursuant to Section 3.01 for Securities of such series, as of the date for determining whether the Holders entitled to perform such action have performed it or as of the date of such decision or determination by the Trustee, as the case may be.

(c) Any decision or determination to be made regarding exchange rates shall be made by an agent appointed by the Issuer; provided, that such agent shall accept such appointment in writing and the terms of such appointment shall, in the opinion of the Issuer at the time of such appointment, require such agent to make such determination by a method consistent with the method provided pursuant to Section 3.01 for the making of such decision or determination. All decisions and determinations of such agent regarding exchange rates shall, in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the Issuer, the Trustee and all Holders of the Securities.

Section 3.12 Judgments. The Issuer may provide pursuant to Section 3.01 for Securities of any series that (a) the obligation, if any, of an Obligor to pay the principal of, premium, if any, and interest on the Securities of any series in a Foreign Currency or U.S. Dollars (the "Designated Currency") as may be specified pursuant to Section 3.01 is of the essence and agrees that, to the fullest extent possible under applicable law, judgments in respect of such Securities shall be given in the Designated Currency; (b) the obligation of an Obligor to make payments in the Designated Currency of the principal of and premium, if any, and interest on such Securities shall, notwithstanding any payment in any other Currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the Designated Currency that the Holder receiving such payment may, in accordance with normal banking procedures, purchase with the sum paid in such other Currency (after any premium and cost of exchange) on the business day in the country of issue of the Designated Currency or in the international banking community (in the case of a composite currency) immediately following the day on which such Holder receives such payment; (c) if the amount in the Designated Currency that may be so purchased for any reason falls short of the amount originally due, the Issuer shall pay such additional amounts as may be necessary to compensate for such shortfall; and (d) any obligation of the Obligors not discharged by such payment shall be due as a separate and independent obligation and, until discharged as provided herein, shall continue in full force and effect.

Section 3.13 CUSIP Numbers. The Issuer in issuing any Securities may use CUSIP, ISIN or other similar numbers, if then generally in use, and thereafter with respect to such series, the Trustee may use such numbers in any notice of redemption or exchange with respect to such series provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee in writing of any change in the CUSIP, ISIN or other similar numbers.

## ARTICLE IV
## REDEMPTION OF SECURITIES

Section 4.01 Applicability of Right of Redemption. Redemption of Securities (other than pursuant to a sinking fund, amortization or analogous provision) permitted by the terms of any series of Securities shall be made (except as otherwise specified pursuant to Section 3.01 for Securities of any series) in accordance with this Article; provided, however, that if any such terms of a series of Securities shall conflict with any provision of this Article, the terms of such series shall govern.

Section 4.02 Selection of Securities to be Redeemed.

(a) If the Issuer shall at any time elect to redeem all or any portion of the Securities of a series then Outstanding, it shall at least 35 days prior to the Redemption Date fixed by the Issuer (unless a shorter period shall be satisfactory to the Trustee) notify the Trustee of such Redemption Date and of the principal amount of Securities to be redeemed, and thereupon the Trustee shall, in accordance with the procedures of the Depositary, select, by lot or in such other manner which may provide for the selection for redemption of a portion of the principal amount of any Security of such series; provided that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security. In any case where more than one Security of such series is registered in the same name, the Trustee may treat the aggregate principal amount so registered as if it were represented by one Security of such series. The Trustee shall, as soon as practicable, notify the Issuer in writing of the Securities and portions of Securities so selected.

(b) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed. If the Issuer shall so direct, Securities registered in the name of the Issuer, any Affiliate or any Subsidiary thereof shall not be included in the Securities selected for redemption.

Section 4.03 Notice of Redemption.

(a) Notice of redemption shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer, not less than 30 nor more than 60 days prior to the Redemption Date (unless a shorter period shall be satisfactory to the Trustee), to the Holders of Securities of any series to be redeemed in whole or in part pursuant to this Article, in the manner provided in Section 17.04. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. Failure to give such notice, or any defect in such notice to the Holder of any Security of a series designated for redemption, in whole or in part, shall not affect the sufficiency of any notice of redemption with respect to the Holder of any other Security of such series.

(b) All notices of redemption shall identify the Securities to be redeemed (including CUSIP, ISIN or other similar numbers, if available, along with the statement in Section 3.13) and shall state:

(i) such election by the Issuer to redeem Securities of such series pursuant to provisions contained in this Indenture or the terms of the Securities of such series or a supplemental indenture establishing such series, if such be the case;

(ii) the Redemption Date;

(iii) the Redemption Price;

(iv) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the Securities of such series to be redeemed;

(v) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed, and that, if applicable, interest thereon shall cease to accrue on and after said date;

(vi) the Place or Places of Payment where such Securities are to be surrendered for payment of the Redemption Price; and

(vii) that the redemption is for a sinking fund, if such is the case;

Section 4.04 Deposit of Redemption Price. On or prior to 11:00 a.m., New York City time, on the Redemption Date for any Securities, the Issuer shall deposit with the Trustee or with a Paying Agent (or, if the Issuer is acting as its own Paying Agent, segregate and hold in trust as provided in Section 6.03) an amount of money in the Currency in which such Securities are denominated (except as provided pursuant to Section 3.01) sufficient to pay the Redemption Price of such Securities or any portions thereof that are to be redeemed on that date.

Section 4.05 Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, any Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price and from and after such date (unless the Issuer shall Default in the payment of the Redemption Price) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Issuer at the Redemption Price; provided, however, that (unless otherwise provided pursuant to Section 3.01) installments of interest that have a Stated Maturity on or prior to the Redemption Date for such Securities shall be payable according to the terms of such Securities and the provisions of Section 3.08.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal thereof and premium, if any, thereon shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security or, if no rate is prescribed therefor in the Security, at the rate of interest otherwise borne by such Security.

Section 4.06 Securities Redeemed in Part. Any Security that is to be redeemed only in part shall be surrendered at the Corporate Trust Office or such other office or agency of the Issuer as is specified in the notice of redemption with, if the Issuer, the Registrar or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer, the Registrar and the Trustee duly executed by the Holder thereof or his, her or its attorney duly authorized in writing, and the Issuer shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series, of like tenor and form, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered; except that if a Global Security is so surrendered, the Issuer shall execute, and the Trustee shall authenticate and deliver to the Depositary for such Global Security, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed portion of the principal of the Global Security so surrendered. In the case of a Security providing appropriate space for such notation, at the option of the Holder thereof, the Trustee, in lieu of delivering a new Security or Securities as aforesaid, may make a notation on such Security of the payment of the redeemed portion thereof.

## ARTICLE V
## SINKING FUNDS

Section 5.01 Applicability of Sinking Fund.

(a) Redemption of Securities permitted or required pursuant to a sinking fund for the retirement of Securities of a series by the terms of such series of Securities shall be made in accordance with such terms of such series of Securities and this Article, except as otherwise specified pursuant to Section 3.01 for Securities of such series, provided, however, that if any such terms of a series of Securities shall conflict with any provision of this Article, the terms of such series shall govern.

(b) The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "Mandatory Sinking Fund Payment," and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "Optional Sinking Fund Payment." If provided for by the terms of Securities of any series, the cash amount of any Mandatory Sinking Fund Payment may be subject to reduction as provided in Section 5.02.

Section 5.02 Mandatory Sinking Fund Obligation. The Issuer may, at its option, satisfy any Mandatory Sinking Fund Payment obligation, in whole or in part, with respect to a particular series of Securities by (a) delivering to the Trustee Securities of such series in transferable form theretofore purchased or otherwise acquired by the Issuer or redeemed at the election of the Issuer pursuant to Article IV or (b) receiving credit for Securities of such series (not previously so credited) acquired by the Issuer and theretofore delivered to the Trustee. The Trustee shall credit such Mandatory Sinking Fund Payment obligation with an amount equal to the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such Mandatory Sinking Fund Payment shall be reduced accordingly. If the Issuer shall elect to so satisfy any Mandatory Sinking Fund Payment obligation, it shall deliver to the Trustee not less than 45 days prior to the relevant sinking fund payment date an Officer's Certificate, which shall designate the Securities (and portions thereof, if any) so delivered or credited and which shall be accompanied by such Securities (to the extent not theretofore delivered) in transferable form. In case of the failure of the Issuer, at or before the time so required, to give such notice and deliver such Securities the Mandatory Sinking Fund Payment obligation shall be paid entirely in moneys.

Section 5.03 Optional Redemption at Sinking Fund Redemption Price. In addition to the sinking fund requirements of Section 5.02, to the extent, if any, provided for by the terms of a particular series of Securities, the Issuer may, at its option, make an Optional Sinking Fund Payment with respect to such Securities. Unless otherwise provided by such terms, (a) to the extent that the right of the Issuer to make such Optional Sinking Fund Payment shall not be exercised in any year, it shall not be cumulative or carried forward to any subsequent year, and (b) such optional payment shall operate to reduce the amount of any Mandatory Sinking Fund Payment obligation as to Securities of the same series. If the Issuer intends to exercise its right to make such optional payment in any year it shall deliver to the Trustee not less than 45 days prior to the relevant sinking fund payment date an Officer's Certificate stating that the Issuer will exercise such optional right, and specifying the amount which the Issuer will pay on or before the next succeeding sinking fund payment date. Such Officer's Certificate shall also state that no Event of Default has occurred and is continuing.

Section 5.04 Application of Sinking Fund Payment.

(a) If the sinking fund payment or payments made in funds pursuant to either Section 5.02 or 5.03 with respect to a particular series of Securities plus any unused balance of any preceding sinking fund payments made in funds with respect to such series shall exceed $50,000 (or a lesser sum if the Issuer shall so request, or such equivalent sum for Securities denominated other than in U.S. Dollars), it shall be applied by the Trustee on the sinking fund payment date next following the date of such payment, unless the date of such payment shall be a sinking fund payment date, in which case such payment shall be applied on such sinking fund payment date, to the redemption of Securities of such series at the redemption price specified pursuant to Section 4.03(b). The Trustee shall select, in the manner provided in Section 4.02, for redemption on such sinking fund payment date, a sufficient principal amount of Securities of such series to absorb said funds, as nearly as may be, and shall, at the expense and in the name of the Issuer, thereupon cause notice of redemption of the Securities to be given in substantially the manner provided in Section 4.03(a) for the redemption of Securities in part at the option of the Issuer, except that the notice of redemption shall also state that the Securities are being redeemed for the sinking fund. Any sinking fund moneys not so applied by the Trustee to the redemption of Securities of such series shall be added to the next sinking fund payment received in funds by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 5.04. Any and all sinking fund moneys held by the Trustee on the last sinking fund payment date with respect to Securities of such series, and not held for the payment or redemption of particular Securities of such series, shall be applied by the Trustee to the payment of the principal of the Securities of such series at Maturity.

(b) On or prior to each sinking fund payment date, the Issuer shall pay to the Trustee a sum equal to all interest accrued to but not including the date fixed for redemption on Securities to be redeemed on such sinking fund payment date pursuant to this Section 5.04.

(c) The Trustee shall not redeem any Securities of a series with sinking fund moneys or mail any notice of redemption of Securities of such series by operation of the sinking fund during the continuance of a Default in payment of interest on any Securities of such series or of any Event of Default (other than an Event of Default occurring as a consequence of this paragraph) of which a Responsible Officer of the Trustee has actual knowledge, except that if the notice of redemption of any Securities of such series shall theretofore have been mailed in accordance with the provisions hereof, the Trustee shall redeem such Securities if funds sufficient for that purpose shall be deposited with the Trustee in accordance with the terms of this Article. Except as aforesaid, any moneys in the sinking fund at the time any such Default or Event of Default shall occur and any moneys thereafter paid into the sinking fund shall, during the continuance of such Default or Event of Default, be held as security for the payment of all the Securities of such series; provided, however, that in case such Default or Event of Default shall have been cured or waived as provided herein, such moneys shall thereafter be applied on the next sinking fund payment date on which such moneys are required to be applied pursuant to the provisions of this Section 5.04.

## ARTICLE VI
## PARTICULAR COVENANTS OF THE ISSUER AND THE GUARANTOR

The Issuer hereby covenants and agrees as follows:

Section 6.01 Payments of Securities. The Issuer will duly and punctually pay the principal of and premium, if any, on each series of Securities, and the interest which shall have accrued thereon, at the dates and place and in the manner provided in the Securities and in this Indenture.

Section 6.02 Paying Agent.

(a) The Issuer will maintain in each Place of Payment for any series of Securities an office or agency where Securities may be presented or surrendered for payment, where Securities of such series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be served (the "Paying Agent"). The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuer hereby appoints the Trustee as Paying Agent to receive all presentations, surrenders, notices and demands.

(b) The Issuer may also from time to time designate different or additional offices or agencies where the Securities of any series may be presented or surrendered for any or all such purposes (in or outside of such Place of Payment), and may from time to time rescind any such designations; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of its obligations described in the preceding paragraph. The Issuer will give prompt written notice to the Trustee of any such additional designation or rescission of designation and of any change in the location of any such different or additional office or agency. The Issuer shall enter into an appropriate agency agreement with any Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of each such agent. The Issuer or any Affiliate thereof may act as Paying Agent, except that neither the Issuer nor any Affiliate thereof may act as Paying Agent with respect to any series of Securities as to which the Issuer has effected satisfaction and discharge pursuant to Section 12.02 or Discharge (as defined in Section 12.03) from its obligations with respect to the Securities of such series pursuant to Section 12.03.

Section 6.03 To Hold Payment in Trust.

(a) If the Issuer or an Affiliate thereof shall at any time act as Paying Agent with respect to any series of Securities, then, on or before the date on which the principal of and premium, if any, or interest on any of the Securities of that series by their terms or as a result of the calling thereof for redemption shall become payable, the Issuer or such Affiliate will segregate and hold in trust for the benefit of the Holders of such Securities or the Trustee a sum sufficient to pay such principal and premium, if any, or interest which shall have so become payable until such sums shall be paid to such Holders or otherwise disposed of as herein provided, and will notify the Trustee of its action or failure to act in that regard. Upon any proceeding under any federal bankruptcy laws with respect to the Issuer or any Affiliate thereof, if the Issuer or such Affiliate is then acting as Paying Agent, the Trustee shall replace the Issuer or such Affiliate as Paying Agent.

(b) If the Issuer shall appoint, and at the time have, a Paying Agent for the payment of the principal of and premium, if any, or interest on any series of Securities, then prior to 11:00 a.m., New York City time, on the date on which the principal of and premium, if any, or interest on any of the Securities of that series shall become payable as aforesaid, whether by their terms or as a result of the calling thereof for redemption, the Issuer will deposit with such Paying Agent a sum sufficient to pay such principal and premium, if any, or interest, such sum to be held in trust for the benefit of the Holders of such Securities or the Trustee, and (unless such Paying Agent is the Trustee), the Issuer or any other obligor of such Securities will promptly notify the Trustee of its payment or failure to make such payment.

(c) If the Paying Agent shall be other than the Trustee, the Issuer will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 6.03, that such Paying Agent shall:

(i) hold all moneys held by it for the payment of the principal of and premium, if any, or interest on the Securities of that series in trust for the benefit of the Holders of such Securities until such sums shall be paid to such Holders or otherwise disposed of as herein provided;

(ii) give to the Trustee notice of any Default by the Issuer or any other obligor upon the Securities of that series in the making of any payment of the principal of and premium, if any, or interest on the Securities of that series; and

(iii) at any time during the continuance of any such Default, upon the written request of the Trustee, pay to the Trustee all sums so held in trust by such Paying Agent.

(d) Anything in this Section 6.03 to the contrary notwithstanding, the Issuer may at any time, for the purpose of obtaining a release, satisfaction or discharge of this Indenture or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Issuer or by any Paying Agent other than the Trustee as required by this Section 6.03, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of and premium, if any, or interest on any Security of any series and remaining unclaimed for two years after such principal and premium, if any, or interest has become due and payable shall be paid to the Issuer upon Issuer Order along with any interest that has accumulated thereon as a result of such money being invested at the direction of the Issuer, or (if then held by the Issuer) shall be discharged from such trust, and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Issuer and the Guarantor for payment of such amounts without interest thereon, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

Section 6.04 Merger, Consolidation and Sale of Assets. Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Securities:

(a) No Obligor will consolidate with any other entity or permit a merger of any other entity into such Obligor or permit such Obligor to be merged into any other entity, or sell, convey, transfer or lease all or substantially all its assets to another entity, unless (i) either such Obligor shall be the continuing entity, or the successor, transferee or lessee entity (if other than such Obligor) shall be organized and existing under the laws of the United States or any State thereof and shall expressly assume, by indenture supplemental hereto, executed and delivered by such entity prior to or simultaneously with such consolidation, merger, sale, conveyance, transfer or lease, the due and punctual payment of the principal of and interest and premium, if any, on all the Securities, according to their tenor, and the due and punctual performance and observance of all other obligations to the Holders and the Trustee under this Indenture or under the Securities to be performed or observed by such Obligor; and (ii) immediately after such consolidation, merger, sale, conveyance, transfer or lease, such Obligor or the successor, transferee or lessee entity (if other than such Obligor) would not be in Default in the performance of any covenant or condition of this Indenture and no Event of Default would have occurred and be continuing.

(b) Upon any consolidation with or merger into any other entity, or any sale, conveyance, transfer or lease of all or substantially all of the assets of an Obligor in accordance with this Section 6.04, the successor entity formed by such consolidation or into or with which such Obligor is merged or to which such Obligor is sold or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, such Obligor under this Indenture with the same effect as if such successor entity had been named as such Obligor herein, and thereafter, except in the case of a lease, the predecessor Obligor shall be relieved of all obligations and covenants under this Indenture and the Securities, and from time to time such entity may exercise each and every right and power of such Obligor under this Indenture, in the name of such Obligor, or in its own name; and any act or proceeding by any provision of this Indenture required or permitted to be done by the Board of Directors or any officer of such Obligor may be done with like force and effect by the like board or officer of any entity that shall at the time be the successor of such Obligor hereunder. In the event of any such sale or conveyance, but not any such lease, the applicable Obligor (or any successor entity which shall theretofore have become such in the manner described in this Section 6.04) shall be discharged from all obligations and covenants under this Indenture and the Securities and may thereupon be dissolved and liquidated.

Section 6.05 Compliance Certificate. Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Securities, the Issuer shall furnish to the Trustee annually, within 120 days after the end of each fiscal year, a brief certificate from the principal executive officer, principal financial officer, principal accounting officer, executive vice president, senior vice president or vice president and treasurer as to his or her knowledge of the Obligors' compliance with all conditions and covenants under this Indenture (which compliance shall be determined without regard to any period of grace or requirement of notice provided under this Indenture) and, in the event of any Default, specifying each such Default and the nature and status thereof of which such person may have knowledge. Such certificates need not comply with Section 17.01 of this Indenture.

Section 6.06 Conditional Waiver by Holders of Securities. Anything in this Indenture to the contrary notwithstanding, the Obligors may fail or omit in any particular instance to comply with a covenant or condition set forth herein with respect to any series of Securities (other than the obligation to pay the principal of, premium, if any, and interest on any Security of such series, or in the case of any Securities which are convertible into or exchangeable for securities or property, the obligation to convert or exchange such Securities, or a covenant or provision hereof which under Section 14.02 cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected) if the Issuer shall have obtained and filed with the Trustee, prior to the time of such failure or omission, evidence (as provided in Article VIII) of the consent of the Holders of a majority in aggregate principal amount of the Securities of such series at the time Outstanding, either waiving such compliance in such instance or generally waiving compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, or impair any right consequent thereon and, until such waiver shall have become effective, the obligations of the Issuer and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

Section 6.07 Statement by Officers as to Default. The Issuer shall deliver to the Trustee as soon as possible and in any event within 30 days after the Issuer becomes aware of the occurrence of any Event of Default or an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default, an Officer's Certificate setting forth the details of such Event of Default or Default and the action which the Issuer proposes to take with respect thereto.

Section 6.08 Maintenance of Insurance. The Issuer will maintain, or cause to be maintained, insurance with responsible companies on all properties of the Issuer and its Subsidiaries and against all tort claims that may be incurred by the Issuer and its Subsidiaries, all to the extent and in such amounts and against such risks as are usually covered by insurance policies carried by owners of similar enterprises.

## ARTICLE VII
## REMEDIES OF TRUSTEE AND SECURITYHOLDERS

Section 7.01 Events of Default. Except where otherwise indicated by the context or where the term is otherwise defined for a specific purpose, the term "Event of Default" as used in this Indenture with respect to Securities of any series shall mean any of the following described events unless it is specifically deleted or modified, insofar as concerns the Securities of such series, in the manner contemplated in Section 3.01:

(a) the failure of the Issuer to pay any installment of interest on any Security of such series when and as the same shall become payable, which failure shall have continued unremedied for a period of 30 days;

(b) the failure of the Issuer to pay any principal of (or premium, if any, on) any Security of such series, when and as the same shall become payable, whether at Maturity as therein expressed, by call for redemption (otherwise than pursuant to a sinking fund), upon acceleration or otherwise;

(c) the failure of the Issuer to pay a sinking fund installment, if any, when and as the same shall become payable by the terms of a Security of such series;

(d) the failure of an Obligor, subject to the provisions of Section 6.06, to perform any covenants or agreements contained in this Indenture (including any indenture supplemental hereto or Officer's Certificate pursuant to which the Securities of such series were issued as contemplated by Section 3.01) (other than a covenant or agreement which has been expressly included in this Indenture solely for the benefit of a series of Securities other than that series and other than a covenant or agreement a default in the performance of which is elsewhere in this Section 7.01 specifically addressed), or in any Securities of such series, which failure shall not have been remedied for a period of 60 days after written notice shall have been given to the Obligors by the Trustee or shall have been given to the Obligors and the Trustee by Holders of 25% or more in aggregate principal amount of the Securities of such series then Outstanding, specifying such failure, requiring the Obligors to remedy the same and stating that such notice is a "Notice of Default" hereunder;

(e) the entry by a court having jurisdiction in the premises of a decree or order for relief in respect of an Obligor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of an Obligor or of substantially all the property of an Obligor or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 60 consecutive days;

(f) the commencement by an Obligor of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent by an Obligor to the entry of an order for relief in an involuntary case under any such law, or the consent by an Obligor to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or similar official) of an Obligor or of substantially all the property of an Obligor or the making by it of an assignment for the benefit of creditors or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by an Obligor in furtherance of any action;

(g) any Guarantee is not, or is claimed by the Guarantor not to be, in full force and effect; or

(h) the occurrence of any other Event of Default with respect to Securities of such series as provided in Section 3.01.

Notwithstanding the foregoing provisions of this Section 7.01, if the principal or any premium or interest on any Security is payable in a Currency other than the Currency of the United States and such Currency is not available to the Issuer for making payment thereof due to the imposition of exchange controls or other circumstances beyond the control of the Issuer, the Issuer will be entitled to satisfy its obligations to Holders of the Securities by making such payment in the Currency of the United States in an amount equal to the Currency of the United States equivalent of the amount payable in such other Currency, as determined by the Issuer's agent in accordance with Section 3.11(c) hereof by reference to the noon buying rate in The City of New York for cable transfers for such Currency ("Exchange Rate"), as such Exchange Rate is reported or otherwise made available by the Federal Reserve Bank of New York on the date of such payment, or, if such rate is not then available, on the basis of the most recently available Exchange Rate. Notwithstanding the foregoing provisions of this Section 7.01, any payment made under such circumstances in the Currency of the United States where the required payment is in a Currency other than the Currency of the United States will not constitute an Event of Default under this Indenture.

Section 7.02 Acceleration; Rescission and Annulment.

(a) Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Securities, if any one or more of the above-described Events of Default (other than an Event of Default specified in Section 7.01(e) or 7.01(f)) shall happen with respect to Securities of any series at the time Outstanding, then, and in each and every such case, during the continuance of any such Event of Default, the Trustee or the Holders of 25% or more in principal amount of the Securities of such series then Outstanding may declare the principal (or, if the Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of and all accrued but unpaid interest on all the Securities of such series then Outstanding to be due and payable immediately by a notice in writing to the Issuer and the Guarantor (and to the Trustee if given by Holders), and upon any such acceleration such principal amount (or specified amount) and interest shall become immediately due and payable. If an Event of Default specified in Section 7.01(e) or 7.01(f) occurs and is continuing, then in every such case, the principal of (or, if the Securities of that series are Original Issue Discount Securities, such portion of the principal amount as may be specified by the terms of that series) of and all accrued but unpaid interest on all of the Securities of that series then Outstanding shall automatically, and without any acceleration or any other action on the part of the Trustee or any Holder, become due and payable immediately. Upon payment of such amounts in the Currency in which such Securities are denominated (subject to the last paragraph of Section 7.01 and except as otherwise provided pursuant to Section 3.01), all obligations of the Issuer in respect of the payment of principal of and interest on the Securities of such series shall terminate.

(b) The provisions of Section 7.02(a), however, are subject to the condition that, at any time after the principal of all the Securities of such series, to which any one or more of the above-described Events of Default is applicable, shall have been so declared to be or shall have automatically become due and payable, and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in this Article, Holders of a majority in principal amount of the Securities of that Series then Outstanding, by written notice to the Issuer, the Guarantor and the Trustee, may rescind and annual such acceleration if:

(i) the Issuer or the Guarantor has paid or deposited with the Trustee or Paying Agent a sum in the Currency in which such Securities are denominated (subject to the last paragraph of Section 7.01 and except as otherwise provided pursuant to Section 3.01) sufficient to pay:

(A) all amounts owing the Trustee and any predecessor trustee hereunder under Section 11.01(a) (provided, however, that all sums payable under this clause (A) shall be paid in U.S. Dollars);

(B) all arrears of interest, if any, upon all the Securities of such series (with interest, to the extent that interest thereon shall be legally enforceable, on any overdue installment of interest at the rate or rates prescribed therefor in such Securities or, if no such rate is prescribed therefor in such Securities, at the rate of interest otherwise borne by such Securities); and

(C) the principal of and premium, if any, on any Securities of such series that have become due otherwise than by such acceleration and interest on such principal and (to the extent that interest thereon shall be legally enforceable) interest on the overdue premium, if any, at the rate prescribed therefor in such Securities or, if no rate is prescribed therefor in such Securities, at the rate of interest otherwise borne by such Securities; and

(ii) every other Default and Event of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such acceleration, have been cured or waived as provided in Section 7.06.

(c) No such rescission shall affect any subsequent default or impair any right consequent thereon.

(d) For all purposes under this Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared due and payable pursuant to the provisions hereof, then, from and after such acceleration, unless such acceleration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities shall be deemed, for all purposes hereunder, to be such portion of the principal thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

Section 7.03 Other Remedies. If the Issuer shall fail for a period of 30 days to pay any installment of interest on the Securities of any series or shall fail to pay any principal of or premium, if any, on any of the Securities of such series when and as the same shall become due and payable, whether at Maturity, or by call for redemption (other than pursuant to the sinking fund), by acceleration as authorized by this Indenture, or otherwise, or shall fail to make any required sinking fund payment as to a series of Securities, then, upon demand of the Trustee, the Issuer will pay to the Paying Agent for the benefit of the Holders of Securities of such series then Outstanding the whole amount which then shall have become due and payable on all the Securities of such series for principal, premium, if any, and interest, with interest on the overdue principal and (so far as the same may be legally enforceable) on the overdue premium, if any, and overdue installments of interest at the rate prescribed therefor in such Securities or, if no rate is prescribed therefor in such Securities, at the rate of interest otherwise borne by such Securities, and all amounts owing the Trustee and any predecessor trustee hereunder under Section 11.01(a).

If an Event of Default with respect to the Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of the Securities of such series by such appropriate judicial proceedings as the Trustee shall deem appropriate to protect and enforce any such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

In case the Issuer shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Issuer or any other obligor upon the Securities of such series, and collect the moneys adjudged or decreed to be payable out of the property of the Issuer, the Guarantor or any other obligor upon the Securities of such series, wherever situated, in the manner provided by law. Every recovery of judgment in any such action or other proceeding, subject to the payment to the Trustee of all amounts owing the Trustee and any predecessor trustee hereunder under Section 11.01(a), shall be for the ratable benefit of the Holders of such series of Securities which shall be the subject of such action or proceeding. All rights of action upon or under any of the Securities or this Indenture may be enforced by the Trustee without the possession of any of the Securities and without the production of any thereof at any trial or any proceeding relative thereto.

Section 7.04 Trustee as Attorney-in-Fact. The Trustee is hereby appointed, and each and every Holder of the Securities, by receiving and holding the same, shall be conclusively deemed to have appointed the Trustee, the true and lawful attorney-in-fact of such Holder, with authority to make or file (whether or not the an Obligor shall be in Default in respect of the payment of the principal of, or premium, if any, or interest on, any of the Securities), in its own name and as trustee of an express trust or otherwise as it shall deem advisable, in any receivership, insolvency, liquidation, bankruptcy, reorganization or other judicial proceeding relative to the an Obligor or any other obligor upon the Securities or to their respective creditors or property, any and all claims, proofs of claim, proofs of debt, petitions, consents, other papers and documents and amendments of any thereof, as may be necessary or advisable in order to have the claims of the Trustee and any predecessor trustee hereunder and of the Holders of the Securities allowed in any such proceeding and to collect and receive any moneys or other property payable or deliverable on any such claim, and to execute and deliver any and all other papers and documents and to do and perform any and all other acts and things, as it may deem necessary or advisable in order to enforce in any such proceeding any of the claims of the Trustee and any predecessor trustee hereunder and of any of such Holders in respect of any of the Securities; and any receiver, assignee, trustee, custodian or debtor in any such proceeding is hereby authorized, and each and every taker or Holder of the Securities, by receiving and holding the same, shall be conclusively deemed to have authorized any such receiver, assignee, trustee, custodian or debtor, to make any such payment or delivery only to or on the order of the Trustee, and to pay to the Trustee any amount due it and any predecessor trustee hereunder under Section 11.01(a); provided, however, that nothing herein contained shall be deemed to authorize or empower the Trustee to consent to or accept or adopt, on behalf of any Holder of Securities, any plan of reorganization or readjustment affecting the Securities or the related Guarantees, if any, or the rights of any Holder thereof, or to authorize or empower the Trustee to vote in respect of the claim of any Holder of any Securities in any such proceeding.

Section 7.05 Priorities. Any moneys or properties collected by the Trustee with respect to a series of Securities under this Article VII shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys or properties and, in the case of the distribution of such moneys or properties on account of the Securities of any series, upon presentation of the Securities of such series, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First: To the payment of all amounts due to the Trustee and any predecessor trustee hereunder under Section 11.01(a).

Second: Subject to Article XV (to the extent applicable to any series of Securities then outstanding), to the payment of the amounts then due and unpaid for principal of and any premium and interest on the Outstanding Securities of such series in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Outstanding Securities for principal and any premium and interest, respectively.

Any surplus then remaining shall be paid to the Issuer or as directed by a court of competent jurisdiction.

Section 7.06 Control by Securityholders; Waiver of Past Defaults. The Holders of a majority in principal amount of the Securities of any series at the time Outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, or of exercising any trust or power hereby conferred upon the Trustee with respect to the Securities of such series, provided, however, that, subject to the provisions of Sections 11.01 and 11.02, the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel determines that the action so directed may not lawfully be taken or would be unduly prejudicial to Holders not joining in such direction or would involve the Trustee in personal liability. Prior to any acceleration of the Maturity of the Securities of any series, the Holders of a majority in aggregate principal amount of such series of Securities at the time Outstanding may on behalf of the Holders of all of the Securities of such series waive any past Default or Event of Default hereunder and its consequences except a Default in the payment of interest or any premium on or principal of the Securities of such series or in the case of any Securities which are convertible into or exchangeable for other securities or property, a Default in any such conversion or exchange, or a Default in respect of a covenant or provision hereof which under Section 14.02 cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected. Upon any such waiver the Obligors, the Trustee and the Holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 7.06, said Default or Event of Default shall for all purposes of the Securities of such series and this Indenture be deemed to have been cured and to be not continuing.

Section 7.07 Limitation on Suits. No Holder of any Security of any series shall have any right to institute any action, suit or proceeding at law or in equity for the execution of any trust hereunder or for the appointment of a receiver or for any other remedy hereunder, in each case with respect to an Event of Default with respect to such series of Securities, unless such Holder previously shall have given to the Trustee written notice of one or more of the Events of Default herein specified with respect to such series of Securities, and unless also the Holders of 25% or more in principal amount of the Securities of such series then Outstanding shall have requested the Trustee in writing to take action in respect of the matter complained of, and unless also there shall have been offered to the Trustee security and indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after receipt of such notification, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and such notification, request and offer of indemnity are hereby declared in every such case to be conditions precedent to any such action, suit or proceeding by any Holder of any Security of such series; it being understood and intended that no one or more of the Holders of Securities of such series shall have any right in any manner whatsoever by his, her, its or their action to enforce any right hereunder, except in the manner herein provided, and that every action, suit or proceeding at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Holders of the Outstanding Securities of such series and shall not affect, disturb or prejudice the rights of any other Holder (the Trustees shall have no affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudiced to such Holders); provided, however, that nothing in this Indenture or in the Securities of such series or the related Guarantees, if any, shall affect or impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal of, premium, if any, and interest on the Securities of such series to the respective Holders of such Securities at the respective due dates in such Securities stated, or affect or impair the right, which is also absolute and unconditional, of such Holders to institute suit to enforce the payment thereof.

Section 7.08 Undertaking for Costs. All parties to this Indenture and each Holder of any Security, by such Holder's acceptance thereof, shall be deemed to have agreed that any court may in its discretion require, in any action, suit or proceeding for the enforcement of any right or remedy under this Indenture, or in any action, suit or proceeding against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such action, suit or proceeding of an undertaking to pay the costs of such action, suit or proceeding, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such action, suit or proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this Section 7.08 shall not apply to any action, suit or proceeding instituted by the Trustee, to any action, suit or proceeding instituted by any one or more Holders of Securities holding in the aggregate more than 10% in principal amount of the Securities of any series Outstanding, or to any action, suit or proceeding instituted by any Holder of Securities of any series for the enforcement of the payment of the principal of or premium, if any, or the interest on, any of the Securities of such series, on or after the respective due dates expressed in such Securities.

Section 7.09 Remedies Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities of any series is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Trustee or of any Holder of the Securities of any series to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default or an acquiescence therein; and every power and remedy given by this Article VII to the Trustee and to the Holders of Securities of any series, respectively, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Holders of Securities of such series, as the case may be. In case the Trustee or any Holder of Securities of any series shall have proceeded to enforce any right under this Indenture and the proceedings for the enforcement thereof shall have been discontinued or abandoned because of waiver or for any other reason or shall have been adjudicated adversely to the Trustee or to such Holder of Securities, then and in every such case the Obligors, the Trustee and the Holders of the Securities of such series shall severally and respectively be restored to their former positions and rights hereunder, and thereafter all rights, remedies and powers of the Trustee and the Holders of the Securities of such series shall continue as though no such proceedings had been taken, except as to any matters so waived or adjudicated.

## ARTICLE VIII
## CONCERNING THE SECURITYHOLDERS

Section 8.01 Evidence of Action of Securityholders. Whenever in this Indenture it is provided that the Holders of a specified percentage or a majority in aggregate principal amount of the Securities or of any series of Securities may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the Holders of such specified percentage or majority have joined therein may be evidenced by (a) any instrument or any number of instruments of similar tenor executed by Securityholders in person, by an agent or by a proxy appointed in writing, including through an electronic system for tabulating consents operated by the Depositary for such series or otherwise (such action becoming effective, except as herein otherwise expressly provided, when such instruments or evidence of electronic consents are delivered to the Trustee and, where it is hereby expressly required, to the Obligors), or (b) by the record of the Holders of Securities voting in favor thereof at any meeting of Securityholders duly called and held in accordance with the provisions of Article IX, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Securityholders.

Section 8.02 Proof of Execution or Holding of Securities. Proof of the execution of any instrument by a Securityholder or his, her or its agent or proxy and proof of the holding by any Person of any of the Securities shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any Person of any such instrument may be proved (i) by the certificate of any notary public or other officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments or proof of deeds to be recorded within such jurisdiction, that the Person who signed such instrument did acknowledge before such notary public or other officer the execution thereof, or (ii) by the affidavit of a witness of such execution sworn to before any such notary or other officer. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority.

(b) The ownership of Securities of any series shall be proved by the Register of such Securities or by a certificate of the Registrar for such series.

(c) The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

(d) The Trustee may require such additional proof of any matter referred to in this Section 8.02 as it shall deem appropriate or necessary, so long as the request is a reasonable one.

(e) If the Issuer shall solicit from the Holders of Securities of any series any action, the Issuer may, at its option fix in advance a record date for the determination of Holders of Securities entitled to take such action, but the Issuer shall have no obligation to do so. Any such record date shall be fixed at the Issuer's discretion. If such a record date is fixed, such action may be sought or given before or after the record date, but only the Holders of Securities of record at the close of business on such record date shall be deemed to be Holders of Securities for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities of such series have authorized or agreed or consented to such action, and for that purpose the Outstanding Securities of such series shall be computed as of such record date.

Section 8.03 Persons Deemed Owners.

(a) The Issuer, the Guarantor, the Trustee or any of their agents may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and premium, if any, and (subject to Section 3.08) interest, if any, on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Issuer, the Trustee nor any of their agents shall be affected by notice to the contrary. All payments made to any Holder, or upon his, her or its order, shall be valid, and, to the extent of the sum or sums paid, effectual to satisfy and discharge the liability for moneys payable upon such Security.

(b) None of the Obligors, the Trustee, or any of their agents will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 8.04 Effect of Consents. After an amendment, supplement, waiver or other action becomes effective as to any series of Securities, a consent to it by a Holder of such series of Securities is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Securities or portion thereof, and of any Security issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Security.

## ARTICLE IX
## SECURITYHOLDERS' MEETINGS

Section 9.01 Purposes of Meetings. A meeting of Securityholders of any or all series may be called at any time and from time to time pursuant to the provisions of this Article IX for any of the following purposes:

(a) to give any notice to the Issuer or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Securityholders pursuant to any of the provisions of Article VIII;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article XI;

(c) to consent to the execution of an Indenture or of indentures supplemental hereto pursuant to the provisions of Section 14.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Securities of any one or more or all series, as the case may be, under any other provision of this Indenture or under applicable law.

Section 9.02 Call of Meetings by Trustee. The Trustee may at any time call a meeting of all Securityholders of any or all series that may be affected by the action proposed to be taken, to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Securityholders of a series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed at the expense of the Issuer to Holders of Securities of such series at their addresses as they shall appear on the Register of the Issuer. Such notice shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Section 9.03 Call of Meetings by Issuer or Securityholders. In case at any time the Issuer or the Holders of at least 10% in aggregate principal amount of the Securities of any series then Outstanding that may be affected by the action proposed to be taken, shall have requested the Trustee to call a meeting of Securityholders of such series, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Issuer or such Securityholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

Section 9.04 Qualifications for Voting. To be entitled to vote at any meeting of Securityholders, a Person shall (a) be a Holder of one or more Securities affected by the action proposed to be taken at the meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more such Securities. The only Persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel, any representatives of the Issuer and its counsel and any representatives of the Guarantor and its counsel. Anything in this Indenture to the contrary notwithstanding, unless otherwise expressly provided pursuant to Section 3.01 with respect to the Securities of any series, any vote, consent, waiver or other action given or taken by the Holders of any series of Securities at a meeting shall be given or taken, as the case may be, by the Holders of such series of Securities as a separate class.

Section 9.05 Regulation of Meetings.

(a) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Securityholders, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem fit.

(b) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuer or by Securityholders as provided in Section 9.03, in which case the Issuer or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chair. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

(c) At any meeting of Securityholders of a series, each Securityholder of such series or such Securityholder's proxy shall be entitled to one vote for each $1,000 principal amount of Securities of such series Outstanding held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. If the Securities of any series are issuable in minimum denominations of less than $1,000, then a Holder of such a Security in a principal amount of less than $1,000 shall be entitled to a fraction of one vote which is equal to the fraction that the principal amount of such Security bears to $1,000. The chairman of the meeting shall have no right to vote other than by virtue of Securities of such series held by him or her or instruments in writing as aforesaid duly designating him or her as the Person to vote on behalf of other Securityholders. At any meeting of the Securityholders of any series duly called pursuant to the provisions of Section 9.02 or 9.03, the presence of Persons holding or representing Securities of such series in an aggregate principal amount sufficient to take action, insofar as concerns the Securities of such series, upon the business for the transaction of which such meeting was called shall be necessary to constitute a quorum for a meeting of Holders of the Securities of such series, and any such meeting may be adjourned from time to time by a majority of those present, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06 Voting. The vote upon any resolution submitted to any meeting of Securityholders of a series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts of the Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amounts of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Issuer and the other to the Trustee to be preserved by the Trustee. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 No Delay of Rights by Meeting. Nothing contained in this Article IX shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Securityholders of any series or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Securityholders of such series under any of the provisions of this Indenture or of the Securities of such series.

## ARTICLE X
## REPORTS BY THE ISSUER AND THE TRUSTEE AND SECURITYHOLDERS' LISTS

Section 10.01 Reports by Trustee.

(a) So long as any Securities are outstanding, the Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided therein. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within 60 days after each anniversary following the date of this Indenture deliver to Holders a brief report which complies with the provisions of such Section 313(a).

(b) The Trustee shall, at the time of the transmission to the Holders of Securities of any report pursuant to the provisions of this Section 10.01, file a copy of such report with each stock exchange upon which the Securities are listed, if any, and also with the SEC in respect of a Security listed and registered on a national securities exchange, if any. The Issuer agrees to notify the Trustee when, as and if the Securities become listed on any stock exchange or any delisting thereof.

(c) The Issuer will reimburse the Trustee for all expenses incurred in the preparation and transmission of any report pursuant to the provisions of this Section 10.01 and of Section 10.02.

Section 10.02 Reports by the Guarantor.

The Issuer shall:

(a) file with or deliver to the Trustee, within 15 days after the Guarantor is required to file the same with the SEC, copies of the annual and quarterly reports and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may from time to time by rules and regulations prescribe) that the Guarantor may be required to file with the SEC pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Guarantor is not required to file information, documents or reports with the SEC pursuant to either Section 13 or Section 15(d) of the Exchange Act, then the Guarantor will file with or deliver to the Trustee and the SEC, in accordance with any other rules and regulations that may be prescribed from time to time by the SEC, such annual and quarterly reports and supplementary and periodic information, documents and reports that may be required pursuant to Section 13 of the Exchange Act, in respect of a security listed and registered on a national securities exchange, as may be prescribed from time to time by the SEC in such rules and regulations; or

(b) if at any time the Guarantor is not subject to Section 13 or 15(d) of the Exchange Act and the Guarantor is not providing annual and quarterly reports and supplementary and periodic information, documents and reports to the SEC and the Trustee pursuant to Section 10.02(a) of this Indenture, the Guarantor will, at its option, either (i) post on a publicly available website or (ii) post on IntraLinks or any comparable password protected online data system requiring user identification and a confidentiality acknowledgement (a "Confidential Datasite"), within 15 days of the filing date that would be applicable to a non-accelerated filer at that time pursuant to applicable SEC rules and regulations, the quarterly and audited annual financial statements and accompanying disclosure described in Item 303 of Regulation S-K ("management's discussion and analysis of financial condition and results of operations") that would be required to be contained in annual reports on Form 10-K and quarterly reports on Form 10-Q, respectively, required to be filed with the SEC if the Guarantor were subject to Section 13(a) or 15(d) of the Exchange Act. If the Guarantor elects to furnish such reports via a Confidential Datasite, access to the Confidential Datasite will be provided promptly upon request to Holders and beneficial owners of, and bona fide potential investors in, the Securities as well as securities analysts and market makers and no such request for access to the Confidential Datasite will be unreasonably denied.

Any such report, information or document that the Guarantor files with or furnishes to the SEC through the EDGAR shall be deemed filed with the Trustee for purposes of Section 10.02(a) and (b) this Indenture at the time of such filing or furnishing through EDGAR. Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such will not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate).

Section 10.03 Securityholders' Lists. The Issuer covenants and agrees that it will furnish or cause to be furnished to the Trustee:

(a) semi-annually, within 15 days after each Record Date, but in any event not less frequently than semi-annually, a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of Securities to which such Record Date applies, as of such Record Date, and

(b) at such other times as the Trustee may request in writing, within 30 days after receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

provided, however, that so long as the Trustee shall be the Registrar, such lists shall not be required to be furnished.

## ARTICLE XI
## CONCERNING THE TRUSTEE

Section 11.01 Rights of Trustees; Compensation and Indemnity. The Trustee accepts the trusts created by this Indenture upon the terms and conditions hereof, including the following, all of which the parties hereto and the Holders from time to time of the Securities agree:

(a) The Trustee shall be entitled to such compensation from the Issuer as the Issuer and the Trustee shall from time to time agree in writing for all services rendered by it hereunder (including in any agent capacity in which it acts). The compensation of the Trustee shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee promptly upon its request for all out-of-pocket expenses, disbursements and advances incurred or made by the Trustee (including the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by its own negligence or willful misconduct.

The Issuer also agrees to indemnify each of the Trustee and any predecessor Trustee hereunder for, and to hold it harmless against, any and all loss, liability, damage, claim, or expense incurred without its own negligence, bad faith or willful misconduct, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder and the performance of its duties (including in any agent capacity in which it acts), as well as the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder, except those determined to have been caused by its own negligence or willful misconduct. The Trustee shall notify the Issuer promptly of any claim of which a Responsible Officer has received written notice for which it may seek indemnity. The Issuer shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have one separate counsel of its selection and the Issuer shall pay the reasonable fees and expenses of such counsel. The Issuer need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld.

As security for the performance of the obligations of the Issuer under this Section 11.01(a), the Trustee shall have a lien upon all property and funds held or collected by the Trustee as such, except funds held in trust by the Trustee to pay principal of and premium, if any, and interest on any Securities. Notwithstanding any provisions of this Indenture to the contrary, the obligations of the Issuer to compensate and indemnify the Trustee under this Section 11.01(a) shall survive the resignation or removal of the Trustee, the termination of this Indenture and any satisfaction and discharge under Article XII. When the Trustee incurs expenses or renders services after an Event of Default specified in clause (e) or (f) of Section 7.01 occurs, the expenses and compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or similar laws.

(b) The Trustee may execute any of the trusts or powers hereof and perform any duty hereunder either directly or by its agents and attorneys and shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(c) The Trustee shall not be responsible in any manner whatsoever for the correctness of the recitals herein or in the Securities (except its certificates of authentication thereon) contained, all of which are made solely by the Obligors; and the Trustee shall not be responsible or accountable in any manner whatsoever for or with respect to the validity or execution or sufficiency of this Indenture or of the Securities (except its certificates of authentication thereon), and the Trustee makes no representation with respect thereto, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Issuer are true and accurate, subject to the qualifications set forth therein. The Trustee shall not be accountable for the use or application by the Issuer of any Securities, or the proceeds of any Securities, authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

(d) The Trustee may consult with counsel of its selection, and any advice of counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Trustee hereunder in good faith and in accordance with such advice of counsel.

(e) The Trustee may rely upon the certificate of the Secretary or one of the Assistant Secretaries of the Issuer as to the adoption of any Board Resolution or resolution of the stockholders of the Issuer, and any request, direction, order or demand of the Issuer mentioned herein shall be sufficiently evidenced by, and whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may rely upon, an Officer's Certificate of the Issuer or the Guarantor (unless other evidence in respect thereof be herein specifically prescribed).

(f) The Trustee or any agent of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Issuer with the same rights it would have had if it were not the Trustee or such agent.

(g) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Issuer.

(h) Any action taken by the Trustee pursuant to any provision hereof at the request or with the consent of any Person who at the time is the Holder of any Security shall be conclusive and binding in respect of such Security upon all future Holders thereof or of any Security or Securities which may be issued for or in lieu thereof in whole or in part, whether or not such Security shall have noted thereon the fact that such request or consent had been made or given.

(i) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(j) The Trustee shall not be under any obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders of the Securities, pursuant to any provision of this Indenture, unless one or more of the Holders of the Securities shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which may be incurred by it therein or thereby.

(k) The Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within its discretion or within the rights or powers conferred upon it by this Indenture.

(l) The Trustee shall not be deemed to have knowledge or notice of any Default or Event of Default unless a Responsible Officer has received written notice thereof from the Issuer or a Guarantor or unless the Issuer or the Holders of not less than 25% of the Outstanding Securities of any series notify the Trustee thereof.

(m) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of Debt or other paper or document, but the Trustee, may, but shall not be required to, make further inquiry or investigation into such facts or matters as it may see fit.

(n) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder.

(o) In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(p) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, pandemics or epidemics, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

(q) The Trustee may request that the Issuer deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

Section 11.02 Duties of Trustee.

(a) If one or more of the Events of Default specified in Section 7.01 with respect to the Securities of any series shall have happened, then, during the continuance thereof, the Trustee shall, with respect to such Securities, exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) None of the provisions of this Indenture shall be construed as relieving the Trustee from liability for its own negligent action, negligent failure to act, or its own willful misconduct, except that, anything in this Indenture contained to the contrary notwithstanding,

(i) unless and until an Event of Default specified in Section 7.01 with respect to the Securities of any series shall have happened which at the time is continuing,

(A) the Trustee undertakes to perform such duties and only such duties with respect to the Securities of that series as are specifically set out in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee, whose duties and obligations shall be determined solely by the express provisions of this Indenture; and

(B) the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of the Trustee, upon certificates and opinions furnished to it pursuant to the express provisions of this Indenture; but in the case of any such certificates or opinions which, by the provisions of this Indenture, are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein);

(ii) the Trustee shall not be liable to any Holder of Securities or to any other Person for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable to any Holder of Securities or to any other Person with respect to any action taken or omitted to be taken by it in good faith, in accordance with the direction of Securityholders given as provided in Section 7.06, relating to the time, method and place of conducting any proceeding for any remedy available to it or exercising any trust or power conferred upon it by this Indenture.

(c) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 11.02.

Section 11.03 Notice of Defaults. Within 90 days after the occurrence thereof, and if known to the Trustee, the Trustee shall give to the Holders of the Securities of a series notice of each Default or Event of Default with respect to the Securities of such series known to the Trustee, by transmitting such notice to Holders at their addresses as the same shall then appear on the Register of the Issuer, unless such Default shall have been cured or waived before the giving of such notice (the term "Default" being hereby defined to be the events specified in Section 7.01, which are, or after notice or lapse of time or both would become, Events of Default as defined in said Section). Except in the case of a Default or Event of Default in payment of the principal of, premium, if any, or interest on any of the Securities of such series when and as the same shall become payable, or to make any sinking fund payment as to Securities of the same series, the Trustee shall be protected in withholding such notice, if and so long as a Responsible Officer or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities of such series.

Section 11.04 Eligibility; Disqualification.

(a) The Trustee shall at all times satisfy the requirements of TIA Section 310(a). The Trustee shall have a combined capital and surplus of at least $50 million as set forth in its most recent published annual report of condition, and shall have a Corporate Trust Office. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 11.04, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

(b) The Trustee shall comply with TIA Section 310(b); provided, however, that there shall be excluded from the operation of TIA Section 310(b)(i) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Issuer are outstanding if the requirements for such exclusion set forth in TIA Section 310(b)(i) are met. If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. If Section 310(b) of the Trust Indenture Act is amended any time after the date of this Indenture to change the circumstances under which a Trustee shall be deemed to have a conflicting interest with respect to the Securities of any series or to change any of the definitions in connection therewith, this Section 11.04 shall be automatically amended to incorporate such changes.

Section 11.05 Resignation and Notice; Removal. The Trustee, or any successor to it hereafter appointed, may at any time resign and be discharged of the trusts hereby created with respect to any one or more or all series of Securities by giving to the Issuer notice in writing. Such resignation shall take effect upon the appointment of a successor Trustee and the acceptance of such appointment by such successor Trustee. Any Trustee hereunder may be removed with respect to any series of Securities at any time by the filing with such Trustee and the delivery to the Issuer of an instrument or instruments in writing signed by the Holders of a majority in principal amount of the Securities of such series then Outstanding, specifying such removal and the date when it shall become effective.

If at any time:

(1) the Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Issuer or by any Holder who has been a bona fide Holder of a Security for at least six months (or, if it is a shorter period, the period since the initial issuance of the Securities of such series), or

(2) the Trustee shall cease to be eligible under Section 11.04 and shall fail to resign after written request therefor by the Issuer or by any Holder who has been a bona fide Holder of a Security for at least six months (or, if it is a shorter period, the period since the initial issuance of the Securities of such series), or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Issuer by written notice to the Trustee may remove the Trustee and appoint a successor Trustee with respect to all Securities, or (ii) subject to TIA Section 315(e), any Securityholder who has been a bona fide Holder of a Security for at least six months (or, if it is a shorter period, the period since the initial issuance of the Securities of such series) may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

Upon its resignation or removal, any Trustee shall be entitled to the payment of reasonable compensation for the services rendered hereunder by such Trustee and to the payment of all reasonable expenses incurred hereunder and all moneys then due to it hereunder. The Trustee's rights to indemnification provided in Section 11.01(a) shall survive its resignation or removal.

Section 11.06 Successor Trustee by Appointment.

(a) In case at any time the Trustee shall resign, or shall be removed (unless the Trustee shall be removed as provided in Section 11.05, in which event the vacancy shall be filled as provided in said subdivision), or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation with respect to the Securities of one or more series, a successor Trustee with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any series) may be appointed with respect to the Securities of each such series by the Holders of a majority in principal amount of the Securities of such series then Outstanding, by an instrument or instruments in writing signed in duplicate by such Holders and filed, one original thereof with the Issuer and the other with the successor Trustee; but, until a successor Trustee shall have been so appointed by the Holders of Securities of any such series as herein authorized, the Issuer, or, in case all or substantially all the assets of the Issuer shall be in the possession of one or more custodians or receivers lawfully appointed, or of trustees in bankruptcy or reorganization proceedings (including a trustee or trustees appointed under the provisions of the federal bankruptcy laws, as now or hereafter constituted), or of assignees for the benefit of creditors, such receivers, custodians, trustees or assignees, as the case may be, by an instrument in writing, shall appoint a successor Trustee with respect to the Securities of such series. Subject to the provisions of Sections 11.04 and 11.05, upon the appointment as aforesaid of a successor Trustee with respect to the Securities of any series, the Trustee with respect to the Securities of such series shall cease to be Trustee hereunder. After any such appointment other than by the Holders of Securities of any series, the Person making such appointment shall forthwith cause notice thereof to be mailed to the Holders of Securities of such series at their addresses as the same shall then appear on the Register of the Issuer but any successor Trustee with respect to the Securities of such series so appointed shall, immediately and without further act, be superseded by a successor Trustee appointed by the Holders of Securities of such series in the manner above prescribed, if such appointment be made prior to the expiration of one year from the date of the mailing of such notice by the Issuer, or by such receivers, trustees or assignees.

(b) If any Trustee with respect to the Securities of any series shall resign or be removed and a successor Trustee shall not have been appointed by the Issuer or by the Holders of the Securities of such series or, if any successor Trustee so appointed shall not have accepted its appointment within 30 days after such appointment shall have been made, the resigning Trustee at the expense of the Issuer may apply to any court of competent jurisdiction for the appointment of a successor Trustee. If in any other case a successor Trustee shall not be appointed pursuant to the foregoing provisions of this Section 11.06 within three months after such appointment might have been made hereunder, the Holder of any Security of the applicable series or any retiring Trustee at the expense of the Issuer may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, in any such case, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

(c) Any successor Trustee appointed hereunder with respect to the Securities of one or more series shall execute, acknowledge and deliver to its predecessor Trustee and to the Issuer and the Guarantor, or to the receivers, trustees, assignees or court appointing it, as the case may be, an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, trusts, immunities, duties and obligations with respect to such series of such predecessor Trustee with like effect as if originally named as Trustee hereunder, and such predecessor Trustee, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to pay over, and such successor Trustee shall be entitled to receive, all moneys and properties held by such predecessor Trustee as Trustee hereunder with respect to the Securities of such series, subject nevertheless to its lien provided for in Section 11.01(a). Nevertheless, on the written request of the Issuer or of the successor Trustee or of the Holders of at least 10% in principal amount of the Securities of any such series then Outstanding, such predecessor Trustee, upon payment of its said charges and disbursements, shall execute and deliver an instrument transferring to such successor Trustee upon the trusts herein expressed all the rights, powers and trusts of such predecessor Trustee with respect to the Securities of such series and shall assign, transfer and deliver to the successor Trustee all moneys and properties held by such predecessor Trustee with respect to the Securities of such series, subject nevertheless to its lien provided for in Section 11.01(a); and, upon request of any such successor Trustee or the Issuer, shall make, execute, acknowledge and deliver any and all instruments in writing for more fully and effectually vesting in and confirming to such successor Trustee all such authority, rights, powers, trusts, immunities, duties and obligations.

Section 11.07 Successor Trustee by Merger. Any Person into which the Trustee or any successor to it in the trusts created by this Indenture shall be merged or converted, or any Person with which it or any successor to it shall be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee or any such successor to it shall be a party, or any Person to which the Trustee or any successor to it shall sell or otherwise transfer all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided that such Person shall be otherwise qualified and eligible under this Article. In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture with respect to one or more series of Securities, any of such Securities shall have been authenticated but not delivered by the Trustee then in office, any successor to such Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have; provided, however, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Securities in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 11.08 Right to Rely on Officer's Certificate. Whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate with respect thereto delivered to the Trustee, and such Officer's Certificate, in the absence of negligence, bad faith or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 11.09 Appointment of Authenticating Agent. The Trustee may appoint an agent (the "Authenticating Agent") acceptable to the Issuer to authenticate the Securities, and the Trustee shall give written notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent. Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder.

Each Authenticating Agent shall at all times be a corporation organized and doing business and in good standing under the laws of the United States, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Article XI, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Article XI, it shall resign immediately in the manner and with the effect specified in this Article XI.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Article XI, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Obligors. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Obligors. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 11.09, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Issuer and shall give written notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 11.09.

The Issuer agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 11.09.

Section 11.10 Communications by Securityholders with Other Securityholders. Holders of Securities may communicate pursuant to Section 312(b) of the Trust Indenture Act with other Holders with respect to their rights under this Indenture or the Securities. The Issuer, the Trustee, the Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act with respect to such communications.

Section 11.11 FATCA. The Issuer agrees (i) to provide the Trustee with such reasonable information as it has in its possession to enable the Trustee to determine whether any payments pursuant to the Indenture are subject to the withholding requirements described in Section 1471(b) of the US Internal Revenue Code of 1986 (the "Code") or otherwise imposed pursuant to Sections 1471 through 1474 of the Code and any regulations, or agreements thereunder or official interpretations thereof ("Applicable Law"), and (ii) that the Trustee shall be entitled to make any withholding or deduction from payments under the Indenture to the extent necessary to comply with Applicable Law, for which the Trustee shall not have any liability.

## ARTICLE XII
## SATISFACTION AND DISCHARGE; DEFEASANCE

Section 12.01 Applicability of Article. The provisions of this Article shall be applicable to the Securities of all series issued pursuant to this Indenture, except as otherwise specified pursuant to Section 3.01 for Securities of any particular series of Securities.

Section 12.02 Satisfaction and Discharge of Indenture. This Indenture, with respect to the Securities of any series (if all series issued under this Indenture are not to be affected), shall, upon Issuer Order, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of such Securities herein expressly provided for and the rights of the Holders of the Securities of such series to receive, the principal of and premium, if any, and interest on such Securities as and when the same shall become due and payable and except as otherwise provided in the last paragraph of this Section 12.02), and the Trustee, at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture with respect to the Securities of such series, when,

(a) either:

(i) all Securities of such series theretofore authenticated and delivered (other than (A) Securities that have been destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.07 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 6.03(e)) have been delivered to the Trustee for cancellation; or

(ii) all Securities of such series not theretofore delivered to the Trustee for cancellation,

(A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year, or

(C) if redeemable at the option of the Issuer (including, without limitation, by operation of any mandatory sinking fund), are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer,

and the Issuer, in the case of (A), (B) or (C) above, has irrevocably deposited or caused to be deposited with the Trustee funds in trust for the purpose an amount in cash in the Currency in which such Securities are payable (subject to Section 12.08) sufficient to pay and discharge the entire indebtedness on such Securities for principal and premium, if any, and interest to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity thereof or, in the case of Securities of such series which are to be called for redemption as contemplated by (C) above, the applicable Redemption Date, as the case may be, and including any mandatory sinking fund payments as and when the same shall become due and payable; provided, however, that, if a Default of the nature described in clauses (e) or (f) of Section 7.01 shall have occurred at any time during the period ending on and including the 91st day after the date of such deposit or if the Trustee or any Paying Agent is required to return the monies then on deposit with or held by the Trustee or such Paying Agent to the Issuer or to a trustee in bankruptcy, receiver, conservator or other similar Person, or the Trustee or any Paying Agent is not permitted to apply any such funds to pay the principal of and premium, if any, and interest on the Securities of such series (including to make sinking fund payments) as and when the same shall become due and payable, the obligations of the Obligors under this Indenture with respect to such Securities shall not be deemed terminated or discharged;

(b) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer with respect to the Securities of such series; and

(c) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture with respect to such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to the Securities of any series, the obligations of the Issuer to the Trustee under Section 11.01, the provisions of Sections 3.04, 3.05, 3.06, 3.07, 6.02 and 6.03 and this Article XII, and, if the Securities of such series are to be redeemed prior to their Stated Maturity (including, without limitation, pursuant to a mandatory sinking fund), the provisions of Article IV hereof, and, if the Securities of such series are convertible into or exchangeable for other securities or property, the rights of the Holders of such Securities to convert or exchange, and the obligations of the Issuer to convert or exchange, such Securities into other securities or property, and, if money shall have been deposited with the Trustee pursuant to clause (a) of this Section, the obligations of the Trustee under Section 12.07 and Section 6.03(e) shall survive such satisfaction and discharge. At such time as satisfaction and discharge of this Indenture shall be effective with respect to the Securities of a particular series, the Guarantor will be released from its Guarantees of the Securities of such series.

Section 12.03 Defeasance and Covenant Defeasance upon Deposit of Moneys or U.S. Government Obligations. At the Issuer's option, either (x) the Obligors shall be deemed to have been Discharged (as defined below) from their respective obligations with respect to Securities of any series on the first day after the applicable conditions set forth below have been satisfied, including, with respect to the Guarantor, release from its Guarantees of the Securities of such series or (y) the Obligors shall cease to be under any obligation to comply with any term, provision or condition set forth in Section 6.08 or Section 10.02 with respect to Securities of any series (and, if so specified pursuant to Section 3.01, any other restrictive covenant added for the benefit of such series pursuant to Section 3.01) but, except as specified above, the remainder of this Indenture, the Securities of such series and the related Guarantees shall be unaffected thereby ("covenant defeasance") upon the satisfaction of the applicable conditions set forth below:

(a) the Issuer shall have deposited or caused to be deposited irrevocably with the Trustee as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities of such series (i) money in the Currency in which such Securities are payable in an amount, or (ii) U.S. Government Obligations (as defined below) that, through the payment of interest and principal in respect thereof in accordance with their terms, will provide, not later than one day before the due date of any payment, money in the Currency in which such Securities are payable in an amount, or (iii) a combination of (i) and (ii), sufficient (without consideration of any reinvestment of such principal and interest) to pay and discharge each installment of principal (including any mandatory sinking fund payments) of and premium, if any, and interest on, the Outstanding Securities of such series on the dates such installments of interest or principal and premium are due and, if the Securities of such series are to be called for redemption as described in clause (d) below, to pay and discharge the Redemption Price on the Securities called for redemption on the applicable Redemption Date;

(b) no Default with respect to the Securities of such series shall have occurred and be continuing on the date of such deposit (other than a Default resulting from the borrowing of funds and the grant of any related liens to be applied to such deposit) and, solely in the case of Discharge pursuant to clause (x) of the first paragraph of this Section 12.03, no Default with respect to the Securities of such series under either clause (e) or (f) of Section 7.01 shall have occurred at any time during the period ending on and including the 91st day after the date of such deposit;

(c) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that Holders of the Securities of such series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the Issuer's exercise of its option under this Section and will be subject to federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such option had not been exercised and, in the case of the Securities of such series being Discharged pursuant to clause (x) of the first paragraph of this Section 12.03, such Opinion of Counsel shall be based upon and accompanied by a ruling to that effect received by the Issuer from or published by the Internal Revenue Service;

(d) if the monies or U.S. Government Obligations or combination thereof, as the case may be, deposited under clause (a) above are sufficient to pay the principal of and premium, if any, and interest on the Securities of such series (including, without limitation, any mandatory sinking fund payment) or any portion thereof to be redeemed on a particular Redemption Date (including, without limitation, pursuant to a mandatory sinking fund), the Issuer shall have given to the Trustee irrevocable instructions to redeem such Securities on such date and shall have made arrangements satisfactory to the Trustee for the giving of notice of such redemption by the Trustee in the name, and at the expense, of the Issuer; and

(e) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to such action under this Indenture have been complied with.

"Discharged" means, with respect to the Securities of any series, that the Obligors shall be deemed to have paid and discharged the entire indebtedness represented by, and obligations under, the Securities of such series and to have satisfied all the obligations under this Indenture relating to the Securities of such series (and the Trustee, at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following, all of which shall survive such Discharge and remain in full force and effect with respect to the Securities of such series: (A) the rights of Holders of Securities of such series to receive, from the trust fund described in clause (a) above, payment of the principal of and premium, if any, and interest on such Securities when such payments are due, (B) Sections 3.04, 3.05, 3.06, 3.07, 3.10, 6.02 and 6.03, (C) if the Securities of such series are to be redeemed prior to their Stated Maturity, the provisions of Article IV hereof, (D) if the Securities of such series are convertible into or exchangeable for other securities or property, the rights of the Holders of such Securities to convert or exchange, and the obligations of the Obligors to convert or exchange, such Securities into such other securities or property, (E) the provisions of this Article XII and (F) the rights, powers, trusts, duties and immunities of the Trustee hereunder.

"U.S. Government Obligations" means securities that are (i) direct obligations of the United States for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States the timely of payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States, that, in either case under clauses (i) or (ii) are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depositary receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depositary receipt.

Section 12.04 Repayment to Issuer. The Trustee and any Paying Agent shall promptly pay to the Issuer (or to its designee) upon delivery of an Officer's Certificate any moneys or U.S. Government Obligations deposited pursuant to Section 12.03 with respect to the Securities of any series and held by them that are in excess of the monies and/or U.S. Government Obligations that would be required to be deposited at such time to effect the Discharge or covenant defeasance, as applicable, with respect to the Securities of such series in accordance with Section 12.03, including any such moneys or obligations held by the Trustee under any escrow trust agreement entered into pursuant to Section 12.06. The provisions of Section 6.03(e) shall apply to any money held by the Trustee or any Paying Agent under this Article.

Section 12.05 Indemnity for U.S. Government Obligations. The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the deposited U.S. Government Obligations or the principal or interest received on such U.S. Government Obligations.

Section 12.06 Deposits to Be Held in Escrow. Any deposits with the Trustee referred to in Section 12.03 above shall be irrevocable (except to the extent provided in Sections 12.04 and 6.03(e)) and shall be made under the terms of an escrow trust agreement. If any Outstanding Securities of a series are to be redeemed prior to their Stated Maturity, whether pursuant to any optional redemption provisions or in accordance with any mandatory or optional sinking fund requirement, the applicable escrow trust agreement shall provide therefor and the Issuer shall make such arrangements as are satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer.

Section 12.07 Application of Trust Money.

(a) Neither the Trustee nor any other Paying Agent shall be required to pay interest on any moneys deposited pursuant to the provisions of this Indenture, except such as it shall agree with the Issuer in writing to pay thereon.

(b) Subject to Section 6.03(e), any monies and U.S. Government Obligations which at any time shall be deposited by the Issuer or on its behalf with the Trustee or any other Paying Agent for the purpose of paying the principal of, premium, if any, and interest on any of the Securities shall be and are hereby assigned, transferred and set over to the Trustee or such other Paying Agent in trust for the respective Holders of the Securities for the purpose for which such moneys shall have been deposited, and such funds shall be applied by the Trustee or Paying Agent in accordance with the provisions of such Securities and this Indenture to the payment of all sums due and to become due on such Securities in respect of principal and premium, if any, and interest; but such moneys need not be segregated from other funds except to the extent required by law. Anything in this Indenture to the contrary notwithstanding, none of the Issuer, the Guarantor or any of their respective Subsidiaries or Affiliates may act as Paying Agent for any Securities in respect of which money or U.S. Government Obligations have been deposited pursuant to this Article XII.

Section 12.08 Deposits of Non-U.S. Currencies. Notwithstanding the foregoing provisions of this Article, if the Securities of any series are payable in a Currency other than U.S. Dollars, the Currency or the nature of the government obligations to be deposited with the Trustee under the foregoing provisions of this Article shall be as set forth in the Officer's Certificate or established in the supplemental indenture under which the terms of the Securities of such series have been established pursuant to Section 3.01.

## ARTICLE XIII
## IMMUNITY OF CERTAIN PERSONS

Section 13.01 No Personal Liability. No recourse shall be had for the payment of the principal of, or the premium, if any, or interest on, any Security or for any claim based thereon or otherwise in respect thereof or of the Debt represented thereby, or upon any obligation, covenant or agreement of this Indenture, against any incorporator, stockholder, officer or director, as such, past, present or future, of the applicable Obligor or of any successor corporation, either directly or through such Obligor or any successor corporation, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Indenture and the Securities are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any incorporator, stockholder, officer or director, as such, past, present or future, of such Obligor or of any successor corporation, either directly or through such Obligor or any successor corporation, because of the incurring of the Debt hereby authorized or under or by reason of any of the obligations, covenants, promises or agreements contained in this Indenture or in any of the Securities, or to be implied herefrom or therefrom, and that all liability, if any, of that character against every such incorporator, stockholder, officer and director is, by the acceptance of the Securities and as a condition of, and as part of the consideration for, the execution of this Indenture and the issue of the Securities expressly waived and released.

## ARTICLE XIV
## SUPPLEMENTAL INDENTURES

Section 14.01 Without Consent of Securityholders. Except as otherwise provided as contemplated by Section 3.01 with respect to any series of Securities, the Issuer, the Guarantor, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any one or more of or all the following purposes:

(a) to add to the covenants and agreements of the Obligors, to be observed thereafter and during the period, if any, in such supplemental indenture or indentures expressed, and to add Events of Default, in each case for the protection or benefit of the Holders of all or any series of the Securities (and if such covenants, agreements and Events of Default are to be for the benefit of fewer than all series of Securities, stating that such covenants, agreements and Events of Default are expressly being included for the benefit of such series as shall be identified therein), or to surrender any right or power herein conferred upon the Obligors;

(b) to delete or modify any Events of Default with respect to any series of the Securities, the form and terms of which are first being established pursuant to such supplemental indenture as permitted in Section 3.01 (and, if any such Event of Default is applicable to fewer than all such series of the Securities, specifying the series to which such Event of Default is applicable), and to specify the rights and remedies of the Trustee and the Holders of such Securities in connection therewith, provided that such supplemental indenture shall not apply to any Outstanding Security of any series created prior to the date of such supplemental indenture;

(c) to change or eliminate any of the provisions of this Indenture; provided that any such change or elimination shall become effective only when there is no Outstanding Security of any series created prior to the execution of such supplemental indenture that is entitled to the benefit of such provision and as to which such supplemental indenture would apply;

(d) to evidence the succession of another entity to the Issuer, or successive successions, and the assumption by such successor of the covenants and obligations of the Issuer contained in the Securities of one or more series and in this Indenture or any supplemental indenture;

(e) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to one or more series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 11.06(c);

(f) to secure any series of Securities;

(g) to evidence any changes to this Indenture pursuant to Sections 11.05, 11.06 or 11.07 hereof as permitted by the terms thereof;

(h) to cure any ambiguity or inconsistency or to correct or supplement any provision contained herein or in any indenture supplemental hereto which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture or to conform the terms hereof, as amended and supplemented, that are applicable to the Securities of any series to the description of the terms of such Securities in the offering memorandum, prospectus supplement or other offering document applicable to such Securities at the time of initial sale thereof;

(i) to add to or change or eliminate any provision of this Indenture as shall be necessary or desirable in accordance with any amendments to the Trust Indenture Act;

(j) to evidence the succession of another Person to the Guarantor and the assumption by any such successor of the covenants of the Guarantor herein and in the Securities or to add guarantors or co-obligors with respect to any series of Securities or to release guarantors from their guarantees of Securities in accordance with the terms of the applicable series of Securities;

(k) to make any change in any series of Securities that does not adversely affect in any material respect the rights of the Holders of such Securities;

(l) to provide for uncertificated securities in addition to certificated securities;

(m) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities; provided that any such action shall not adversely affect the interests of the Holders of Securities of such series or any other series of Securities;

(n) to prohibit the authentication and delivery of additional series of Securities; or

(o) to establish the form and terms of Securities of any series as permitted in Section 3.01, or to authorize the issuance of additional Securities of a series previously authorized or to add to the conditions, limitations or restrictions on the authorized amount, terms or purposes of issue, authentication or delivery of the Securities of any series, as herein set forth, or other conditions, limitations or restrictions thereafter to be observed.

Subject to the provisions of Section 14.03, the Trustee is authorized to join with the Issuer and the Guarantor in the execution of any such supplemental indenture, to make the further agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property or assets thereunder.

Any supplemental indenture authorized by the provisions of this Section 14.01 may be executed by the Issuer, the Guarantor and the Trustee without the consent of the Holders of any of the Securities at the time Outstanding.

Section 14.02 With Consent of Securityholders; Limitations.

(a) With the consent of the Holders (evidenced as provided in Article VIII) of a majority in aggregate principal amount of the Outstanding Securities of each series affected by such supplemental indenture voting separately, the Issuer, the Guarantor and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto or any applicable Guarantee for the purpose of adding any provisions to or changing in any manner or eliminating any provisions of this Indenture or any applicable Guarantee or of modifying in any manner the rights of the Holders of the Securities of such series to be affected; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security of each such series affected thereby,

(i) extend the Stated Maturity of the principal of, or any installment of interest on, any Security, or reduce the principal amount thereof or the interest thereon or any premium thereon, or extend the Stated Maturity of, or change the place of payment where, or the Currency in which the principal of and premium, if any, or interest on such Security is denominated or payable, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon acceleration of the Maturity thereof pursuant to Section 7.02, change the ranking of any Security or, in the case of any subordinated Security, the definition of Senior Debt applicable thereto, or impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or materially adversely affect the economic terms of any right to convert or exchange any Security as may be provided pursuant to Section 3.01; or

(ii) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain Defaults hereunder and their consequences provided for in this Indenture, or reduce the requirements under Article IX for quorum or voting; or

(iii) modify any of the provisions of this Section, Section 7.06 or Section 6.06, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section and Section 6.06, or the deletion of this proviso, in accordance with the requirements of Sections 11.06 and 14.01(f); or

(iv) modify or affect in any manner adverse to the Holders of the Securities the terms and conditions of the obligations of the Guarantor in respect of the payments of principal and premium, if any, and Interest; or

(v) modify, without the written consent of the Trustee, the rights, duties or immunities of the Trustee; or

(vi) make any change that adversely affects the right, if any, to convert or exchange any Security for other securities or property in accordance with its terms.

(b) A supplemental indenture that changes or eliminates any provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

(c) It shall not be necessary for the consent of the Securityholders under this Section 14.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

(d) The Issuer may set a record date for purposes of determining the identity of the Holders of each series of Securities entitled to give a written consent or waive compliance by the Issuer as authorized or permitted by this Section. Such record date shall not be more than 30 days prior to the first solicitation of such consent or waiver or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation pursuant to Section 312 of the Trust Indenture Act.

(e) Promptly after the execution by the Issuer, the Guarantor and the Trustee of any supplemental indenture pursuant to the provisions of this Section 14.02, the Issuer shall mail a notice, setting forth in general terms the substance of such supplemental indenture, to the Holders of Securities at their addresses as the same shall then appear in the Register of the Issuer. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 14.03 Trustee Protected. Upon the request of the Issuer, accompanied by the Officer's Certificate and Opinion of Counsel required by Section 17.01 (and stating that such supplemental indenture is authorized or permitted by this Indenture) and evidence reasonably satisfactory to the Trustee of consent of the Holders if the supplemental indenture is to be executed pursuant to Section 14.02, the Trustee shall join with the Issuer in the execution of said supplemental indenture unless said supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into said supplemental indenture. The Trustee shall be fully protected in relying upon such Officer's Certificate and an Opinion of Counsel.

Section 14.04 Effect of Execution of Supplemental Indenture. Upon the execution of any supplemental indenture pursuant to the provisions of this Article XIV, this Indenture shall be deemed to be modified and amended in accordance therewith and, except as herein otherwise expressly provided, the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Obligors and the Holders of all of the Securities or of the Securities of any series affected, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 14.05 Notation on or Exchange of Securities. Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article may bear a notation in the form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer or the Trustee shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Issuer, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Obligors and authenticated and delivered by the Trustee in exchange for the Securities then Outstanding in equal aggregate principal amounts, and such exchange shall be made without cost to the Holders of the Securities.

Section 14.06 Conformity with TIA. Every supplemental indenture executed pursuant to the provisions of this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

## ARTICLE XV
## SUBORDINATION OF SECURITIES

Section 15.01 Agreement to Subordinate. In the event a series of Securities is designated as subordinated pursuant to Section 3.01, and except as otherwise provided in an Officer's Certificate or in one or more indentures supplemental hereto, the Issuer, for itself, its successors and assigns, covenants and agrees, and each Holder of Securities of such series by his, her or its acceptance thereof, likewise covenants and agrees, that the payment of the principal of (and premium, if any) and interest, if any, on each and all of the Securities of such series is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of all Senior Debt. In the event a series of Securities is not designated as subordinated pursuant to Section 3.01(s), this Article XV shall have no effect upon the Securities.

Section 15.02 Distribution on Dissolution, Liquidation and Reorganization; Subrogation of Securities. Subject to Section 15.01, upon any distribution of assets of the Issuer upon any dissolution, winding up, liquidation or reorganization of the Issuer, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Issuer or otherwise (subject to the power of a court of competent jurisdiction to make other equitable provision reflecting the rights conferred in this Indenture upon the Senior Debt and the holders thereof with respect to the Securities and the Holders thereof by a lawful plan of reorganization under applicable bankruptcy law):

(a) the holders of all Senior Debt shall be entitled to receive payment in full of the principal thereof (and premium, if any) and interest due thereon before the Holders of the Securities are entitled to receive any payment upon the principal (or premium, if any) or interest, if any, on Debt evidenced by the Securities; and

(b) any payment or distribution of assets of the Issuer of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XV shall be paid by the liquidation trustee or agent or other Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Senior Debt or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Debt may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the principal of (and premium, if any) and interest on the Senior Debt held or represented by each, to the extent necessary to make payment in full of all Senior Debt remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt; and

(c) in the event that, notwithstanding the foregoing, any payment or distribution of assets of the Issuer of any kind or character, whether in cash, property or securities prohibited by the foregoing, shall be received by the Trustee or the Holders of the Securities before all Senior Debt is paid in full, such payment or distribution shall be paid over, upon written notice to a Responsible Officer of the Trustee, to the holder of such Senior Debt or his, her or its representative or representatives or to the trustee or trustees under any indenture under which any instrument evidencing any of such Senior Debt may have been issued, ratably as aforesaid, as calculated by the Issuer, for application to payment of all Senior Debt remaining unpaid until all such Senior Debt shall have been paid in full, after giving effect to any concurrent payment or distribution to the holders of such Senior Debt.

(d) Subject to the payment in full of all Senior Debt, the Holders of the Securities shall be subrogated to the rights of the holders of Senior Debt (to the extent that distributions otherwise payable to such Holders have been applied to the payment of Senior Debt) to receive payments or distributions of cash, property or securities of the Issuer applicable to Senior Debt until the principal of (and premium, if any) and interest, if any, on the Securities shall be paid in full and no such payments or distributions to the Holders of the Securities of cash, property or securities otherwise distributable to the holders of Senior Debt shall, as between the Issuer, its creditors other than the holders of Senior Debt, and the Holders of the Securities be deemed to be a payment by the Issuer to or on account of the Securities. It is understood that the provisions of this Article XV are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Debt, on the other hand. Nothing contained in this Article XV or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Issuer, its creditors other than the holders of Senior Debt, and the Holders of the Securities, the obligation of the Issuer, which is unconditional and absolute, to pay to the Holders of the Securities the principal of (and premium, if any) and interest, if any, on the Securities as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the Holders of the Securities and creditors of the Issuer other than the holders of Senior Debt, nor shall anything herein or in the Securities prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XV of the holders of Senior Debt in respect of cash, property or securities of the Issuer received upon the exercise of any such remedy. Upon any payment or distribution of assets of the Issuer referred to in this Article XV, the Trustee, subject to the provisions of Section 15.06, shall be entitled to conclusively rely upon a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Debt and other indebtedness of the Issuer, the amount thereof or payable thereon, the amount or amounts paid or distributed thereof and all other facts pertinent thereto or to this Article XV.

Section 15.03 No Payment on Securities in Event of Default on Senior Debt. Subject to Section 15.01, no payment by the Issuer on account of principal (or premium, if any), sinking funds or interest, if any, on the Securities shall be made at any time if: (i) a default on Senior Debt exists that permits the holders of such Senior Debt to accelerate its maturity and (ii) the default is the subject of judicial proceedings or the Issuer has received notice of such default. The Issuer may resume payments on the Securities when full payment of amounts then due for principal (premium, if any), sinking funds and interest on Senior Debt has been made or duly provided for in money or money's worth.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 15.03, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of such Senior Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear, as calculated by the Issuer, but only to the extent that the holders of such Senior Debt (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on such Senior Debt and only the amounts specified in such notice to the Trustee shall be paid to the holders of such Senior Debt.

Section 15.04 Payments on Securities Permitted. Subject to Section 15.01, nothing contained in this Indenture or in any of the Securities shall (a) affect the obligation of the Issuer to make, or prevent the Issuer from making, at any time except as provided in Sections 15.02 and 15.03, payments of principal of (or premium, if any) or interest, if any, on the Securities or (b) prevent the application by the Trustee of any moneys or assets deposited with it hereunder to the payment of or on account of the principal of (or premium, if any) or interest, if any, on the Securities, unless a Responsible Officer of the Trustee shall have received at its Corporate Trust Office written notice of any fact prohibiting the making of such payment from the Issuer or from the holder of any Senior Debt or from the trustee for any such holder, together with proof satisfactory to the Trustee of such holding of Senior Debt or of the authority of such trustee more than two Business Days prior to the date fixed for such payment.

Section 15.05 Authorization of Securityholders to Trustee to Effect Subordination. Subject to Section 15.01, each Holder of Securities by his acceptance thereof authorizes and directs the Trustee on his, her or its behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article XV and appoints the Trustee his attorney-in-fact for any and all such purposes.

Section 15.06 Notices to Trustee. The Issuer shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Issuer that would prohibit the making of any payment of monies or assets to or by the Trustee in respect of the Securities of any series pursuant to the provisions of this Article XV. Subject to Section 15.01, notwithstanding the provisions of this Article XV or any other provisions of this Indenture, neither the Trustee nor any Paying Agent (other than the Issuer) shall be charged with knowledge of the existence of any Senior Debt or of any fact which would prohibit the making of any payment of moneys or assets to or by the Trustee or such Paying Agent, unless and until a Responsible Officer of the Trustee or such Paying Agent shall have received (in the case of a Responsible Officer of the Trustee, at the Corporate Trust Office of the Trustee) written notice thereof from the Issuer or from the holder of any Senior Debt or from the trustee for any such holder, together with proof satisfactory to the Trustee of such holding of Senior Debt or of the authority of such trustee and, prior to the receipt of any such written notice, the Trustee shall be entitled in all respects conclusively to presume that no such facts exist; provided, however, that if at least two Business Days prior to the date upon which by the terms hereof any such moneys or assets may become payable for any purpose (including, without limitation, the payment of either the principal (or premium, if any) or interest, if any, on any Security) a Responsible Officer of the Trustee shall not have received with respect to such moneys or assets the notice provided for in this Section 15.06, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such moneys or assets and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date. The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee on behalf of such holder) to establish that such a notice has been given by a holder of Senior Debt or a trustee on behalf of any such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XV, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XV and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 15.07 Trustee as Holder of Senior Debt. Subject to Section 15.01, the Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XV in respect of any Senior Debt at any time held by it to the same extent as any other holder of Senior Debt and nothing in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder. Nothing in this Article XV shall apply to claims of, or payments to, the Trustee under or pursuant to Sections 7.05 or 11.01.

Section 15.08 Modifications of Terms of Senior Debt. Subject to Section 15.01, any renewal or extension of the time of payment of any Senior Debt or the exercise by the holders of Senior Debt of any of their rights under any instrument creating or evidencing Senior Debt, including, without limitation, the waiver of default thereunder, may be made or done all without notice to or assent from the Holders of the Securities or the Trustee. To the fullest extent permitted by applicable law, no compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of, or of any of the terms, covenants or conditions of any indenture or other instrument under which any Senior Debt is outstanding or of such Senior Debt, whether or not such release is in accordance with the provisions of any applicable document, shall in any way alter or affect any of the provisions of this Article XV or of the Securities relating to the subordination thereof.

Section 15.09 Reliance on Judicial Order or Certificate of Liquidating Agent. Subject to Section 15.01, upon any payment or distribution of assets of the Issuer referred to in this Article XV, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of Senior Debt and other indebtedness of the Issuer, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XV.

Section 15.10 Satisfaction and Discharge; Defeasance and Covenant Defeasance. Subject to Section 15.01, amounts and U.S. Government Obligations deposited in trust with the Trustee pursuant to and in accordance with Article XII and not, at the time of such deposit, prohibited to be deposited under Sections 15.02 or 15.03 shall not be subject to this Article XV.

Section 15.11 Trustee Not Fiduciary for Holders of Senior Debt. With respect to the holders of Senior Debt, the Trustee undertakes to perform or observe only such of its covenants and obligations as are specifically set forth in this Article XV, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt. The Trustee shall not be liable to any such holder if it shall pay over or distribute to or on behalf of Holders of Securities or the Issuer, or any other Person, moneys or assets to which any holder of Senior Debt shall be entitled by virtue of this Article XV or otherwise.

**ARTICLE XVI**
**GUARANTEES**

Section 16.01 Applicability of Article; Guarantee.

(a) All Securities previously issued under the Indenture and that remain Outstanding as of February 10, 2023 shall have the benefit of the Guarantees as set forth in this Article XVI, and, if the Issuer elects to issue any series of Securities on any date after February 10, 2023 with the benefit of the Guarantees as set forth in this Article then the provisions of this Article XVI (with such modifications thereto as may be specified pursuant to Section 3.01 with respect to any series of Securities issued after February 10, 2023), will be applicable to such Securities. Each reference in this Article XVI to a "Security" or "the Securities" refers to the Securities of the particular series as to which provision has been made for such Guarantees (including, for the avoidance of doubt, all Securities which have been previously issued under the Indenture and that remain Outstanding as of February 10, 2023). If more than one series of Securities as to which such provision has been made are Outstanding at any time, the provisions of this Article XVI shall be applied separately to each such series.

(b) Subject to this Article XVI, the Guarantor fully and unconditionally guarantees to the Trustee and to each Holder of a Security of any series issued with the benefit of Guarantees and which Security has been authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, such Security or the obligations of the Issuer hereunder or thereunder, that:

(i) the principal of, premium, if any, and interest on such Security will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on such Security, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(ii) in case of any extension of time of payment or renewal of any Securities of that series or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantor will be obligated to pay the same immediately. The Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(c) The Guarantor hereby agrees that its obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Securities of any series issued with the benefit of Guarantees or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities of that series with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor, other than payment in full of all obligations under the Securities of that series. The Guarantor in respect of a series of Securities hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer in respect of that series, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Guarantee will not be discharged except by complete performance of the obligations contained in such Securities and this Indenture.

(d) If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantor or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantor, any amount paid by either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(e) The Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Seven hereof for the purposes of its Guarantee notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article Seven hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purpose of its Guarantee.

Section 16.02 Limitation on Guarantor Liability. The Guarantor, and by its acceptance of Securities of any series issued with the benefit of Guarantees, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of the Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantor hereby irrevocably agree that the obligations of the Guarantor will, after giving effect to any maximum amount and all other contingent and fixed liabilities of the Guarantor that are relevant under such laws, result in the obligations of the Guarantor under its Guarantee not constituting a fraudulent transfer or conveyance.

Section 16.03 Execution and Delivery of Guarantee. For all Securities issued after February 10, 2023 as to which the Issuer elects to issue with the benefit of the Guarantees as provided herein, to evidence its Guarantee set forth in Section 16.01 in respect of Securities of a series issued with the benefit of Guarantees, the Guarantor hereby agrees that a notation of such Guarantee substantially in the form as shall be established in one or more indentures supplemental hereto, will be endorsed by an officer of the Guarantor on each Security of that series authenticated and delivered by the Trustee and that this Indenture will be executed on behalf of the Guarantor by one of its officers.

The Guarantor hereby agrees that its Guarantee set forth in Section 16.01 will remain in full force and effect notwithstanding any failure to endorse on each Security of that series a notation of such Guarantee.

If an officer whose signature is on this Indenture or on the Guarantee no longer holds that office at the time the Trustee authenticates the Security of that series on which a Guarantee is endorsed, such Guarantee will be valid nevertheless.

The delivery of any Security of a series issued with the benefit of Guarantees by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantor (including, for the avoidance of doubt, all Securities which have been previously issued, and authenticated by the Trustee, and which remain Outstanding as of February 10, 2023).

## ARTICLE XVII
## MISCELLANEOUS PROVISIONS

Section 17.01 Certificates and Opinions as to Conditions Precedent.

(a) Upon any request or application by the Issuer to the Trustee to take any action under any of the provisions of this Indenture, the Issuer shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with.

(b) Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificates provided pursuant to Section 6.05 of this Indenture) shall include (i) a statement that the Person giving such certificate or opinion has read such covenant or condition; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the view or opinion of such Person, he or she has made such examination or investigation as is necessary to enable such Person to express an informed view or opinion as to whether or not such covenant or condition has been complied with; and (iv) a statement as to whether or not, in the view or opinion of such Person, such condition or covenant has been complied with.

(c) Any certificate, statement or opinion of an officer of the Issuer or Guarantor may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his or her certificate, statement or opinion is based are erroneous. Any certificate, statement or opinion of counsel may be based, insofar as it relates to factual matters, upon a certificate, statement or opinion of, or representations by, an officer or officers of the Issuer or Guarantor stating that the information with respect to such factual matters is in the possession of the Issuer, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate, statement or opinion or representations with respect to such matters are erroneous.

(d) Any certificate, statement or opinion of an officer of the Issuer or of counsel to the Issuer may be based, insofar as it relates to accounting matters, upon a certificate or opinion of, or representations by, an accountant or firm of accountants, unless such officer or counsel, as the case may be, knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the accounting matters upon which his or her certificate, statement or opinion may be based are erroneous. Any certificate or opinion of any firm of independent registered public accountants filed with the Trustee shall contain a statement that such firm is independent.

(e) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(f) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 17.02 Trust Indenture Act Controls. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by, or another provision included in this Indenture which is required to be included in this Indenture by any of the provisions of Sections 310 to 318, inclusive, of the Trust Indenture Act, such imposed duties or incorporated provision shall control.

Section 17.03 Notices to the Issuer and Trustee. Any notice or demand authorized by this Indenture to be made upon, given or furnished to, or filed with, the Issuer or the Trustee shall be sufficiently made, given, furnished or filed for all purposes if it shall be mailed, delivered or telefaxed to:

(a) the Issuer, at 4600 South Syracuse Street, Suite 500, Denver, Colorado 80237, Attention: General Counsel, or at such other address as may have been furnished in writing to the Trustee by the Issuer.

(b) the Trustee, at the Corporate Trust Office, with a copy to the Trustee at 333 South Hope Street, Suite 2525, Los Angeles, CA 90071, Attention: Corporate Trust Unit.

Any such notice, demand or other document shall be in the English language.

In addition to the foregoing, the Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (for the purposes of this Section, "Instructions") given pursuant to the Indenture and delivered using Electronic Means; provided, however, that the Issuer shall provide to the Trustee an incumbency certificate listing authorized officers and containing specimen signatures of such authorized officers, which incumbency certificate shall be amended by the Issuer whenever a person is to be added or deleted from the listing. If the Issuer elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Issuer understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an authorized officer listed on the incumbency certificate provided to the Trustee have been sent by such authorized officer. The Issuer shall be responsible for ensuring that only authorized officers transmit such Instructions to the Trustee and that the Issuer and all authorized officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Issuer agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

Section 17.04 Notices to Securityholders; Waiver. Any notice required or permitted to be given to Securityholders shall be sufficiently given (unless otherwise herein expressly provided),

(a) if to Holders, if given in writing by first class mail, postage prepaid, or otherwise given pursuant to applicable Depositary procedures to such Holders at their addresses as the same shall appear on the Register of the Issuer; provided, that in the event of suspension of regular mail service or by reason of any other cause it shall be impracticable to give notice by mail, then such notification as shall be given with the approval of the Trustee shall constitute sufficient notice for every purpose hereunder; or

(b) if a series of Securities has been issued in the form of one or more Global Securities through DTC as Depositary, notice may be provided with respect to such series of Securities by delivery of such notice to DTC for posting through its "Legal Notice Service" (LENS) or a successor system thereof.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance on such waiver. In any case where notice to Holders is given by mail; neither the failure to mail such notice nor any defect in any notice so mailed to any particular Holder shall affect the sufficiency of such notice with respect to other Holders, and any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given. In any case where notice to Holders is given by publication, any defect in any notice so published as to any particular Holder shall not affect the sufficiency of such notice with respect to other Holders, and any notice that is published in the manner herein provided shall be conclusively presumed to have been duly given.

Section 17.05 Legal Holiday. Unless otherwise specified pursuant to Section 3.01, in any case where any Interest Payment Date, Redemption Date or Maturity of any Security of any series shall not be a Business Day at any Place of Payment for the Securities of that series, then payment of principal and premium, if any, or interest need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on such Interest Payment Date, Redemption Date or Maturity and no interest shall accrue on such payment for the period from and after such Interest Payment Date, Redemption Date or Maturity, as the case may be, to such Business Day if such payment is made or duly provided for on such Business Day.

Section 17.06 Effects of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 17.07 Successors and Assigns. All covenants and agreements in this Indenture by the parties hereto shall bind their respective successors and assigns and inure to the benefit of their permitted successors and assigns, whether so expressed or not.

Section 17.08 Separability Clause. In case any provision in this Indenture or in the Securities or Guarantee shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 17.09 Benefits of Indenture. Nothing in this Indenture expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or to give to, any Person or corporation other than the parties hereto and their successors and the Holders of the Securities any benefit or any right, remedy or claim under or by reason of this Indenture or any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Indenture contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Holders of the Securities.

Section 17.10 Counterparts Originals. This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Indenture or in any other certificate, agreement or document related to this Indenture shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. Without limitation to the foregoing, and anything in this Indenture to the contrary notwithstanding, (a) any Officer's Certificate, Issuer Order, Opinion of Counsel, Security, Guarantee endorsed on any Security, opinion of counsel, instrument, agreement or other document delivered pursuant to this Indenture may be executed, attested and transmitted by any of the foregoing electronic means and formats, (b) all references in Section 3.03 or elsewhere in this Indenture to the execution, attestation or authentication of any Security, any Guarantee endorsed on any Security, or any certificate of authentication appearing on or attached to any Security by means of a manual or facsimile signature shall be deemed to include signatures that are made or transmitted by any of the foregoing electronic means or formats, and (c) any requirement in the Indenture that any signature be made under a corporate seal (or facsimile thereof) shall not be applicable to the Securities or any Guarantees endorsed on any Securities.

Section 17.11 Governing Law; Waiver of Trial by Jury. This Indenture and the Securities shall be deemed to be contracts made under the law of the State of New York, and for all purposes shall be governed by and construed in accordance with the law of said State.

EACH PARTY HERETO, AND EACH HOLDER OF A SECURITY BY ACCEPTANCE THEREOF, HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE, THE SECURITIES OR ANY GUARANTEE.

Section 17.12 Submission to Jurisdiction. The Issuer and each Guarantor hereby irrevocably submits to the jurisdiction of any New York State court sitting in the Borough of Manhattan in the City of New York or any federal court sitting in the Southern District of Manhattan in the City of New York in respect of any suit, action or proceeding arising out of or relating to this Indenture, the Guarantees and the Notes, and irrevocably accepts for itself and in respect of its property, generally and unconditionally, jurisdiction of the aforesaid courts.

Section 17.13 Sanctions Representations.

(a) The Issuer and the Guarantor represent that neither the Issuer nor the Guarantor nor, to the knowledge of the Issuer and the Guarantor, any of their respective affiliates, subsidiaries, directors or officers are the subject of any sanctions enforced by the U.S. Government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively "Sanctions"); and

(b) Each of the Issuer and the Guarantor covenants that it will not directly or indirectly use any funds received pursuant to this Indenture, (i) to fund or facilitate any activities of or business with any Person who, at the time of such funding, is the subject of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any Person (in each case, except to the extent permitted for a Person required to comply with such Sanctions).

**Exhibit 10.1**

**OPERATING AGREEMENT**
**OF**
**HEALTHPEAK OP, LLC**
**a Maryland limited liability company**

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*SECURITIES ACT*"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE SECURITIES ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

dated as of February 10, 2023

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**OPERATING AGREEMENT**
**OF HEALTHPEAK OP, LLC**

THIS OPERATING AGREEMENT OF HEALTHPEAK OP, LLC (the "*Company*"), dated as of February 10, 2023, (the "*Effective Date"*), is made and entered into by and among HEALTHPEAK PROPERTIES, INC., a Maryland corporation (the "*Managing Member*"), as Managing Member, and the Persons from time to time party hereto, as members.

WHEREAS, the entity formerly known as Healthpeak Properties, Inc., a Maryland corporation (the "*Converted Entity*"), was formed as a corporation under the laws of the State of Maryland by the filing of Articles of Incorporation with the State Department of Assessments and Taxation of Maryland (the "*SDAT*") on March 21, 1985;

WHEREAS, pursuant to that certain Agreement and Plan of Merger, dated February 7, 2023, by and among the Converted Entity, the Managing Member (which was then a direct subsidiary of the Converted Entity under the name New Healthpeak, Inc.) and Healthpeak Merger Sub, Inc., a Maryland corporation and indirect subsidiary of the Converted Entity ("*Merger Sub*"), on February 10, 2023, Merger Sub merged with and into the Converted Entity and the Managing Member became the sole stockholder of the Converted Entity (the "*Merger*");

WHEREAS, immediately following the Merger, the Managing Member, by the filing of Articles of Amendment with the SDAT, and the acceptance thereof by the SDAT, changed its name to Healthpeak Properties, Inc.;

WHEREAS, by the filing, on or about the date hereof, of (i) Articles of Organization of the Company (the "*Articles of Organization*") with the SDAT under the Act (defined below) and (ii) Articles of Conversion (the "*Articles of Conversion*") with the SDAT under the Maryland General Corporation Law (the "*MGCL*") and the Act, and the acceptance thereof by the SDAT, the Converted Entity was converted to the Company under the name Healthpeak OP, LLC and the Managing Member became the sole member of the Company (the "*Conversion*");

WHEREAS, in accordance with applicable provisions of the MGCL and the Act, upon completion of the Conversion, the Converted Entity ceased to exist as a Maryland corporation and continued to exist as a Maryland limited liability company, and for all purposes of the laws of the State of Maryland, the Company shall be deemed to be the same entity as the Converted Entity;

WHEREAS, on or prior to February 10, 2023, all necessary action, corporate and otherwise, was taken by the Converted Entity and its board of directors to (i) authorize the Conversion and (ii) approve this Agreement (as hereinafter defined); and

WHEREAS, the Members (as hereinafter defined) of the Company desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE 1
## DEFINED TERMS

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement:

"*Act*" means the Maryland Limited Liability Company Act (Title 4A of the Corporations and Associations Article of the Annotated Code of Maryland), as it may be amended from time to time and any successor to such statute.

"*Actions*" has the meaning set forth in Section 7.7 hereof.

"*Additional Funds*" has the meaning set forth in Section 4.3(a) hereof.

"*Additional Member*" means a Person who is admitted to the Company as a Member pursuant to the Act and Section 4.2 and Section 12.2 hereof and who is shown as such on the Member Registry.

"*Adjusted Capital Account*" means, with respect to any Member, the balance in such Member's Capital Account as of the end of the relevant Fiscal Year or other applicable period, after giving effect to the following adjustments:

(a) increase such Capital Account by any amounts that such Member is obligated to restore pursuant to this Agreement upon liquidation of such Member's Membership Interest or that such Person is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) decrease such Capital Account by the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of "Adjusted Capital Account" is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"*Adjusted Capital Account Deficit*" means, with respect to any Member, the deficit balance, if any, in such Member's Adjusted Capital Account as of the end of the relevant Fiscal Year or other applicable period.

"*Adjustment Event*" has the meaning set forth in Section 16.3 hereof.

"*Adjustment Factor*" means 1.0; *provided*, *however*, that in the event that:

(a) the Managing Member (i) declares or pays a dividend on its outstanding REIT Shares wholly or partly in REIT Shares or makes a distribution to all holders of its outstanding REIT Shares wholly or partly in REIT Shares, (ii) splits or subdivides its outstanding REIT Shares or (iii) effects a reverse stock split or otherwise combines its outstanding REIT Shares into a smaller number of REIT Shares, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction, (A) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination (assuming for such purposes that such dividend, distribution, split, subdivision, reverse split or combination has occurred as of such time) and (B) the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination;

(b) the Managing Member distributes any rights, options or warrants to all holders of its REIT Shares to subscribe for or to purchase or to otherwise acquire REIT Shares (other than in connection with a dividend reinvestment program adopted by the Managing Member), or other securities or rights convertible into, exchangeable for or exercisable for REIT Shares, at a price per share less than the Value of a REIT Share on the record date for such distribution (each a "*Distributed Right*"), then, as of the distribution date of such Distributed Rights or, if later, the time such Distributed Rights become exercisable, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction (i) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date (or, if later, the date such Distributed Rights become exercisable) plus the maximum number of REIT Shares purchasable under such Distributed Rights and (ii) the denominator of which shall be the number of REIT Shares issued and outstanding on the record date (or, if later, the date such Distributed Rights become exercisable) plus a fraction (A) the numerator of which is the maximum number of REIT Shares purchasable under such Distributed Rights times the minimum purchase price per REIT Share under such Distributed Rights and (B) the denominator of which is the Value of a REIT Share as of the record date (or, if later, the date such Distributed Rights become exercisable); *provided*, *however*, that, if any such Distributed Rights expire or become no longer exercisable, then the Adjustment Factor shall be adjusted, effective retroactive to the date of distribution of the Distributed Rights (or, if applicable, the later time that the Distributed Rights became exercisable), to reflect a reduced maximum number of REIT Shares or any change in the minimum purchase price for the purposes of the above fraction; and

(c) the Managing Member shall, by dividend or otherwise, distribute to all holders of its REIT Shares evidences of its indebtedness or assets (including securities of the Managing Member or any other issuer, but excluding any dividend or distribution referred to in subsection (a) or (b) above), which evidences of indebtedness or assets relate to assets not received by the Managing Member pursuant to a pro rata distribution by the Company, then the Adjustment Factor shall be adjusted to equal the amount determined by multiplying the Adjustment Factor in effect immediately prior to the close of business as of the applicable record date by a fraction (i) the numerator of which shall be such Value of a REIT Share as of the record date and (ii) the denominator of which shall be the Value of a REIT Share as of the record date less the then fair market value (as determined by the Managing Member, whose determination shall be conclusive) of the portion of the evidences of indebtedness or assets so distributed applicable to one REIT Share.

Notwithstanding the foregoing, no adjustments to the Adjustment Factor will be made for any class or series of Membership Interests to the extent that the Company makes or effects any correlative distribution or payment to all of the Members holding Membership Interests of such class or series, or effects any correlative split or reverse split in respect of Membership Interests of such class or series. Any adjustments to the Adjustment Factor shall become effective immediately after such event, retroactive to the record date, if any, for such event (or, if later, the date Distributed Rights become exercisable). For illustrative purposes, examples of adjustments to the Adjustment Factor are set forth on Exhibit A attached hereto.

"*Affiliate*" means, with respect to any Person, any Person directly or indirectly controlling or controlled by or under common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Agreement*" means this Operating Agreement of Healthpeak OP, LLC, as now or hereafter amended, restated, modified, supplemented or replaced (including any Membership Unit Designations).

"*Applicable Percentage*" has the meaning set forth in Section 15.1(b) hereof.

"*Appraisal*" means, with respect to any assets, the written opinion of an independent third party experienced in the valuation of similar assets, selected by the Managing Member. Such opinion may be in the form of an opinion by such independent third party that the value for such property or asset as set by the Managing Member is fair, from a financial point of view, to the Company.

"*Articles of Conversion*" has the meaning set forth in the preamble.

"*Articles of Organization*" has the meaning set forth in the preamble.

"*Assignee*" means a Person to whom a Membership Interest has been Transferred in a manner permitted under this Agreement, but who has not become a Substituted Member, and who has the rights set forth in Section 11.5 hereof.

"*Available Cash*" means, with respect to any period for which such calculation is being made,

(a) the sum, without duplication, of:

(i) the Company's Net Income or Net Loss (as the case may be) for such period,

(ii) Depreciation and all other noncash charges to the extent deducted in determining Net Income or Net Loss for such period,

(iii) the amount of any reduction in reserves of the Company referred to in clause (b)(vi) below (including, without limitation, reductions resulting because the Managing Member determines such amounts are no longer necessary),

(iv) the excess, if any, of the net cash proceeds from the sale, exchange, disposition, financing or refinancing of Company property for such period over the gain (or loss, as the case may be) recognized from such sale, exchange, disposition, financing or refinancing during such period (excluding Terminating Capital Transactions), and

(v) all other cash received (including amounts previously accrued as Net Income and amounts of deferred income) or any net amounts borrowed by the Company for such period that was not included in determining Net Income or Net Loss for such period;

(b) less the sum, without duplication, of:

(i) all principal debt payments made during such period by the Company,

(ii) capital expenditures made by the Company during such period,

(iii) investments in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clause (b)(i) or clause (b)(ii) above,

(iv) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period (including amounts paid in respect of expenses previously accrued),

(v) any amount included in determining Net Income or Net Loss for such period that was not received by the Company during such period,

(vi) the amount of any increase in reserves (including, without limitation, working capital reserves) established during such period that the Managing Member determines are necessary or appropriate in its sole and absolute discretion,

(vii) any amount distributed or paid in redemption of any Member Interest or Membership Units, including, without limitation, any Cash Amount paid, and

(viii) the amount of any working capital accounts and other cash or similar balances that the Managing Member determines to be necessary or appropriate in its sole and absolute discretion.

Notwithstanding the foregoing, Available Cash shall not include (a) any cash received or reductions in reserves, or take into account any disbursements made, or reserves established, after dissolution and the commencement of the liquidation and winding up of the Company or (b) any Capital Contributions, whenever received or any payments, expenditures or investments made with such Capital Contributions.

"*Board of Directors*" means the Board of Directors of the Managing Member.

"*Business Day*" means any day except a Saturday, Sunday or other day on which commercial banks in the City of New York, New York are authorized by law to close.

"*Capital Account*" means, with respect to any Member, the capital account maintained by the Managing Member for such Member on the Member Registry maintained by the Company in accordance with the following provisions:

(a) To each Member's Capital Account, there shall be added such Member's Capital Contributions, such Member's distributive share of Net Income and any items in the nature of income or gain that are specially allocated pursuant to Section 6.3 or 6.4 hereof, and the amount of any Company liabilities assumed by such Member or that are secured by any property distributed to such Member.

(b) From each Member's Capital Account, there shall be subtracted the amount of cash and the Gross Asset Value of any Company property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Net Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 6.3 or 6.4 hereof, and the amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company (except to the extent already reflected in the amount of such Member's Capital Contribution).

(c) In the event any interest in the Company is Transferred in accordance with the terms of this Agreement (which Transfer does not result in the termination of the Company for U.S. federal income tax purposes), the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the Transferred interest.

(d) In determining the amount of any liability for purposes of subsections (a) and (b) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(e) The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations promulgated under Section 704 of the Code, and shall be interpreted and applied in a manner consistent with such Regulations. If the Managing Member shall determine that it is necessary or appropriate to modify the manner in which the Capital Accounts are maintained in order to comply with such Regulations, the Managing Member may make such modification, *provided* that such modification is not likely to have any material effect on the amounts distributable to any Member pursuant to Article 13 hereof upon the dissolution of the Company. The Managing Member may, in its sole discretion, (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any modifications that are necessary or appropriate in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b) or Section 1.704-2.

"*Capital Account Limitation*" means, with respect to a Holder of LTIP Units, (x) the Economic Capital Account Balance of such Holder, to the extent attributable to such Holder's ownership of LTIP Units, divided by (y) the Common Unit Economic Balance, in each case as determined as of the effective date of conversion.

"*Capital Contribution*" means, with respect to any Member, the amount of money and the initial Gross Asset Value of any Contributed Property that such Member contributes or is deemed to contribute pursuant to Article 4 hereof.

"*Capital Share*" means a share of any class or series of stock of the Managing Member now or hereafter authorized other than a REIT Share.

"*Cash Amount*" means an amount of cash equal to the product of (a) the Value of a REIT Share and (b) the REIT Shares Amount determined as of the applicable Valuation Date.

"*Charity*" means an entity described in Section 501(c)(3) of the Code or any trust all the beneficiaries of which are such entities.

"*Charter*" means the charter of the Managing Member, within the meaning of Section 1-101 of the MGCL.

"*Closing Price*" has the meaning set forth in the definition of "*Value*."

"*Code*" means the Internal Revenue Code of 1986, as amended and in effect from time to time or any successor statute thereto, as interpreted by the applicable Regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"*Common Unit*" means a fractional, undivided share of the Membership Interests of all Members issued pursuant to Sections 4.1 and 4.2 hereof, but does not include any Preferred Unit, LTIP Unit or any other Membership Unit specified in a Membership Unit Designation as being other than a Common Unit.

"*Common Unit Economic Balance*" means (i) the Capital Account balance of the Managing Member, plus the amount of the Managing Member's share of any Member Minimum Gain or Company Minimum Gain, in either case to the extent attributable to the Managing Member's ownership of Common Units and computed on a hypothetical basis after taking into account all allocations through the date on which any allocation is made under Section 6.2(d) hereof, divided by (ii) the number of the Managing Member's Common Units.

"*Company*" has the meaning set forth in the preamble.

"*Company Minimum Gain*" has the meaning set forth in Regulations Section 1.704-2(b)(2) for the term "partnership minimum gain," and the amount of Company Minimum Gain, as well as any net increase or decrease in Company Minimum Gain, for a Fiscal Year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

"*Company Record Date*" means the record date established by the Managing Member for the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or to consent to any matter, or to receive any distribution or the allotment of any other rights, or in order to make a determination of Members for any other proper purpose, which, in the case of a distribution of Available Cash pursuant to Section 5.1 hereof, shall, absent a contrary determination by the Managing Member, be the same as the record date established by the Managing Member for a distribution to its stockholders of some or all of its portion of such distribution.

"*Company Representative"* has the meaning set forth in Section 10.3(a) hereof.

"*Consent*" means the consent to, approval of, or vote in favor of a proposed action by a Member given in accordance with Article 14 hereof. The terms "*Consented*" and "*Consenting*" have correlative meanings.

"*Consent of the Managing Member*" means the Consent of the Managing Member, which Consent, except as otherwise specifically required by this Agreement, may be obtained prior to or after the taking of any action for which it is required by this Agreement and may be given or withheld by the Managing Member in its sole and absolute discretion.

"*Consent of the Non-Managing Members*" means the Consent of a Majority in Interest of the Non-Managing Members, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and, except as otherwise provided in this Agreement, may be given or withheld by each Non-Managing Member in its sole and absolute discretion.

"*Consent of the Members*" means the Consent of the Managing Member and the Consent of a Majority in Interest of the Members, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and, except as otherwise provided in this Agreement, may be given or withheld by the Managing Member or the Members in their sole and absolute discretion; *provided*, *however*, that, if any such action affects only certain classes or series of Membership Interests, "Consent of the Members" means the Consent of the Managing Member and the Consent of a Majority in Interest of the Members of the affected classes or series of Membership Interests.

"*Constituent Person*" has the meaning set forth in Section 16.9(g) hereof.

"*Contributed Property*" means each Property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Company.

"*Controlled Entity*" means, as to any Member, (a) any corporation more than fifty percent (50%) of the outstanding voting stock of which is owned by such Member or such Member's Family Members or Affiliates, (b) any trust, whether or not revocable, of which such Member or such Member's Family Members or Affiliates are the sole beneficiaries, (c) any partnership of which such Member or its Affiliates are the managing partners and in which such Member, such Member's Family Members or Affiliates hold partnership interests representing at least twenty-five percent (25%) of such partnership's capital and profits and (d) any limited liability company of which such Member or its Affiliates are the managers and in which such Member, such Member's Family Members or Affiliates hold membership interests representing at least twenty-five percent (25%) of such limited liability company's capital and profits.

"*Conversion*" has the meaning set forth in the preamble.

"*Conversion Date*" has the meaning set forth in Section 16.9(b) hereof.

"*Conversion Notice*" has the meaning set forth in Section 16.9(b) hereof.

"*Conversion Right*" has the meaning set forth in Section 16.9(a) hereof.

"*Converted Entity*" has the meaning set forth in the preamble.

"*Cut-Off Date*" means the thirtieth (30th) Business Day after the Managing Member's receipt of a Notice of Redemption.

"*Debt*" means, as to any Person, as of any date of determination: (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services; (b) all amounts owed by such Person to banks or other Persons in respect of reimbursement obligations under letters of credit, surety bonds and other similar instruments guaranteeing payment or other performance of obligations by such Person; (c) all indebtedness for borrowed money or for the deferred purchase price of property or services secured by any lien on any property owned by such Person, to the extent attributable to such Person's interest in such property, even though such Person has not assumed or become liable for the payment thereof; and (d) lease obligations of such Person that, in accordance with generally accepted accounting principles, should be capitalized.

"*Depreciation*" means, for each Fiscal Year or other applicable period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; *provided*, *however*, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

"*Designated Individual"* has the meaning set forth in Section 10.3(a) hereof.

"*Disregarded Entity*" means, with respect to any Person, (i) any "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)) of such Person, (ii) any entity treated as a disregarded entity for federal income tax purposes with respect to such Person, or (iii) any grantor trust if the sole owner of the assets of such trust for federal income tax purposes is such Person.

"*Distributed Right*" has the meaning set forth in the definition of "*Adjustment Factor*."

"*Economic Capital Account Balance*" means, with respect to a Holder of LTIP Units, its Capital Account balance, plus the amount of its share of any Member Minimum Gain or Company Minimum Gain, in either case to the extent attributable to its ownership of LTIP Units.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended.

"*Equity Plan*" means any stock, unit or equity purchase plan, restricted stock, unit or equity plan or other similar equity-based compensation plan as of the date hereof or hereafter adopted by the Company or the Managing Member, including the Plan.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"*Family Members*" means, as to a Person that is an individual, such Person's spouse, ancestors, descendants (whether by blood or by adoption or step-descendants by marriage), brothers and sisters, nieces and nephews and *inter vivos* or testamentary trusts (whether revocable or irrevocable) of which only such Person and his or her spouse, ancestors, descendants (whether by blood or by adoption or step-descendants by marriage), brothers and sisters and nieces and nephews are beneficiaries.

"*Final Adjustment*" has the meaning set forth in Section 10.3(b)(ii) hereof.

"*Fiscal Year*" means the fiscal year of the Company, which shall be the tax year of the Company. The tax year shall be the calendar year unless otherwise required by the Code.

"*Forced Conversion*" has the meaning set forth in Section 16.9(d) hereof.

"*Forced Conversion Notice*" has the meaning set forth in Section 16.9(d) hereof.

"*Funding Debt*" means any Debt incurred by or on behalf of the Managing Member for the purpose of providing funds to the Company.

"*Gross Asset Value*" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset on the date of contribution (subject to any adjustments required with respect to the conversion feature of any securities issued by the Company that are exercisable or convertible into Common Units, as determined by the Managing Member in its sole discretion), as determined by the Managing Member and agreed to by the contributing Person.

(b) The Gross Asset Values of all Company assets immediately prior to the occurrence of any event described in clauses (i) through (v) below shall be adjusted to equal their respective gross fair market values, as determined by the Managing Member using such reasonable method of valuation as it may adopt, as of the following times:

(i) the acquisition of an additional interest in the Company (including, without limitation, acquisitions pursuant to Section 4.2 hereof or contributions or deemed contributions by the Managing Member pursuant to Section 4.2 hereof) by a new or existing Member in exchange for more than a *de minimis* Capital Contribution;

(ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for an interest in the Company;

(iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(iv) the grant of an interest in the Company (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a member capacity or in anticipation of becoming a Member of the Company (including the grant of an LTIP Unit); and

(v) at such other times as the Managing Member shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2.

(c) The Gross Asset Value of any Company asset distributed to a Member shall be the gross fair market value of such asset on the date of distribution, as determined by the distributee and the Managing Member; *provided*, *however*, that if the distributee is the Managing Member or if the distributee and the Managing Member cannot agree on such a determination, such gross fair market value shall be determined by Appraisal.

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); *provided*, *however*, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent that the Managing Member reasonably determines that an adjustment pursuant to subsection (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d).

(e) If the Gross Asset Value of a Company asset has been determined or adjusted pursuant to subsection (a), subsection (b) or subsection (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Losses.

(f) If any unvested LTIP Units are forfeited, as described in Section 16.2(b), upon such forfeiture, the Gross Asset Value of the Company's assets shall be reduced by the amount of any reduction of such Member's Capital Account attributable to the forfeiture of such LTIP Units.

"*Hart-Scott-Rodino Act*" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"*Holder*" means either (a) a Member or (b) an Assignee owning a Membership Interest.

"*Incapacity*" or "*Incapacitated*" means: (a) as to any Member who is an individual, death, total physical disability or entry by a court of competent jurisdiction adjudicating such Member incompetent to manage his or her person or his or her estate; (b) as to any Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; (c) as to any Member that is a partnership or limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company; (d) as to any Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company; (e) as to any trustee of a trust that is a Member, the termination of the trust (but not the substitution of a new trustee); or (f) as to any Member, the bankruptcy of such Member. For purposes of this definition, bankruptcy of a Member shall be deemed to have occurred when (i) the Member commences a voluntary proceeding seeking liquidation, reorganization or other relief of or against such Member under any bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) the Member is adjudged as bankrupt or insolvent, or a final and non-appealable order for relief under any bankruptcy, insolvency or similar law now or hereafter in effect has been entered against the Member, (iii) the Member executes and delivers a general assignment for the benefit of the Member's creditors, (iv) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding of the nature described in clause (ii) above, (v) the Member seeks, consents to or acquiesces in the appointment of a trustee, receiver or Liquidator for the Member or for all or any substantial part of the Member's properties, (vi) any proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect has not been dismissed within one hundred twenty (120) days after the commencement thereof, (vii) the appointment without the Member's consent or acquiescence of a trustee, receiver or liquidator has not been vacated or stayed within ninety (90) days of such appointment, or (viii) an appointment referred to in clause (vii) above is not vacated within ninety (90) days after the expiration of any such stay.

"*Indemnitee*" means (a) (i) the Managing Member, the Company Representative or the Designated Individual or (ii) each present or former director of the Managing Member or officer of the Company or the Managing Member and (b) such other Persons (including Affiliates or employees of the Managing Member or the Company) as the Company may designate from time to time (whether before or after the event giving rise to potential liability), in its sole and absolute discretion.

"*Initial Holding Period*" means, respect to any Common Units held by a Qualifying Party or any of their successors-in-interest, a period ending on the day before the first fourteen-month anniversary of such date that the Qualifying Party first became a Holder of such Common Units; provided, however, that the Managing Member may, in its sole and absolute discretion, by written agreement with a Qualifying Party or any such successor-in-interest, shorten or lengthen the Initial Holding Period applicable to any Common Units, held by a Qualifying Party and/or its successors-in-interest to a period of shorter or longer than fourteen (14) months. For sake of clarity, as applied to a Common Unit that is issued upon conversion of an LTIP Unit pursuant to Section 16.9 (and subject to the proviso in the immediately preceding sentence, if applicable), the Initial Holding Period of such Common Unit shall end on the day before the first fourteen-month anniversary of the date that the underlying LTIP Unit was first issued.

"*IRS*" means the United States Internal Revenue Service.

"*Liquidating Event*" has the meaning set forth in Section 13.1 hereof.

"*Liquidating Gains*" means any net gain realized in connection with the actual or hypothetical sale of all or substantially all of the assets of the Company (including upon the occurrence of any Liquidating Event or Terminating Capital Transaction), including but not limited to net gain realized in connection with an adjustment to the Gross Asset Value of Company assets under the definition of Gross Asset Value in Section 1 of this Agreement.

"*Liquidator*" has the meaning set forth in Section 13.2(a) hereof.

"*LTIP Unit Agreement*" means any written agreement(s) between the Company and any recipient of LTIP Units evidencing the terms and conditions of any LTIP Units, including any vesting, forfeiture and other terms and conditions as may apply to such LTIP Units, consistent with the terms hereof and of the Plan (or other applicable Equity Plan governing such LTIP Units).

"*LTIP Unit Distribution Payment Date*" has the meaning set forth in Section 16.4(c) hereof.

"*LTIP Units*" means the Membership Units designated as such having the rights, powers, privileges, restrictions, qualifications and limitations set forth herein and in the Plan (or other applicable Equity Plan governing such LTIP Units). LTIP Units can be issued in one or more classes, or one or more series of any such classes bearing such relationship to one another as to allocations, distributions, and other rights as the Managing Member shall determine in its sole and absolute discretion subject to Maryland law and this Agreement.

"*Majority in Interest of the Non-Managing Members*" means the Non-Managing Members holding in the aggregate Percentage Interests that are greater than fifty percent (50%) of the aggregate Percentage Interests of all Non-Managing Members entitled to Consent to or withhold Consent from a proposed action.

"*Majority in Interest of the Members*" means Members holding in the aggregate Percentage Interests that are greater than fifty percent (50%) of the aggregate Percentage Interests of all Members entitled to Consent to or withhold Consent from a proposed action.

"*Managing Member*" means Healthpeak Properties, Inc., a Maryland corporation formerly known as New Healthpeak, Inc., and its successors and assigns as a Managing Member of the Company, in each case, that is admitted from time to time to the Company as a Managing Member, and has not ceased to be a Managing Member, pursuant to the Act and this Agreement, in such Person's capacity as a Managing Member of the Company.

"*Managing Member Interest*" means the entire Membership Interest held by a Managing Member hereof, which Membership Interest may be expressed as a number of Common Units, Preferred Units or any other Membership Units.

"*Market Price*" has the meaning set forth in the definition of "*Value*."

"*Maryland Courts*" has the meaning set forth in Section 15.9(b) hereof.

"*Member*" means any Person that is admitted from time to time to the Company as a Member, and has not ceased to be a Member pursuant to the Act and this Agreement, of the Company, including any Substituted Member or Additional Member or the Managing Member, in such Person's capacity as a Member of the Company.

"*Member Interest*" means a Membership Interest of a Member, other than the Managing Member, in the Company representing a fractional part of the Membership Interests of all Members, other than the Managing Member, and includes any and all benefits to which the holder of such a Membership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Member Interest may be expressed as a number of Common Units, Preferred Units or other Membership Units.

"*Member Minimum Gain*" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"*Member Nonrecourse Debt*" has the meaning set forth in Regulations Section 1.704-2(b)(4) applicable to the term "partner nonrecourse debt."

"*Member Nonrecourse Deductions*" has the meaning set forth in Regulations Section 1.704-2(i)(1) for the term "partner nonrecourse deductions," and the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Fiscal Year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2) applicable to the term "partner nonrecourse deductions".

"*Member Registry*" means the registry maintained by the Managing Member in the books and records of the Company.

"*Membership Equivalent Units*" has the meaning set forth in Section 4.7(a) hereof.

"*Membership Interest*" means an ownership interest in the Company held by either a Member or a Managing Member and includes any and all benefits to which the holder of such a Membership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. There may be one or more classes or series of Membership Interests. A Membership Interest may be expressed as a number of Common Units, Preferred Units or other Membership Units; however, notwithstanding that the Managing Member and any Member may have different rights and privileges as specified in this Agreement (including differences in rights and privileges with respect to their Membership Interests), the Membership Interest held by the Managing Member or any other Member and designated as being of a particular class or series shall not be deemed to be a separate class or series of Membership Interest from a Membership Interest having the same designation as to class and series that is held by any other Member solely because such Membership Interest is held by the Managing Member or other Member having different rights and privileges as specified under this Agreement.

"*Membership Unit*" means a Common Unit, a Preferred Unit, a LTIP Unit or any other unit of the fractional, undivided share of the Membership Interests that the Managing Member has authorized pursuant to Section 4.2 hereof.

"*Membership Unit Designation*" shall have the meaning set forth in Section 4.2(a) hereof.

"*Merger*" has the meaning set forth in the preamble.

"*Merger Sub*" has the meaning set forth in the preamble.

"*MGCL*" has the meaning set forth in the preamble.

"*Net Income*" or "*Net Loss*" means, for each Fiscal Year or other applicable period, an amount equal to the Company's taxable income or loss for such year or other applicable period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss" shall be added to (or subtracted from, as the case may be) such taxable income (or loss);

(b) Any expenditure of the Company described in Code Section 705(a)(2)(B) or treated as a Code Section 705(a)(2)(B) expenditure pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss," shall be subtracted from (or added to, as the case may be) such taxable income (or loss);

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subsection (b) or subsection (c) of the definition of "Gross Asset Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions that would otherwise be taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other applicable period;

(f) To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income or Net Loss; and

(g) Notwithstanding any other provision of this definition of "Net Income" or "Net Loss," any item that is specially allocated pursuant to Article 6 hereof shall not be taken into account in computing Net Income or Net Loss. The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 6.3 or 6.4 hereof shall be determined by applying rules analogous to those set forth in this definition of "Net Income" or "Net Loss."

"*New Securities*" means (a) any rights, options, warrants or convertible or exchangeable securities having the right to subscribe for or purchase REIT Shares or Preferred Shares, excluding grants under any Equity Plan, or (b) any Debt issued by the Managing Member or any subsidiary of the Managing Member that provides any of the rights described in clause (a).

"*Nonrecourse Deductions*" has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Fiscal Year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

"*Nonrecourse Liability*" has the meaning set forth in Regulations Sections 1.704-2(b)(3) and 1.752-1(a)(2).

"*Non-Managing Members*" means Members other than (i) the Managing Member or (ii) any Member fifty percent (50%) or more of whose equity is owned, directly or indirectly, by the Managing Member.

"*Notice of Redemption*" means the Notice of Redemption substantially in the form of Exhibit B attached to this Agreement.

"*Optionee*" means a Person to whom a stock option is granted under any Equity Plan.

"*Ownership Limit*" means the restriction or restrictions on the ownership and transfer of stock of the Managing Member imposed under the Charter.

"*Percentage Interest*" means, with respect to each Member, the fraction, expressed as a percentage, the numerator of which is the aggregate number of Membership Units of all classes and series held by such Member and the denominator of which is the total number of Membership Units of all classes and series held by all Members; *provided*, *however*, that, to the extent applicable in context, the term "Percentage Interest" means, with respect to a Member, the fraction, expressed as a percentage, the numerator of which is the aggregate number of Membership Units of a specified class or series (or specified group of classes and/or series) held by such Member and the denominator of which is the total number of Membership Units of such specified class or series (or specified group of classes and/or series) held by all Members.

"*Performance LTIP Units*" shall mean LTIP Units that vest in whole or in part based on the attainment of performance-vesting conditions; *provided*, *however*, that Performance LTIP Units shall not include any LTIP Units designated or characterized as so-called "retentive LTIP Units" in an applicable LTIP Unit Agreement or otherwise so designated or characterized by the Company.

"*Performance Unit Sharing Percentage*" shall mean 10%.

"*Permitted Transfer*" has the meaning set forth in Section 11.3(a) hereof.

"*Person*" means an individual or a corporation, partnership, trust, unincorporated organization, association, limited liability company or other entity.

"*Plan*" means the Amended and Restated Healthpeak Properties, Inc. 2014 Performance Incentive Plan, as amended and/or restated from time to time.

"*Pledge*" has the meaning set forth in Section 11.3(a) hereof.

"*Preferred Distribution Shortfall*" means, with respect to any Membership Interests that are entitled to any preference in distributions of Available Cash pursuant to this Agreement, the aggregate amount of the required distributions for such outstanding Membership Interests for all prior distribution periods *minus* the aggregate amount of the distributions made with respect to such outstanding Membership Interests pursuant to this Agreement.

"*Preferred Share*" means a share of stock of the Managing Member of any class or series now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the REIT Shares.

"*Preferred Unit*" means a fractional, undivided share of the Membership Interests of a particular class or series that the Managing Member has authorized pursuant to Section 4.2 hereof that has distribution rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the Common Units.

"*Properties*" means any assets and property of the Company such as, but not limited to, interests in real property and personal property, including, without limitation, fee interests, interests in ground leases, easements and rights of way, interests in limited liability companies, joint ventures or partnerships, interests in mortgages, and Debt instruments as the Company may hold from time to time and "Property" means any one such asset or property.

"*Proposed Section 83 Safe Harbor Regulation*" has the meaning set forth in Section 16.11 hereof.

"*Publicly Traded*" means listed or admitted to trading on the New York Stock Exchange, the NASDAQ Stock Market, or any nationally or internationally recognized stock exchange or any successor to any of the foregoing.

"*Qualified Transferee*" means an "accredited investor" as defined in Rule 501 promulgated under the Securities Act.

"*Qualifying Party*" means (a) a Member, (b) an Assignee or (c) a Person, including a lending institution as the pledgee of a Pledge, who is the transferee of a Member Interest in a Permitted Transfer; *provided*, *however*, that a Qualifying Party shall not include the Managing Member.

"*Redemption*" has the meaning set forth in Section 15.1(a) hereof.

"*Regulations*" means the income tax regulations under the Code, whether such regulations are in proposed, temporary or final form, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"*Regulatory Allocations*" has the meaning set forth in Section 6.4(a)(viii) hereof.

"*REIT*" means a real estate investment trust qualifying under Code Section 856.

"*REIT Member*" means (a) the Managing Member or any Affiliate of the Managing Member to the extent such person has in place an election to qualify as a REIT and (b) any Disregarded Entity with respect to any such Person.

"*REIT Payment*" has the meaning set forth in Section 15.12 hereof.

"*REIT Requirements*" has the meaning set forth in Section 5.1 hereof.

"*REIT Share*" means a share of common stock of the Managing Member, $1.00 par value per share, but shall not include any class or series of the Managing Member's common stock classified after the date of this Agreement; *provided*, *however* that if (i) the shares of common stock of the Managing Member are at any time not Publicly Traded, and (ii) the shares of common stock (or other comparable equity securities) of an entity that owns, directly or indirectly, all of the common stock of the Managing Member are Publicly Traded, the term "REIT Share" shall refer to the common stock (or other comparable equity securities) of such entity that is Publicly Traded.

"*REIT Shares Amount*" means a number of REIT Shares equal to the product of (a) the number of Tendered Units and (b) the Adjustment Factor; *provided*, *however*, that, in the event that the Managing Member issues to all holders of REIT Shares as of a certain record date rights, options, warrants or convertible or exchangeable securities entitling the Managing Member's stockholders to subscribe for or purchase REIT Shares, or any other securities or property (collectively, the "*Rights*"), with the record date for such Rights issuance falling within the period starting on the date of the Notice of Redemption and ending on the day immediately preceding the Specified Redemption Date, which Rights will not be distributed before the relevant Specified Redemption Date, then the REIT Shares Amount shall also include such Rights that a holder of that number of REIT Shares would be entitled to receive, expressed, where relevant hereunder, in a number of REIT Shares determined by the Managing Member.

"*Related Party*" means, with respect to any Person, any other Person to whom ownership of shares of the Managing Member's stock by the first such Person would be attributed under Code Section 544 (as modified by Code Section 856(h)(1)(B)) or Code Section 318(a) (as modified by Code Section 856(d)(5)).

"*Rights*" has the meaning set forth in the definition of "*REIT Shares Amount*."

"*Safe Harbors*" has the meaning set forth in Section 11.3(c) hereof.

"*SDAT*" has means the meaning set forth in the preamble.

"*SEC*" means the Securities and Exchange Commission.

"*Section 83 Safe Harbor*" has the meaning set forth in Section 16.11 hereof.

"*Securities Act*" means the Securities Act of 1933, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"*Special Redemption*" has the meaning set forth in Section 15.1(a) hereof.

"*Specified Redemption Date*" means the thirtieth (30th) Business Day after the receipt by the Managing Member of a Notice of Redemption; *provided*, *however*, that no Specified Redemption Date shall occur during the Initial Holding Period with respect to any Common Units (except pursuant to a Special Redemption).

"*Subsidiary*" means, with respect to any Person, any corporation or other entity of which a majority of (a) the voting power of the voting equity securities or (b) the outstanding equity interests is owned, directly or indirectly, by such Person; *provided*, *however*, that, with respect to the Company, "Subsidiary" means solely a partnership or limited liability company (taxed, for federal income tax purposes, as a partnership or as a Disregarded Entity and not as an association or publicly traded partnership taxable as a corporation) of which the Company is a partner or member or any "taxable REIT subsidiary" of the Managing Member in which the Company owns shares of stock, unless the ownership of shares of stock of a corporation or other entity (other than a "*taxable REIT subsidiary*") will not jeopardize the Managing Member's status as a REIT or any Managing Member Affiliate's status as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)), in which event the term "Subsidiary" shall include such corporation or other entity.

"*Substituted Member*" means a Person who is admitted as a Member to the Company pursuant to the Act and (a) Section 11.4 hereof or (b) pursuant to any Membership Unit Designation.

"*Surviving Company*" has the meaning set forth in Section 11.2(b)(ii) hereof.

"*Tax Items*" has the meaning set forth in Section 6.5(a) hereof.

"*Tendered Units*" has the meaning set forth in Section 15.1(a) hereof.

"*Tendering Party*" has the meaning set forth in Section 15.1(a) hereof.

"*Terminating Capital Transaction*" means any sale or other disposition of all or substantially all of the assets of the Company or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Company, in any case, not in the ordinary course of the Company's business.

"*Termination Transaction*" has the meaning set forth in Section 11.2(b) hereof.

"*Transfer*" means any sale, assignment, bequest, conveyance, devise, gift (outright or in trust), Pledge, encumbrance, hypothecation, mortgage, exchange, transfer or other disposition or act of alienation, whether voluntary, involuntary or by operation of law; *provided*, *however*, that when the term is used in Article 11 hereof, except as otherwise expressly provided, "Transfer" does not include (a) any Redemption of Common Units by the Company, or acquisition of Tendered Units by the Managing Member, pursuant to Section 15.1, (b) any conversion of LTIP Units into Common Units pursuant to Section 16.9 hereof or (c) any conversion, redemption, exchange or acquisition by the Managing Member of Membership Equivalent Units pursuant to Section 4.7 or any Membership Unit Designation. The terms "Transferred" and "Transferring" have correlative meanings.

"*Valuation Date*" means the date of receipt by the Managing Member of a Notice of Redemption pursuant to Section 15.1 herein, or such other date as specified herein, or, if such date is not a Business Day, the immediately preceding Business Day.

"*Value*" means, on any Valuation Date with respect to a REIT Share, the average of the daily Market Prices for ten (10) consecutive trading days immediately preceding the Valuation Date (except that, with respect to any REIT Share underlying any stock option, Value shall mean the term "Fair Market Value" or term of similar import set forth in the Equity Plan under which such stock option was granted). The term "*Market Price*" on any date means, with respect to any class or series of outstanding REIT Shares, the Closing Price for such REIT Shares on such date. The "*Closing Price*" on any date means the last sale price for such REIT Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such REIT Shares, in either case as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such REIT Shares are listed or admitted to trading or, if such REIT Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such REIT Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such REIT Shares selected by the Board of Directors or, in the event that no trading price is available for such REIT Shares, the fair market value of the REIT Shares, as determined by the Board of Directors.

In the event that the REIT Shares Amount includes Rights that a holder of REIT Shares would be entitled to receive, then the Value of such Rights shall be determined by the Managing Member on the basis of such quotations and other information as it considers appropriate.

"*Vested LTIP Units*" has the meaning set forth in Section 16.2(a) hereof.

"*Vesting Agreement*" has the meaning set forth in Section 16.2(a) hereof.

## ARTICLE 2
## ORGANIZATIONAL MATTERS

Section 2.1 *Conversion*. Effective at the effective time of the Conversion under the Act and immediately following the Merger, (i) the charter and the bylaws of the Converted Entity, shall be and hereby are replaced and superseded in their entirety by the Articles of Organization and this Agreement in respect of all periods beginning on or after the effective time of the Conversion, (ii) all of the issued and outstanding capital stock of the Converted Entity (consisting of 546,782,509 shares of common stock) held by the Managing Member was converted into all of the limited liability company interests in the Company, (iii) all of the capital stock in the Converted Entity issued and outstanding immediately prior to the effective time of the Conversion shall be and hereby is canceled on the books and records of the Converted Entity and (iv) the Managing Member, the sole stockholder of the Converted Entity, is hereby admitted to the Company as the sole member of the Company. Peter A. Scott is hereby designated as an authorized person within the meaning of the Act, and has executed, delivered and filed the Articles of Organization with the SDAT. Upon acceptance of the Articles of Organization by the SDAT, his powers as an "authorized person" ceased, and the Managing Member thereupon became a designated "authorized person" within the meaning of the Act. The Managing Member hereby ratifies, confirms and approves the Articles of Organization and all actions taken by Peter A. Scott, in his capacity as an authorized person within the meaning of the Act. The Managing Member shall do, and continue to do, all other things that are required or advisable to maintain the Company as a limited liability company existing pursuant to the laws of the State of Maryland. The Managing Member shall execute, deliver and file any other certificates (and any amendment and/or restatements thereof) required to be filed under the Act or necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business. The Company is a limited liability company organized pursuant to the provisions of the Act and upon the terms and subject to the conditions set forth in this Agreement. Except as expressly provided herein to the contrary, the rights and obligations of the Members and the administration and termination of the Company shall be governed by the Act. The Membership Interest of each Member shall be personal property for all purposes.

Section 2.2 *Name*. The name of the Company is "Healthpeak OP, LLC". The Company's business may be conducted under any other name or names deemed advisable by the Managing Member, including the name of the Managing Member or any Affiliate thereof. The Managing Member in its sole and absolute discretion may change the name of the Company at any time and from time to time.

Section 2.3 *Principal Office and Resident Agent; Principal Executive Office*. The address of the principal office of the Company in the State of Maryland as of the date hereof is c/o The Corporation Trust Incorporated, 2405 York Road, Suite 201, Lutherville Timonium, Maryland 21093-2264, and the name and address of the resident agent for service of process on the Company in the State of Maryland as of the date hereof is The Corporation Trust Incorporated. The Managing Member may, from time to time, designate a new resident agent and/or principal office in the State of Maryland for the Company and, notwithstanding any provision in this Agreement, may amend this Agreement and the Articles of Organization to reflect such designation without the Consent of the Members or any other Person. The principal executive office of the Company shall be c/o Healthpeak Properties, Inc., 4600 South Syracuse Street, Suite 500, Denver, CO 80237, or such other place as the Managing Member may from time to time designate by notice to the Members. The Company may maintain offices at such other place or places within or outside the State of Maryland as the Managing Member may from time to time designate.

Section 2.4 *Power of Attorney*.

(a) Each Member and Assignee hereby irrevocably constitutes and appoints the Managing Member, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to:

(i) execute, swear to, seal, acknowledge, deliver, file and record in the appropriate public offices: (A) all certificates, documents and other instruments (including, without limitation, this Agreement and the Articles of Organization and all amendments, supplements or restatements thereof) that the Managing Member or the Liquidator deems appropriate or necessary to form, qualify or continue the existence or qualification of the Company as a limited liability company in the State of Maryland and in all other jurisdictions in which the Company may conduct business or own property; (B) all instruments that the Managing Member or any Liquidator deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (C) all conveyances and other instruments or documents that the Managing Member or the Liquidator deems appropriate or necessary to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement, including, without limitation, a certificate of cancellation; (D) all conveyances and other instruments or documents that the Managing Member or the Liquidator deems appropriate or necessary to reflect the distribution or exchange of assets of the Company pursuant to the terms of this Agreement; (E) all instruments relating to the admission, acceptance, withdrawal, removal or substitution of any Member pursuant to the terms of this Agreement or the Capital Contribution of any Member; and (F) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges relating to Membership Interests; and

(ii) execute, swear to, acknowledge and file all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the sole and absolute discretion of the Managing Member or any Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Members hereunder or is consistent with the terms of this Agreement.

Nothing contained herein shall be construed as authorizing the Managing Member or any Liquidator to amend this Agreement except in accordance with Section 14.2 hereof or as may be otherwise expressly provided for in this Agreement.

(b) The foregoing power of attorney is hereby declared to be irrevocable and a special power coupled with an interest, in recognition of the fact that each of the Members and Assignees will be relying upon the power of the Managing Member or the Liquidator to act as contemplated by this Agreement in any filing or other action by it on behalf of the Company, and it shall survive and not be affected by the subsequent Incapacity of any Member or Assignee and the Transfer of all or any portion of such Person's Membership Interest and shall extend to such Person's heirs, successors, assigns and personal representatives. Each such Member and Assignee hereby agrees to be bound by any representation made by the Managing Member or the Liquidator, acting in good faith pursuant to such power of attorney; and, to the fullest extent permitted by law, each such Member and Assignee hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the Managing Member or the Liquidator, taken in good faith under such power of attorney. Each Member and Assignee shall execute and deliver to the Managing Member or the Liquidator, within fifteen (15) days after receipt of the Managing Member's or the Liquidator's request therefor, such further designation, powers of attorney and other instruments as the Managing Member or the Liquidator (as the case may be) deems necessary to effectuate this Agreement and the purposes of the Company. Notwithstanding anything else set forth in this Section 2.4(b), no Member shall incur any personal liability for any action of the Managing Member or the Liquidator taken under such power of attorney.

Section 2.5 *Term*. The term of the Company commenced on February 10, 2023, and shall continue indefinitely unless the Company is dissolved sooner pursuant to the provisions of Article 13 hereof or as otherwise provided by law.

Section 2.6 *Membership Interests Are Securities*. All Membership Interests shall be securities within the meaning of, and governed by, (i) Article 8 of the Maryland Uniform Commercial Code and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction.

## ARTICLE 3
## PURPOSE

Section 3.1 *Purpose and Business*. The purpose and nature of the Company is to conduct any business, enterprise or activity permitted by or under the Act, whether directly or through one or more partnerships, joint ventures, Subsidiaries, business trusts, limited liability companies or similar arrangements.

Section 3.2 *Powers*. The Company shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Company including, without limitation, full power and authority, directly or through its ownership interest in other entities, to enter into, perform and carry out contracts of any kind, to borrow and lend money and to issue evidence of indebtedness, whether or not secured by mortgage, deed of trust, pledge or other lien, to acquire, own, manage, improve and develop real property and lease, sell, transfer and dispose of real property.

Section 3.3 *Nature of Relationship of Members*. The Company shall be a limited liability company formed pursuant to the Act, and this Agreement shall not be deemed to create a venture or partnership between or among the Members or any other Persons with respect to any activities whatsoever. Except as otherwise provided in this Agreement, no Member shall have any authority to act for, bind, commit or assume any obligation or responsibility on behalf of the Company, its properties or any other Member. No Member, in its capacity as a Member under this Agreement, shall be responsible or liable for any indebtedness or obligation of another Member, nor shall the Company be responsible or liable for any indebtedness or obligation of any Member, incurred either before or after the execution and delivery of this Agreement by such Member, except as to those responsibilities, liabilities, indebtedness or obligations incurred pursuant to, and as limited by, the terms of this Agreement and the Act.

Section 3.4 *Representations and Warranties by the Members*.

(a) Each Member that is an individual (including, without limitation, each Additional Member or Substituted Member as a condition to becoming an Additional Member or a Substituted Member) represents and warrants to, and covenants with, each other Member that (i) the consummation of the transactions contemplated by this Agreement to be performed by such Member will not result in a breach or violation of, or a default under, any material agreement by which such Member or any of such Member's property is bound, or any statute, regulation, order or other law to which such Member is subject, (ii) if five percent (5%) or more (by value) of the Company's interests are or will be owned by such Member within the meaning of Code Section 7704(d)(3), such Member does not, and for so long as it is a Member will not, own, directly or indirectly, (A) stock of any corporation that is a tenant of (I) the Managing Member or any Disregarded Entity with respect to the Managing Member, (II) the Company or (III) any partnership, venture, trust, limited liability company or other entity of which the Managing Member, any Disregarded Entity with respect to the Managing Member, or the Company is a direct or indirect partner, beneficial owner or member or (B) an interest in the assets or net profits of any non-corporate tenant of (I) the Managing Member or any Disregarded Entity with respect to the Managing Member, (II) the Company or (III) any partnership, venture, trust, limited liability company or other entity of which the Managing Member, any Disregarded Entity with respect to the Managing Member, or the Company is a direct or indirect partner, beneficial owner or member, (iii) such Member has the legal capacity to enter into this Agreement and perform such Member's obligations hereunder, and (iv) this Agreement is binding upon, and enforceable against, such Member in accordance with its terms. Notwithstanding the foregoing, a Member that is an individual shall not be subject to the ownership restrictions set forth in clause (ii) of the immediately preceding sentence to the extent such Member obtains the written Consent of the Managing Member prior to violating any such restrictions, which consent the Managing Member may give or withhold in its sole and absolute discretion. Each Member that is an individual shall also represent and warrant to the Company that such Member is neither a "foreign person" within the meaning of Code Section 1445(f) nor a foreign partner within the meaning of Code Section 1446(e).

(b) Each Member that is not an individual (including, without limitation, each Additional Member or Substituted Member as a condition to becoming an Additional Member or a Substituted Member) represents and warrants to, and covenants with, each other Member that (i) all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action, including, without limitation, that of its general partner(s), managing member(s), member(s), committee(s), trustee(s), beneficiaries, directors and/or stockholder(s) (as the case may be) as required, (ii) the consummation of such transactions shall not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, charter or bylaws (as the case may be) any material agreement by which such Member or any of such Member's properties or any of its partners, members, beneficiaries, trustees or stockholders (as the case may be) is or are bound, or any statute, regulation, order or other law to which such Member or any of its partners, members, trustees, beneficiaries or stockholders (as the case may be) is or are subject, (iii) if five percent (5%) or more (by value) of the Company's interests are or will be owned by such Member within the meaning of Code Section 7704(d)(3), such Member does not, and for so long as it is a Member will not, own, directly or indirectly, (A) stock of any corporation that is a tenant of (I) the Managing Member or any Disregarded Entity with respect to the Managing Member, (II) the Company or (III) any partnership, venture, trust, limited liability company or other entity of which the Managing Member, any Managing Member, any Disregarded Entity with respect to the Managing Member, or the Company is a direct or indirect partner, beneficial owner or member or (B) an interest in the assets or net profits of any non-corporate tenant of (I) the Managing Member, or any Disregarded Entity with respect to the Managing Member, (II) the Company or (III) any partnership, venture, trust, limited liability company or other entity for which the Managing Member, any Managing Member, any Disregarded Entity with respect to the Managing Member, or the Company is a direct or indirect partner, beneficial owner or member, and (iv) this Agreement is binding upon, and enforceable against, such Member in accordance with its terms. Notwithstanding the foregoing, a Member that is not an individual shall not be subject to the ownership restrictions set forth in clause (iii) of the immediately preceding sentence to the extent such Member obtains the written Consent of the Managing Member prior to violating any such restrictions, which consent the Managing Member may give or withhold in its sole and absolute discretion. Each Member that is not an individual shall also represent and warrant to the Company that such Member is neither a "foreign person" within the meaning of Code Section 1445(f) nor a foreign partner within the meaning of Code Section 1446(e).

(c) Each Member (including, without limitation, each Additional Member or Substituted Member as a condition to becoming an Additional Member or Substituted Member) represents, warrants and agrees that (i) it has acquired and continues to hold its interest in the Company for its own account for investment purposes only and not for the purpose of, or with a view toward, the resale or distribution of all or any part thereof in violation of applicable laws, and not with a view toward selling or otherwise distributing such interest or any part thereof at any particular time or under any predetermined circumstances in violation of applicable laws and (ii) it is a sophisticated investor, able and accustomed to handling sophisticated financial matters for itself, particularly real estate investments, and that it has a sufficiently high net worth that it does not anticipate a need for the funds that it has invested in the Company in what it understands to be a highly speculative and illiquid investment.

(d) The representations and warranties contained in Sections 3.4(a), 3.4(b) and 3.4(c) hereof shall survive the execution and delivery of this Agreement by each Member (and, in the case of an Additional Member or a Substituted Member, the admission of such Additional Member or Substituted Member as a Member in the Company) and the dissolution, liquidation and termination of the Company.

(e) Each Member (including, without limitation, each Additional Member or Substituted Member as a condition to becoming an Additional Member or Substituted Member) hereby acknowledges that no representations as to potential profit, cash flows, funds from operations or yield, if any, in respect of the Company or the Managing Member have been made by any Member or any employee or representative or Affiliate of any Member, and that projections and any other information, including, without limitation, financial and descriptive information and documentation, that may have been in any manner submitted to such Member shall not constitute any representation or warranty of any kind or nature, express or implied.

(f) Notwithstanding the foregoing, the Managing Member may, in its sole and absolute discretion, permit the modification of any of the representations and warranties contained in Sections 3.4(a), 3.4(b) and 3.4(c) above as applicable to any Member (including, without limitation any Additional Member or Substituted Member or any transferee of either), *provided* that such representations and warranties, as modified, shall be set forth in either (i) a Membership Unit Designation applicable to the Membership Units held by such Member or (ii) a separate writing addressed to the Company and the Managing Member.

## ARTICLE 4
## CAPITAL CONTRIBUTIONS

Section 4.1 *Capital Contributions of the Members*. The Members have heretofore made or are deemed to have made Capital Contributions to the Company. Except as provided by law or in Section 4.2, 4.3, or 10.4 hereof, the Members shall have no obligation or, except with the prior Consent of the Managing Member, right to make any additional Capital Contributions or loans to the Company. The Managing Member shall cause to be maintained in the principal business office of the Company, or such other place as may be determined by the Managing Member, the Member Registry of the Company, which shall include, among other things, the name, address, and number, class and series of Membership Units of each Member, and such other information as the Managing Member may deem necessary or desirable. The Member Registry shall not be part of this Agreement. The Managing Member shall from time to time update the Member Registry as necessary to accurately reflect the information therein, including as a result of any sales, exchanges or other Transfers, or any redemptions, issuances or similar events involving Membership Units. Any reference in this Agreement to the Member Registry shall be deemed a reference to the Member Registry as in effect from time to time. Subject to the terms of this Agreement, the Managing Member may take any action authorized hereunder in respect of the Member Registry without any need to obtain the consent or approval of any other Member. No action of any Member shall be required to amend or update the Member Registry. Except as required by law, no Member shall be entitled to receive a copy of the information set forth in the Member Registry relating to any Member other than itself.

Section 4.2 *Issuances of Additional Membership Interests*. Subject to the rights of any Holder of any Membership Interest set forth in a Membership Unit Designation:

(a) *General*. Subject to the terms of this Agreement, including Section 4.2(c), below, the Managing Member is hereby authorized to cause the Company to issue additional Membership Interests, in the form of Membership Units, for any Company purpose, at any time or from time to time, to the Members (including the Managing Member) or to other Persons, and to admit such Persons as Additional Members, for such consideration and on such terms and conditions as shall be established by the Managing Member in its sole and absolute discretion, all without the approval of any Member or any other Person. Without limiting the foregoing, the Managing Member is expressly authorized to cause the Company to issue Membership Units (i) upon the conversion, redemption or exchange of any Debt, Membership Units, or other securities issued by the Company, (ii) for less than fair market value, (iii) for no consideration, (iv) in connection with any merger of any other Person into the Company or any other Subsidiary of the Managing Member or (v) upon the contribution of property or assets to the Company. Any additional Membership Interests may be issued in one or more classes or series, or one or more series of any of such classes, with such designations, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption (including, without limitation, terms that may be senior or otherwise entitled to preference over existing Membership Units) as shall be determined by the Managing Member, in its sole and absolute discretion without the approval of any Member or any other Person, and set forth in this Agreement or a written document thereafter attached to and made an exhibit to this Agreement, which exhibit shall be an amendment to this Agreement and shall be incorporated herein by this reference (each, a "*Membership Unit Designation*"), without the approval of any Member or any other Person. Without limiting the generality of the foregoing, the Managing Member shall have authority to specify: (A) the allocations of items of Company income, gain, loss, deduction and credit to each such class or series of Membership Interests; (B) the right of each such class or series of Membership Interests to share (on a *pari passu*, junior or preferred basis) in Company distributions; (C) the rights of each such class or series of Membership Interests upon dissolution and liquidation of the Company; (D) the voting rights, if any, of each such class or series of Membership Interests; and (E) the conversion, redemption or exchange rights applicable to each such class or series of Membership Interests. Except as expressly set forth in any Membership Unit Designation, a Membership Interest of any class or series other than a Common Unit shall not entitle the holder thereof to vote on, or consent to, any matter. Upon the issuance of any additional Membership Interest, the Managing Member shall update the Member Registry and the books and records of the Company as appropriate to reflect such issuance.

(b) *Issuances of LTIP Units*. Without limiting the generality of the foregoing, from time to time, the Managing Member is hereby authorized to issue LTIP Units to Persons providing services to or for the benefit of the Company for such consideration or for no consideration as the Managing Member may determine to be appropriate and on such terms and conditions as shall be established by the Managing Member, and admit such Persons as Members. Except to the extent a Capital Contribution is made with respect to an LTIP Unit or as otherwise determined by the Managing Member, each LTIP Unit is intended to qualify as a "profits interest" in the Company within the meaning of the Code, the Regulations, and any published guidance by the IRS with respect thereto. Except as may be provided from time to time by the Managing Member, LTIP Units shall have the terms set forth in Article 16.

(c) *Issuances to the Managing Member*. No additional Membership Units shall be issued to the Managing Member unless (i) the additional Membership Units are issued to all Members holding Common Units in proportion to their respective Percentage Interests in Common Units, (ii) (A) the additional Membership Units are (I) Common Units issued in connection with an issuance of REIT Shares, or (II) Membership Equivalent Units (other than Common Units) issued in connection with an issuance of Preferred Shares, New Securities or other interests in the Managing Member (other than REIT Shares), and (B) the Managing Member contributes to the Company the cash proceeds or other consideration received in connection with the issuance of such REIT Shares, Preferred Shares, New Securities or other interests in the Managing Member; (iii) the additional Membership Units are issued upon the conversion, redemption or exchange of Debt, Membership Units or other securities issued by the Company or (iv) the additional Membership Units are issued pursuant to Section 4.3(b), Section 4.3(e), Section 4.4 or Section 4.5.

(d) *No Preemptive Rights*. Except as expressly provided in this Agreement or in any Membership Unit Designation, no Person, including, without limitation, any Member or Assignee, shall have any preemptive, preferential, participation or similar right or rights to subscribe for or acquire any Membership Interest.

Section 4.3 *Additional Funds and Capital Contributions*.

(a) *General*. The Managing Member may, at any time and from time to time, determine that the Company requires additional funds ("*Additional Funds*") for the acquisition or development of additional Properties, for the redemption of Membership Units or for such other purposes as the Managing Member may determine, in its sole and absolute discretion. Additional Funds may be obtained by the Company, at the election of the Managing Member, in any manner provided in, and in accordance with, the terms of this Section 4.3 without the approval of any Member or any other Person.

(b) *Additional Capital Contributions*. The Managing Member, on behalf of the Company, may obtain any Additional Funds by accepting Capital Contributions from any Members or other Persons. In connection with any such Capital Contribution (of cash or property), the Managing Member is hereby authorized to cause the Company from time to time to issue additional Membership Units (as set forth in Section 4.2 above) in consideration therefor.

(c) *Loans by Third Parties*. The Managing Member, on behalf of the Company, may obtain any Additional Funds by causing the Company to incur Debt to any Person (other than to the Managing Member (but, for this purpose, disregarding any Debt that may be deemed incurred to the Managing Member by virtue of clause (c) of the definition of Debt)) upon such terms as the Managing Member determines appropriate, including making such Debt convertible, redeemable or exchangeable for Membership Units or REIT Shares; *provided*, *however*, that the Company shall not incur any such Debt if any Member would be personally liable for the repayment of such Debt (unless such Member otherwise agrees).

(d) *Managing Member Loans*. The Managing Member, on behalf of the Company, may obtain any Additional Funds by causing the Company to incur Debt to the Managing Member if (i) such Debt is, to the extent permitted by law, on substantially the same terms and conditions as to interest rate and repayment schedule (but, for avoidance of doubt, such Debt may have differing conversion, redemption, repurchase and exchange rights) as Funding Debt incurred by the Managing Member, the net proceeds of which are loaned to the Company to provide such Additional Funds, or (ii) such Debt is on terms and conditions no less favorable to the Company than would be available to the Company from any third party; *provided*, *however*, that the Company shall not incur any such Debt if any Member would be personally liable for the repayment of such Debt (unless such Member otherwise agrees).

(e) *Issuance of Securities by the Managing Member*. The Managing Member shall not issue any additional REIT Shares, Capital Shares or New Securities unless the Managing Member contributes the cash proceeds or other consideration received from the issuance of such additional REIT Shares, Capital Shares or New Securities (as the case may be) and from the exercise of the rights contained in any such additional Capital Shares or New Securities to the Company in exchange for (x) in the case of an issuance of REIT Shares, Common Units, or (y) in the case of an issuance of Capital Shares or New Securities, Membership Equivalent Units; *provided*, *however*, that notwithstanding the foregoing, the Managing Member may issue REIT Shares, Capital Shares or New Securities (i) pursuant to Section 4.4 or Section 15.1(b) hereof, (ii) pursuant to a dividend or distribution (including any stock split) of REIT Shares, Capital Shares or New Securities to holders of REIT Shares, Capital Shares or New Securities (as the case may be), (iii) upon a conversion, redemption or exchange of Capital Shares, (iv) upon a conversion, redemption, exchange or exercise of New Securities, or (v) in connection with an acquisition by the Managing Member of outstanding Membership Units or of any property or other asset to be owned, directly or indirectly, by the Managing Member. In the event of any issuance of additional REIT Shares, Capital Shares or New Securities by the Managing Member, and the contribution, if applicable, to the Company, by the Managing Member, of the cash proceeds or other consideration received from such issuance (or property acquired with such proceeds), if any, if the cash proceeds actually received by the Managing Member are less than the gross proceeds of such issuance as a result of any underwriter's discount or other expenses paid or incurred in connection with such issuance, then the Managing Member shall be deemed to have made a Capital Contribution to the Company in the amount equal to the sum of the cash proceeds of such issuance plus the amount of such underwriter's discount and other expenses paid by the Managing Member (which discount and expense shall be treated as an expense for the benefit of the Company for purposes of Section 7.4). In the event that the Managing Member issues any additional REIT Shares, Capital Shares or New Securities and contributes the cash proceeds or other consideration received from the issuance thereof to the Company, the Company is expressly authorized to issue a number of Common Units or Membership Equivalent Units to the Managing Member equal to the number of REIT Shares, Capital Shares or New Securities so issued, divided by the Adjustment Factor then in effect, in accordance with this Section 4.3(e) without any further act, approval or vote of any Member or any other Persons.

Section 4.4 *Equity Incentive Plans*. Nothing in this Agreement shall be construed or applied to preclude or restrain the Managing Member or the Company from adopting, modifying or terminating equity incentive plans for the benefit of employees, directors, consultants or other business associates or service providers of the Managing Member, the Company or any of their Affiliates or from issuing REIT Shares, Capital Shares, LTIP Units or New Securities pursuant to any such plans. The Managing Member may implement such plans and any actions taken under such plans (such as the grant or exercise of options to acquire REIT Shares, or the issuance of restricted REIT Shares), whether taken with respect to or by an employee or other service provider of the Managing Member, the Company or its Subsidiaries, in a manner determined by the Managing Member, which may be set forth in plan implementation guidelines that the Managing Member may establish or amend from time to time. The Members acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the Managing Member, amendments to this Agreement may become necessary or advisable and shall not require approval or Consent of any other Member. The Company is expressly authorized to issue Membership Units (a) in accordance with the terms of any such equity incentive plans or plan implementation guidelines or (b) in an amount equal to the number of REIT Shares, Capital Shares or New Securities issued pursuant to any such equity incentive plans, divided, if applicable, by the Adjustment Factor then in effect, without any further act, approval or vote of any Member or any other Persons.

Section 4.5 *Dividend Reinvestment Plan, Cash Option Purchase Plan, Equity Incentive Plan or Other Plan*. Except as may otherwise be provided in this Article 4, all amounts received or deemed received by the Managing Member in respect of any dividend reinvestment plan, cash option purchase plan, equity incentive or other equity or subscription plan or agreement, either (a) shall be utilized by the Managing Member to effect open market purchases of REIT Shares, or (b) if the Managing Member elects instead to issue new REIT Shares with respect to such amounts, shall be contributed by the Managing Member to the Company in exchange for additional Common Units. Upon such contribution, the Company will issue to the Managing Member a number of Common Units equal to the quotient of (i) the new REIT Shares so issued, divided by (ii) the Adjustment Factor then in effect.

Section 4.6 *No Interest; No Return*. No Member shall be entitled to interest on its Capital Contribution or on such Member's Capital Account. Except as *provided* herein or by law, no Member shall have any right to demand or receive the return of its Capital Contribution from the Company.

Section 4.7 *Conversion or Redemption of Capital Shares*.

(a) *Conversion of Capital Shares*. If, at any time, any of the Capital Shares are converted into REIT Shares, in whole or in part, then a number of Membership Units with preferences, conversion and other rights, restrictions (other than restrictions on transfer), rights and limitations as to dividends and other distributions, qualifications and terms and conditions of redemption that are substantially the same as the preferences, conversion and other rights, restrictions (other than restrictions on transfer), rights and limitations as to distributions, qualifications and terms and conditions of redemption as those of such Capital Shares ("*Membership Equivalent Units*") or, in the case of conversion rights and terms and conditions of redemption, consistent with this Section 4.7 (for the avoidance of doubt, Membership Equivalent Units need not have voting rights, conversion rights, terms and conditions of redemption or restrictions on transfer that are substantially similar to the corresponding Capital Shares) equal to the number of Capital Shares so converted shall automatically be converted into a number of Common Units equal to the quotient of (i) the number of REIT Shares issued upon such conversion divided by (ii) the Adjustment Factor then in effect, and the Member Registry shall be adjusted to reflect such conversion.

(b) *Redemption or Repurchase of Capital Shares or REIT Shares*. Except as otherwise provided in Section 4.7(c) or in Section 7.4(c), if, at any time, any Capital Shares are redeemed or otherwise repurchased (whether by exercise of a put or call, automatically or by means of another arrangement) by the Managing Member, the Company shall, immediately prior to such redemption or repurchase of Capital Shares, redeem an equal number of Membership Equivalent Units held by the Managing Member upon the same terms and for the same price per Membership Equivalent Unit as such Capital Shares are redeemed or repurchased. Except as otherwise provided in Section 4.7(c) or in Section 7.4(c), if, at any time, any REIT Shares are redeemed or otherwise repurchased by the Managing Member, the Company shall, immediately prior to such redemption or repurchase of REIT Shares, redeem or repurchase a number of Common Units held by the Managing Member equal to the quotient of (i) the REIT Shares so redeemed or repurchased, divided by (ii) the Adjustment Factor then in effect, such redemption or repurchase to be upon the same terms and for the same price per Common Unit (after giving effect to application of the Adjustment Factor) as such REIT Shares are redeemed or otherwise repurchased. Notwithstanding the foregoing, the provisions of this Section 4.7(b) shall not apply in the event that such repurchase of REIT Shares is paired with a stock split or stock dividend such that after giving effect to such repurchase and subsequent stock split or stock dividend there shall be outstanding an equal number of REIT Shares as were outstanding prior to such repurchase and subsequent stock split or stock dividend.

Section 4.8 *Other Contribution Provisions*. In the event that any Member is admitted to the Company and is given a Capital Account in exchange for services rendered to the Company, such transaction shall be treated by the Company and the affected Member as if the Company had compensated such partner in cash and such Member had contributed the cash that the Member would have received to the capital of the Company. In addition, with the Consent of the Managing Member, one or more Members may enter into contribution agreements with the Company which have the effect of providing a guarantee of certain obligations of the Company (and/or a wholly-owned Subsidiary of the Company).

**ARTICLE 5**
**DISTRIBUTIONS**

Section 5.1 *Requirement and Characterization of Distributions*. Subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member may cause the Company to distribute such amounts, at such times, as the Managing Member may, in its sole and absolute discretion, determine, to the Holders as of any Company Record Date: (a) first, with respect to any Membership Units that are entitled to any preference in distribution, in accordance with the rights of Holders of such class(es) of Membership Units (and, within each such class, among the Holders of each such class, pro rata in proportion to their respective Percentage Interests of such class on such Company Record Date); and (b) second, with respect to any Membership Units that are not entitled to any preference in distribution, in accordance with the rights of Holders of such class(es) of Membership Units, as applicable (and, within each such class, among the Holders of each such class, pro rata in proportion to their respective Percentage Interests of such class on such Company Record Date). Distributions payable with respect to any Membership Units, other than any Membership Units issued to the Managing Member in connection with the issuance of REIT Shares by the Managing Member, that were not outstanding during the entire quarterly period in respect of which any distribution is made, shall be prorated based on the portion of the period that such Membership Units were outstanding. The Managing Member shall make such reasonable efforts, as determined by it in its sole and absolute discretion and consistent with the Managing Member's qualification as a REIT, to cause the Company to distribute sufficient amounts to enable the Managing Member, for so long as the Managing Member has determined to qualify as a REIT, to pay stockholder dividends that will (i) satisfy the requirements for qualifying as a REIT under the Code and Regulations (the "*REIT Requirements*") and (ii) except to the extent otherwise determined by the Managing Member, eliminate any U.S. federal income or excise tax liability of the Managing Member. Notwithstanding anything in the foregoing to the contrary, a Holder of LTIP Units will only be entitled to distributions with respect to an LTIP Unit as set forth in Article 16 hereof and in making distributions pursuant to this Section 5.1, the Managing Member of the Company shall take into account the provisions of Section 16.4 hereof.

Section 5.2 *Distributions in Kind*. Except as expressly provided herein, no right is given to any Holder to demand and receive property other than cash as provided in this Agreement. The Managing Member may determine, in its sole and absolute discretion, to make a distribution in kind of Company assets to the Holders, and such assets shall be distributed in such a fashion as to ensure that the fair market value is distributed and allocated in accordance with Articles 5, 6 and 13 hereof; *provided*, *however*, that the Managing Member shall not make a distribution in kind to any Holder unless the Holder has been given 90 days prior written notice of such distribution.

Section 5.3 *Amounts Withheld*. All amounts withheld pursuant to the Code or any provisions of any state, local or non-United States tax law and Section 10.4 hereof with respect to any allocation, payment or distribution to any Holder shall be treated as amounts paid or distributed to such Holder pursuant to Section 5.1 hereof for all purposes under this Agreement.

Section 5.4 *Distributions upon Liquidation*. Notwithstanding the other provisions of this Article 5, net proceeds from a Terminating Capital Transaction, and any other amounts distributed after the occurrence of a Liquidating Event, shall be distributed to the Holders in accordance with Section 13.2 hereof.

Section 5.5 *Distributions to Reflect Additional Membership Units*. In the event that the Company issues additional Membership Units pursuant to the provisions of Article 4 hereof, subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member is authorized to make such revisions to this Article 5 and to Articles 6, 11 and 12 hereof as it determines are necessary or desirable to reflect the issuance of such additional Membership Units, including, without limitation, making preferential distributions to Holders of certain classes of Membership Units.

Section 5.6 *Restricted Distributions*. Notwithstanding any provision to the contrary contained in this Agreement, neither the Company nor the Managing Member, on behalf of the Company, shall make a distribution to any Holder if such distribution would violate the Act or other applicable law.

**ARTICLE 6**
**ALLOCATIONS**

Section 6.1 *Timing and Amount of Allocations of Net Income and Net Loss*. Net Income and Net Loss of the Company shall be determined and allocated with respect to each Fiscal Year as of the end of each such year, *provided* that the Managing Member may in its discretion allocate Net Income and Net Loss for a shorter period as of the end of such period (and, for purposes of this Article 6, references to the term "Fiscal Year" may include such shorter periods). Except as otherwise provided in this Article 6, and subject to Section 11.6(c) hereof, an allocation to a Holder of a share of Net Income or Net Loss shall be treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing Net Income or Net Loss.

Section 6.2 *General Allocations*. Except as otherwise provided in this Article 6 and Section 11.6(c) hereof, Net Income and Net Loss for any Fiscal Year shall be allocated to each of the Holders as follows:

(a) Net Income.

(i) First, 100% to the Managing Member in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to the Managing Member pursuant to clause (iv) in Section 6.2(b) for all prior Fiscal Years minus the cumulative Net Income allocated to the Managing Member pursuant to this clause (i) for all prior Fiscal Years;

(ii) Second, 100% to each Holder (other than the Managing Member) in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to each such Holder pursuant to clause (iii) in Section 6.2(b) for all prior Fiscal Years minus the cumulative Net Income allocated to such Holder pursuant to this clause (ii) for all prior Fiscal Years;

(iii) Third, 100% to the Managing Member in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to the Managing Member pursuant to clause (ii) in Section 6.2(b) for all prior Fiscal Years minus the cumulative Net Income allocated to the Managing Member pursuant to this clause (iii) for all prior Fiscal Years;

(iv) Fourth, 100% to each Holder in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to each such Holder pursuant to clause (i) in Section 6.2(b) for all prior Fiscal Years minus the cumulative Net Income allocated to such Holder pursuant to this clause (v) for all prior Fiscal Year; and

(v) Fifth, 100% to the Holders of Common Units in accordance with their respective Percentage Interests in the Common Units.

To the extent the allocations of Net Income set forth above in any paragraph of this Section 6.2(a) are not sufficient to entirely satisfy the allocation set forth in such paragraph, such allocation shall be made in proportion to the total amount that would have been allocated pursuant to such paragraph without regard to such shortfall. In making allocations pursuant to this Section 6.2(a) and Section 6.2(b), the Managing Member of the Company shall take into account the provisions of Section 16.5 hereof.

(b) Net Losses.

(i) First, 100% to the Holders of Common Units in accordance with their respective Percentage Interests in the Common Units (to the extent consistent with this clause (i)) until the Adjusted Capital Account (ignoring for this purpose any amounts a Holder is obligated to contribute to the capital of the Company or is deemed obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c)(2)) of all such Holders is zero;

(ii) Second, 100% to the Managing Member (ignoring for this purpose any amounts the Managing Member is obligated to contribute to the capital of the Company or is deemed obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c)(2)), until the Adjusted Capital Account (as so modified) of the Managing Member is zero;

(iii) Third, 100% to the Holders (other than the Managing Member) to the extent of, and in proportion to, the positive balance (if any) in their Adjusted Capital Accounts; and

(iv) Fourth, 100% to the Managing Member.

(c) *Allocations to Reflect Issuance of Additional Membership Interests*. In the event that the Company issues additional Membership Interests to the Managing Member or any Additional Member pursuant to Article 4 hereof, subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member is authorized to make such revisions to this Article 6 or to Articles 12 and 13 hereof as it determines are necessary or desirable to reflect the terms of the issuance of such additional Membership Interests, including making preferential allocations to certain classes of Membership Interests.

(d) *Special Allocations with Respect to LTIP Units*. In the event that Liquidating Gains are allocated under this Section 6.2(d), Net Income allocable under Section 6.2(a) and any Net Losses allocable under Section 6.2(b) shall be recomputed without regard to the Liquidating Gains so allocated. After giving effect to the special allocations set forth in Section 6.4(a) hereof, and notwithstanding the provisions of Sections 6.2(a) and 6.2(b) above, any Liquidating Gains shall first be allocated to the Holders of LTIP Units until the Economic Capital Account Balances of such Holders, to the extent attributable to their ownership of LTIP Units, are equal to (i) the Common Unit Economic Balance, multiplied by (ii) the number of their LTIP Units. Any such allocations shall be made among the Holders of LTIP Units in proportion to the amounts required to be allocated to each under this Section 6.2(d). The parties agree that the intent of this Section 6.2(d) is to make the Capital Account balances of the Holders of LTIP Units with respect to their LTIP Units economically equivalent to the Capital Account balance of the Managing Member with respect to its Common Units.

Section 6.3 *Additional Allocation Provisions*. Notwithstanding the foregoing provisions of this Article 6:

(a) *Special Allocations Upon Liquidation*. In the event that the Company disposes of all or substantially all of its assets in a transaction that will lead to a liquidation of the Company pursuant to Article 13 hereof, then: (i) any Liquidating Gains shall first be allocated to each Holder of LTIP Units in accordance with Section 6.2(d); and (ii) any Net Income or Net Loss realized in connection with such transaction and thereafter (recomputed without regard to the Liquidating Gains allocated pursuant to clause (i) above) shall be specially allocated for such Fiscal Year (and to the extent permitted by Section 761(c) of the Code, for the immediately preceding Fiscal Year) among the Holders as required so as to cause liquidating distributions pursuant to Section 13.2(a)(iv) hereof to be made in the same amounts and proportions as would have resulted had such distributions instead been made pursuant to Article 5 hereof. In addition, if there is an adjustment to the Gross Asset Value of the assets of the Company pursuant to paragraph (b) of the definition of Gross Asset Value, allocations of Net Income or Net Loss arising from such adjustment shall be allocated in the same manner as described in the prior sentence.

(b) *Offsetting Allocations*. Notwithstanding the provisions of Sections 6.1, 6.2(a) and 6.2(b), but subject to Sections 6.3 and 6.4, in the event Net Income or items thereof are being allocated to a Member to offset prior Net Loss or items thereof which have been allocated to such Member (including any allocations of Net Income or items thereof pursuant to Section 6.3(a)), the Managing Member shall attempt to allocate such offsetting Net Income or items thereof which are of the same or similar character (including without limitation Section 704(b) book items versus tax items) to the original allocations with respect to such Member.

Section 6.4 *Regulatory Allocation Provisions*. Notwithstanding the foregoing provisions of this Article 6:

(a) Regulatory Allocations.

(i) *Minimum Gain Chargeback*. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding the provisions of Section 6.2 hereof, or any other provision of this Article 6, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Holder shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Company Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Holder pursuant thereto. The items to be allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.4(a)(i) is intended to qualify as a "minimum gain chargeback" within the meaning of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Member Minimum Gain Chargeback*. Except as otherwise provided in Regulations Section 1.704-2(i)(4) or in Section 6.4(a)(i) hereof, if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Holder who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 6.4(a)(ii) is intended to qualify as a "chargeback of partner nonrecourse debt minimum gain" within the meaning of Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(iii) *Nonrecourse Deductions and Member Nonrecourse Deductions*. Any Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Holders in accordance with their respective Percentage Interests with respect to Common Units. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Holder(s) who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable, in accordance with Regulations Section 1.704-2(i).

(iv) *Qualified Income Offset*. If any Holder unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated, in accordance with Regulations Section 1.704-1(b)(2)(ii)(d), to such Holder in an amount and manner sufficient to eliminate, to the extent required by such Regulations, the Adjusted Capital Account Deficit of such Holder as quickly as possible, *provided* that an allocation pursuant to this Section 6.4(a)(iv) shall be made if and only to the extent that such Holder would have an Adjusted Capital Account Deficit after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.4(a)(iv) were not in the Agreement. It is intended that this Section 6.4(a)(iv) qualify and be construed as a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(v) *Gross Income Allocation*. In the event that any Holder has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (1) the amount (if any) that such Holder is obligated to restore to the Company upon complete liquidation of such Holder's Membership Interest (including, the Holder's interest in outstanding Preferred Units and other Membership Units) and (2) the amount that such Holder is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Holder shall be specially allocated items of Company income and gain in the amount of such excess to eliminate such deficit as quickly as possible, *provided* that an allocation pursuant to this Section 6.4(a)(v) shall be made if and only to the extent that such Holder would have a deficit Capital Account in excess of such sum after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.4(a)(v) and Section 6.4(a)(iv) hereof were not in the Agreement.

(vi) *Limitation on Allocation of Net Loss*. To the extent that any allocation of Net Loss would cause or increase an Adjusted Capital Account Deficit as to any Holder, such allocation of Net Loss shall be reallocated (x) first, among the other Holders of Common Units in accordance with their respective Percentage Interests with respect to Common Units and (y) thereafter, among the Holders of other classes of Membership Units as determined by the Managing Member, subject to the limitations of this Section 6.4(a)(vi).

(vii) *Section 754 Adjustment*. To the extent that an adjustment to the adjusted tax basis of any Membership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Holder in complete liquidation of its interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Holders in accordance with their respective Percentage Interests with respect to Common Units. in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Holder(s) to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(viii) *Curative Allocations*. The allocations set forth in Sections 6.4(a)(i), (ii), (iii), (iv), (v), (vi) and (vii) hereof (the "*Regulatory Allocations*") are intended to comply with certain regulatory requirements, including the requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding the provisions of Sections 6.1 and 6.2 hereof, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Holders so that to the extent possible without violating the requirements giving rise to the Regulatory Allocations, the net amount of such allocations of other items and the Regulatory Allocations to each Holder shall be equal to the net amount that would have been allocated to each such Holder if the Regulatory Allocations had not occurred.

(ix) *Forfeiture Allocations*. Upon a forfeiture of any Unvested LTIP Units by any Member, gross items of income, gain, loss or deduction shall be allocated to such Member if and to the extent required by final Regulations promulgated after the Effective Date to ensure that allocations made with respect to all unvested Membership Interests are recognized under Code Section 704(b).

(x) *LTIP Units*. For purposes of the allocations set forth in this Section 6.4, each issued and outstanding LTIP Unit will be treated as one outstanding Common Unit; provided, however, that for purposes of determining Percentage Interests with respect to Common Units, each Performance LTIP Unit that has not satisfied the applicable performance vesting condition will be treated as a fraction of one outstanding Common Unit equal to one Common Unit multiplied by the Performance Unit Sharing Percentage.

(b) Allocation of Excess Nonrecourse Liabilities. For purposes of determining a Holder's proportional share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), each Holder's respective interest in Company profits shall be equal to such Holder's Percentage Interest with respect to Common Units, except as otherwise determined by the Managing Member.

Section 6.5 *Tax Allocations*.

(a) In General. Except as otherwise provided in this Section 6.5, for income tax purposes under the Code and the Regulations, each Company item of income, gain, loss and deduction (collectively, "*Tax Items*") shall be allocated among the Holders in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Sections 6.2 and 6.3 hereof.

(b) Section 704(c) Allocations. Notwithstanding Section 6.5(a) hereof, Tax Items with respect to Property that is contributed to the Company with an initial Gross Asset Value that varies from its basis in the hands of the contributing Member immediately preceding the date of contribution shall be allocated among the Holders for income tax purposes pursuant to Regulations promulgated under Code Section 704(c) so as to take into account such variation. The Company shall account for such variation under any method approved under Code Section 704(c) and the applicable Regulations as chosen by the Managing Member. In the event that the Gross Asset Value of any Company asset is adjusted pursuant to subsection (b) of the definition of "Gross Asset Value" (provided in Article 1 hereof), subsequent allocations of Tax Items with respect to such asset shall take account of the variation, if any, between the adjusted basis of such asset and its Gross Asset Value in the same manner as under Code Section 704(c) and the applicable Regulations and using the method chosen by the Managing Member. Allocations pursuant to this Section 6.5(b) are solely for purposes of federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income, Net Loss, or any other items or distributions pursuant to any provision of this Agreement.

**ARTICLE 7**
**MANAGEMENT AND OPERATIONS OF BUSINESS**

Section 7.1 *Management*.

(a) Except as otherwise expressly provided in this Agreement, including in any Membership Unit Designation, all management powers over the business and affairs of the Company are and shall be exclusively vested in the Managing Member, and no Member shall have any right to participate in or exercise control or management power over the business and affairs of the Company. No Managing Member may be removed by the Members, with or without cause, except with the Consent of the Managing Member. In addition to the powers now or hereafter granted a managing member of a limited liability company under applicable law or that are granted to the Managing Member under any other provision of this Agreement, the Managing Member, subject to the other provisions hereof including, without limitation, Section 3.2 and Section 7.3, and the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, shall have full and exclusive power and authority, without the consent or approval of any Member, to do or authorize all things deemed necessary or desirable by it to conduct the business and affairs of the Company, to exercise or direct the exercise of all of the powers of the Company and a managing member under the Act, the Articles of Organization and this Agreement and to effectuate the purposes of the Company including, without limitation:

(i) the making of any expenditures, the lending or borrowing of money or selling of assets (including, without limitation, making prepayments on loans and borrowing money to permit the Company to make distributions to the Holders in such amounts as will permit the Managing Member to prevent the imposition of any federal income tax on the Managing Member (including, for this purpose, any excise tax pursuant to Code Section 4981), to make distributions to its stockholders and payments to any taxing authority sufficient to permit the Managing Member to maintain REIT status or otherwise to satisfy the REIT Requirements), the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness (including the securing of same by deed to secure debt, mortgage, deed of trust, pledge or other lien or encumbrance on the Company's assets) and the incurring of any obligations to conduct the activities of the Company;

(ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Company;

(iii) the taking of any and all acts to ensure that the Company will not be classified as a "publicly traded partnership" under Code Section 7704;

(iv) subject to Section 11.2 hereof, the acquisition, sale, transfer, exchange or other disposition of any, all or substantially all of the assets (including the goodwill) of the Company (including, but not limited to, the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Company) or the merger, division, consolidation, reorganization or other combination of the Company with or into another entity;

(v) the mortgage, pledge, encumbrance or hypothecation of any assets of the Company, the assignment of any assets of the Company in trust for creditors or on the promise of the assignee to pay the debts of the Company, the use of the assets of the Company (including, without limitation, cash on hand) for any purpose consistent with the terms of this Agreement and on any terms that the Managing Member sees fit, including, without limitation, the financing of the operations and activities of the Managing Member, the Company or any of the Company's Subsidiaries, the lending of funds to other Persons (including, without limitation, the Managing Member and/or the Company's Subsidiaries) and the repayment of obligations of the Company, its Subsidiaries and any other Person in which the Company has an equity investment, and the making of capital contributions to and equity investments in the Company's Subsidiaries;

(vi) the management, operation, leasing, landscaping, repair, alteration, demolition, replacement or improvement of any Property;

(vii) the negotiation, execution and performance of any contracts, including leases (including ground leases), easements, management agreements, rights of way and other property-related agreements, conveyances or other instruments to conduct the Company's operations or implement the Managing Member's powers under this Agreement, including contracting with contractors, developers, consultants, governmental authorities, accountants, legal counsel, other professional advisors and other agents and the payment of their expenses and compensation, as applicable, out of the Company's assets;

(viii) the distribution of Company cash or other Company assets in accordance with this Agreement, the holding, management, investment and reinvestment of cash and other assets of the Company, and the collection and receipt of revenues, rents and income of the Company;

(ix) the selection, appointment and dismissal of employees or officers of the Company (if any) (including, without limitation, employees or officers having titles or offices such as "president," "vice president," "secretary" and "treasurer"), and agents, outside attorneys, accountants, consultants and contractors of the Company and the determination of their compensation, powers, authorities and other terms of employment, appointment or hiring;

(x) the maintenance of such insurance (including, without limitation, directors' and officers' insurance) for the benefit of the Company and the Members (including, without limitation, the Managing Member);

(xi) the formation of, or acquisition of an interest in, and the contribution of property to, any further limited or general partnership, limited liability companies, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of property to, any Subsidiary and any other Person in which the Managing Member has an equity investment from time to time);

(xii) the control of any matters affecting the rights and obligations of the Company, including the settlement, compromise, submission to arbitration or any other form of dispute resolution, or abandonment, of any claim, cause of action, liability, debt or damages, due or owing to or from the Company, the commencement or defense of suits, legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, and the representation of the Company in all suits or legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, the incurring of legal expense, and the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(xiii) the undertaking of any action in connection with the Company's direct or indirect investment in any Subsidiary or any other Person (including, without limitation, the contribution or loan of funds by the Company to such Persons);

(xiv) the determination of the fair market value of any Company property distributed in kind using such reasonable method of valuation as the Managing Member may adopt; *provided*, *however*, that such methods are otherwise consistent with the requirements of this Agreement;

(xv) the enforcement of any rights against any Member pursuant to representations, warranties, covenants and indemnities relating to such Member's contribution of property or assets to the Company;

(xvi) the exercise, directly or indirectly, through any attorney-in-fact acting under a general or limited power of attorney, of any right, including the right to vote, appurtenant to any asset or investment held by the Company;

(xvii) the exercise of any of the powers of the Managing Member enumerated in this Agreement on behalf of or in connection with any Subsidiary of the Company or any other Person in which the Company has a direct or indirect interest, or jointly with any such Subsidiary or other Person;

(xviii) an election to acquire Tendered Units in exchange for REIT Shares;

(xix) the exercise of any of the powers of the Managing Member enumerated in this Agreement on behalf of any Person in which the Company does not have an interest, pursuant to contractual or other arrangements with such Person;

(xx) the making, execution and delivery of any and all deeds, leases, notes, deeds to secure debt, mortgages, deeds of trust, security agreements, conveyances, contracts, guarantees, warranties, indemnities, waivers, releases, confessions of judgment or any other legal instruments or agreements in writing;

(xxi) the issuance of additional Membership Units in connection with Capital Contributions by Additional Members and additional Capital Contributions by Members pursuant to Article 4 hereof;

(xxii) an election to dissolve the Company pursuant to Section 13.1(b) hereof;

(xxiii) the distribution of cash to acquire Common Units held by a Member in connection with a Redemption under Section 15.1 hereof;

(xxiv) the maintenance of the Member Registry from time to time to reflect accurately at all times the Membership Units, Capital Contributions and Percentage Interests of the Members as the same are adjusted from time to time to reflect redemptions, Capital Contributions, the issuance or transfer of Membership Units, the admission of any Additional Member or any Substituted Member or otherwise, which shall not be deemed an amendment to this Agreement, as long as the matter or event being reflected in the Member Registry otherwise is authorized by this Agreement; and

(xxv) the registration of any class of securities of the Company under the Securities Act or the Exchange Act, and the listing of any debt securities of the Company on any exchange.

(b) Each of the Members agrees that, except as provided in Section 7.3 hereof and subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member is authorized to execute and deliver any affidavit, agreement, certificate, consent, instrument, notice, power of attorney, waiver or other writing or document in the name and on behalf of the Company and to otherwise exercise any power of the Managing Member under this Agreement and the Act on behalf of the Company without any further act, approval or vote of the Members or any other Persons, notwithstanding any other provision of the Act or any applicable law, rule or regulation and, in the absence of any specific corporate action on the part of the Managing Member to the contrary, the taking of any action or the execution of any such document or writing by an officer of the Managing Member, in the name and on behalf of the Managing Member, in its capacity as the Managing Member of the Company, shall conclusively evidence (i) the approval thereof by the Managing Member, in its capacity as the Managing Member of the Company, (ii) the Managing Member's determination that such action, document or writing is necessary, advisable, appropriate, desirable or prudent to conduct the business and affairs of the Company, exercise the powers of the Company under this Agreement and the Act or effectuate the purposes of the Company, or any other determination by the Managing Member required by this Agreement in connection with the taking of such action or execution of such document or writing, and (iii) the authority of such officer with respect thereto.

(c) At all times from and after the date hereof, the Managing Member may cause the Company to obtain and maintain (i) casualty, liability and other insurance on the Properties and (ii) liability insurance for the Indemnitees hereunder.

(d) At all times from and after the date hereof, the Managing Member may cause the Company to establish and maintain working capital and other reserves in such amounts as the Managing Member, in its sole and absolute discretion, determines from time to time.

(e) The determination as to any of the following matters, made by or at the direction of the Managing Member consistent with this Agreement and the Act, shall be final and conclusive and shall be binding upon the Company and every Member: the amount of assets at any time available for distribution or the redemption of Common Units; the amount and timing of any distribution; any determination to redeem Tendered Units; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); the amount of any Member's Capital Account, Adjusted Capital Account or Adjusted Capital Account Deficit; the amount of Net Income, Net Loss or Depreciation for any period; any special allocations of Net Income or Net Loss pursuant to Sections 6.2(c), 6.2(d), 6.3, 6.4, 6.5 or 16.5; the Gross Asset Value of any Company asset; the Value of any REIT Share; the timing and amount of any adjustment to the Adjustment Factor; any adjustment to the number of outstanding LTIP Units pursuant to Section 16.3; the timing, number and redemption or repurchase price of the redemption or repurchase of any Membership Units pursuant to Section 4.7(b); any interpretation of the rights, powers and duties of any class or series of Membership Interest; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Company or of any Membership Interest; the number of authorized or outstanding Membership Units of any class or series; any matter relating to the acquisition, holding and disposition of any assets by the Company; or any other matter relating to the business and affairs of the Company or required or permitted by applicable law, this Agreement or otherwise to be determined by the Managing Member.

Section 7.2 *Articles of Organization*. The Managing Member, as the designated "authorized person" within the meaning of the Act, may file amendments to and restatements of the Articles of Organization and do all other things to maintain the Company as a limited liability company under the laws of the State of Maryland and each other state, the District of Columbia or any other jurisdiction, in which the Company may elect to do business or own property. Subject to the terms of Section 8.5(a) hereof, the Managing Member shall not be required, before or after filing, to deliver or mail a copy of the Articles of Organization or any amendment thereto to any Member. The Managing Member shall use all reasonable efforts to cause to be filed such other certificates or documents for the formation, continuation, qualification and operation of a limited liability company in the State of Maryland and any other state, or the District of Columbia or other jurisdiction, in which the Company may elect to do business or own property.

Section 7.3 *Restrictions on Managing Member's Authority*.

(a) The Managing Member may not, in its capacity as the Managing Member, for or on behalf of the Company:

(i) take any action that would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement or with the Consent of the Non-Managing Members;

(ii) enter into any contract, mortgage, loan or other agreement that, in the absence of any default by the Managing Member of its obligations thereunder, expressly prohibits or restricts (A) the Managing Member or the Company from performing its specific obligations under Section 15.1 hereof in full or (B) a Member from exercising its rights under Section 15.1 hereof to effect a Redemption in full, except, in either case, (x) with the Consent of each Non-Managing Member affected by the prohibition or restriction or (y) in connection with or as a result of a Termination Transaction that, in accordance with Section 11.2(b)(i) and/or (ii), does not require the Consent of the Non-Managing Members.

(b) Notwithstanding Section 14.2 hereof but subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member shall have the power, without the Consent of the Members or the consent or approval of any Member or any other Person, to amend this Agreement as may be required to facilitate or implement any of the following purposes:

(i) to add to the obligations of the Managing Member or surrender any right or power granted to the Managing Member or any Affiliate of the Managing Member for the benefit of the Members;

(ii) to reflect the admission, substitution or withdrawal of Members, the Transfer of any Membership Interest, the termination of the Company in accordance with this Agreement, or the adjustment of outstanding LTIP Units as contemplated by Section 16.3, and to update the Member Registry in connection with such admission, substitution, withdrawal, Transfer or adjustment;

(iii) to reflect a change that is of an inconsequential nature or does not adversely affect the Members in any material respect, or to cure any ambiguity, correct or supplement any provision in this Agreement not inconsistent with law or with other provisions of this Agreement, or make other changes with respect to matters arising under this Agreement that will not be inconsistent with law or with the provisions of this Agreement;

(iv) to set forth or amend the rights, powers and duties of the Holders of any additional Membership Interests issued pursuant to Article 4 (including any changes contemplated by Section 5.5 above);

(v) to satisfy any requirements, conditions or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state court or agency or contained in federal or state law or the listing standards of any securities exchange upon which the Managing Member's securities are then listed or admitted for trading;

(vi) (A) to reflect such changes as are reasonably necessary or appropriate for the Managing Member to maintain its status as a REIT or to satisfy the REIT Requirements or (B) to reflect the Transfer of all or any part of a Membership Interest among the Managing Member and any Disregarded Entity with respect to the Managing Member;

(vii) to modify either or both of the manner in which items of Net Income or Net Loss are allocated pursuant to Article VI or the manner in which Capital Accounts are adjusted, computed, or maintained (but in each case only to the extent otherwise provided in this Agreement and as may be permitted under applicable law);

(viii) to reflect the issuance of additional Membership Interests in accordance with Section 4.2;

(ix) as contemplated by the last sentence of Section 4.4;

(x) to reflect any other modification to this Agreement as is reasonably necessary for the business or operations of the Company or the Managing Member and which does not violate Section 7.3(d); and

(xi) to effect or facilitate a Termination Transaction that, in accordance with Section 11.2(b)(i) and/or (ii), does not require the Consent of the Non-Managing Members and, if the Company is the Surviving Company in any Termination Transaction, to modify Section 15.1 or any related definitions to provide that the holders of interests in such Surviving Company have rights that are consistent with Section 11.2B(ii).

(c) Notwithstanding Sections 7.3(b) (other than as set forth below in this Section 7.3(c)) and 14.2 hereof, this Agreement shall not be amended, and no action may be taken by the Managing Member, without the Consent of each Member adversely affected thereby, if such amendment or action would (i) adversely modify in any material respect the limited liability of a Member, (ii) alter the rights of any Member to receive the distributions to which such Member is entitled pursuant to Article 5 or Section 13.2(a)(iv) hereof, or alter the allocations specified in Article 6 hereof (except, in any case, as permitted pursuant to Sections 4.2, 5.5, 7.3(b) (including clause (xi) thereof) and Article 6 hereof), (iii) alter or modify the Redemption rights, Cash Amount or REIT Shares Amount as set forth in Section 15.1 hereof, or amend or modify any related definitions (except, in any case, as permitted pursuant to clause (xi) of Section 7.3(b) hereof), (iv) alter or modify Section 11.2 hereof (except as permitted pursuant to clause (xi) of Section 7.3(b) hereof), (v) subject to Section 7.8(i), remove the powers and restrictions related to REIT Requirements or permitting the Managing Member to avoid paying tax under Code Sections 857 or 4981 contained in Sections 7.1 and 7.3, or (vi) amend this Section 7.3(d) (except as permitted pursuant to clause (xi) of Section 7.3(b) hereof). Further, no amendment may alter the restrictions on the Managing Member's authority set forth elsewhere in this Section 7.3 without the Consent specified therein. Any such amendment or action consented to by any Member shall be effective as to that Member, notwithstanding the absence of such consent by any other Member.

Section 7.4 *Reimbursement of the Managing Member*.

(a) The Managing Member shall not be compensated for its services as Managing Member of the Company except as provided in this Agreement (including the provisions of Articles 5 and 6 hereof regarding distributions, payments and allocations to which the Managing Member may be entitled in its capacity as the Managing Member).

(b) Subject to Sections 7.4(d) and 15.12 hereof, the Company shall be responsible for and shall pay all expenses relating to the Company's and the Managing Member's organization and the ownership of each of their assets and operations. The Managing Member is hereby authorized to pay compensation for accounting, administrative, legal, technical, management and other services rendered to the Company. The Company shall be liable for, and shall reimburse the Managing Member, on a monthly basis, or such other basis as the Managing Member may determine in its sole and absolute discretion, for all sums expended in connection with the Company's business, including, without limitation, (i) expenses relating to the ownership of interests in and management and operation of, or for the benefit of, the Company, (ii) compensation of officers and employees, including, without limitation, payments under future compensation plans, of the Managing Member, or the Company that may provide for stock units, or phantom stock, pursuant to which employees of the Managing Member, or the Company will receive payments based upon dividends on or the value of REIT Shares, (iii) director fees and expenses of the Managing Member or its Affiliates, (iv) any expenses (other than the purchase price) incurred by the Managing Member in connection with the redemption or other repurchase of its Capital Shares or the purchase by the Managing Member of any outstanding Membership Units, (v) all costs and expenses of the Managing Member in connection with the preparation of reports and other distributions to its stockholders and any regulatory or governmental authorities or agencies and, as applicable, all costs and expenses of the Managing Member as a reporting company (including, without limitation, costs of filings with the SEC), (vi) all costs and expenses of the Managing Member in connection with its operation as a REIT, and (vii) all costs and expenses of the Managing Member in connection with the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests and financing or refinancing of any type related to the Company or its assets or activities; *provided*, *however*, that the amount of any reimbursement shall be reduced by any interest earned by the Managing Member with respect to bank accounts or other instruments or accounts held by it on behalf of the Company as permitted pursuant to Section 7.5 hereof. The Members acknowledge that all such expenses of the Managing Member are deemed to be for the benefit of the Company. Such reimbursements shall be in addition to any reimbursement of the Managing Member as a result of indemnification pursuant to Section 7.7 hereof.

(c) If the Managing Member shall elect to purchase from its stockholders Capital Shares for the purpose of delivering such Capital Shares to satisfy an obligation under any dividend reinvestment program adopted by the Managing Member, any employee stock purchase plan adopted by the Managing Member or any similar obligation or arrangement undertaken by the Managing Member in the future, in lieu of the treatment specified in Section 4.7(b), the purchase price paid by the Managing Member for such Capital Shares shall be considered expenses of the Company and shall be advanced to the Managing Member or reimbursed to the Managing Member, subject to the condition that: (i) if such REIT Shares subsequently are sold by the Managing Member, the Managing Member shall pay or cause to be paid to the Company any proceeds received by the Managing Member for such REIT Shares (which sales proceeds shall include the amount of dividends reinvested under any dividend reinvestment or similar program; *provided*, that a transfer of REIT Shares for Membership Units pursuant to Section 15.1 would not be considered a sale for such purposes); and (ii) if such REIT Shares are not retransferred by the Managing Member within 30 days after the purchase thereof, or the Managing Member otherwise determines not to retransfer such REIT Shares, the Managing Member shall cause the Company to redeem a number of Membership Units determined in accordance with Section 4.7(b), as adjusted, (x) pursuant to Section 7.5 (in the event the Managing Member acquires material assets, other than on behalf of the Company) and (y) for stock dividends and distributions, stock splits and subdivisions, reverse stock splits and combinations, distributions of rights, warrants or options, and distributions of evidences of indebtedness or assets relating to assets not received by the Managing Member pursuant to a pro rata distribution by the Company (in which case such advancement or reimbursement of expenses shall be treated as having been made as a distribution in redemption of such number of Membership Units held by the Managing Member).

(d) To the extent practicable, Company expenses shall be billed directly to and paid by the Company and, subject to Section 15.12 hereof, if and to the extent any reimbursements to the Managing Member or any of its Affiliates by the Company pursuant to this Section 7.4 constitute gross income to such Person (as opposed to the repayment of advances made by such Person on behalf of the Company), such amounts shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Members' Capital Accounts.

Section 7.5 *Outside Activities of the Managing Member*. Without the Consent of the Members, not to be unreasonably withheld, conditioned or delayed, the Managing Member shall not directly or indirectly enter into or conduct any business, other than in connection with, (a) the ownership, acquisition and disposition of Membership Interests, (b) the management of the business and affairs of the Company, (c) the operation of the Managing Member as a reporting company with a class (or classes) of securities registered under the Exchange Act, (d) its operations as a REIT, (e) the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, (f) financing or refinancing of any type related to the Company or its assets or activities, and (g) such activities as are incidental thereto; *provided*, *however*, that, except as otherwise *provided* herein, any funds raised by the Managing Member pursuant to the preceding clauses (e) and (f) shall be made available to the Company, whether as Capital Contributions, loans or otherwise, as appropriate, and, *provided*, *further,* that the Managing Member may, in its sole and absolute discretion, from time to time hold or acquire assets in its own name or otherwise other than through the Company so long as the Managing Member takes commercially reasonable measures to ensure that the economic benefits and burdens of such Property are otherwise vested in the Company, through assignment, mortgage loan or otherwise or, if it is not commercially reasonable to vest such economic interests in the Company, the Members shall negotiate in good faith to amend this Agreement, including, without limitation, the definition of "Adjustment Factor," to reflect such activities and the direct ownership of assets by the Managing Member. Nothing contained herein shall be deemed to prohibit the Managing Member from executing guarantees of Company debt. The Managing Member and all Disregarded Entities with respect to the Managing Member, taken as a group, shall not own any assets or take title to assets (other than temporarily in connection with an acquisition prior to contributing such assets to the Company) other than (i) interests in Disregarded Entities with respect to the Managing Member, (ii) Membership Interests as the Managing Member, (iii) a minority interest in any Subsidiary of the Company that the Managing Member holds to maintain such Subsidiary's status as a partnership for federal income tax purposes or otherwise, and (iv) such cash and cash equivalents, bank accounts or similar instruments or accounts as such group deems reasonably necessary, taking into account Section 7.1(d) hereof and the requirements necessary for the Managing Member to qualify as a REIT and for the Managing Member to carry out its responsibilities contemplated under this Agreement and the Charter. Any Membership Interests acquired by the Managing Member, whether pursuant to the exercise by a Member of its right to Redemption, or otherwise, shall be automatically converted into a Managing Member Interest comprised of an identical number of Membership Units with the same terms as the class or series so acquired. Any Affiliates of the Managing Member may acquire Member Interests and shall, except as expressly provided in this Agreement, be entitled to exercise all rights of a Member relating to such Member Interests.

Section 7.6 *Transactions with Affiliates*.

(a) The Company may lend or contribute funds to, and borrow funds from, Persons in which the Company has an equity investment, and such Persons may borrow funds from, and lend or contribute funds to, the Company, on terms and conditions established in the sole and absolute discretion of the Managing Member. The foregoing authority shall not create any right or benefit in favor of any Person.

(b) Except as provided in Section 7.5 hereof, the Company may transfer assets to joint ventures, limited liability companies, partnerships, corporations, business trusts or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions consistent with this Agreement and applicable law.

(c) The Managing Member and its Affiliates may sell, transfer or convey any property to, or purchase any property from, the Company, directly or indirectly, on terms and conditions established by the Managing Member in its sole and absolute discretion.

(d) The Managing Member, in its sole and absolute discretion and without the approval of the Members or any of them or any other Persons, may propose and adopt (on behalf of the Company or its Subsidiaries) employee benefit plans (including without limitation plans that contemplate the issuance of LTIP Units) funded by the Company or its Subsidiaries for the benefit of employees of the Managing Member, the Company, Subsidiaries of the Company or any Affiliate of any of them in respect of services performed, directly or indirectly, for the benefit of the Managing Member, the Company or any of the Company's Subsidiaries.

Section 7.7 *Indemnification*.

(a) To the fullest extent that a Maryland corporation may indemnify and advance expenses to directors and officers of a Maryland corporation under the laws of the State of Maryland, the Company shall indemnify, and shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, any Indemnitee who is made or threatened to be made a party to, or witness in, a proceeding by reason of his or her service as an Indemnitee. The rights to indemnification and advance of expenses provided by this Section 7.7 shall vest immediately upon any Indemnitee becoming an Indemnitee.

Without limitation, the foregoing indemnity shall extend to any liability of any Indemnitee, pursuant to a loan guaranty or otherwise, for any indebtedness of the Company or any Subsidiary of the Company (including, without limitation, any indebtedness which the Company or any Subsidiary of the Company has assumed or taken subject to), and the Managing Member is hereby authorized and empowered, on behalf of the Company, to enter into one or more indemnity agreements consistent with the provisions of this Section 7.7 in favor of any Indemnitee having or potentially having liability for any such indebtedness. It is the intention of this Section 7.7(a) that the Company indemnify each Indemnitee to the fullest extent permitted by law and this Agreement. The termination of any proceeding by judgment, order or settlement does not create a presumption that the Indemnitee did not meet the requisite standard of conduct set forth in this Section 7.7(a). The termination of any proceeding by conviction of an Indemnitee or upon a plea of *nolo contendere* or its equivalent by an Indemnitee, or an entry of an order of probation against an Indemnitee prior to judgment, does not create a presumption that such Indemnitee acted in a manner contrary to that specified in this Section 7.7(a) with respect to the subject matter of such proceeding. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Company, and neither the Managing Member nor any other Holder shall have any obligation to contribute to the capital of the Company or otherwise provide funds to enable the Company to fund its obligations under this Section 7.7.

(b) The Company's obligation to indemnify or advance expenses hereunder to any Indemnitee shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from any other Person, including the Managing Member or from any insurance policy or policies.

(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Members, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee unless otherwise provided in a written agreement with such Indemnitee or in the writing pursuant to which such Indemnitee is indemnified.

(d) The Company may, but shall not be obligated to, purchase and maintain insurance, on behalf of any of the Indemnitees and such other Persons as the Managing Member shall determine, against any liability that may be asserted against or expenses that may be incurred by such Person in connection with the Company's activities, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) Any liabilities which an Indemnitee incurs as a result of acting on behalf of the Company or the Managing Member (whether as a fiduciary or otherwise) in connection with the operation, administration or maintenance of an employee benefit plan or any related trust or funding mechanism (whether such liabilities are in the form of excise taxes assessed by the IRS, penalties assessed by the U.S. Department of Labor, restitutions to such a plan or trust or other funding mechanism or to a participant or beneficiary of such plan, trust or other funding mechanism, or otherwise) shall be treated as liabilities or judgments or fines under this Section 7.7, unless such liabilities arise as a result of (i) an act or omission of such Indemnitee that was material to the matter giving rise to the Action and either was committed in bad faith or was the result of active and deliberate dishonesty; (ii) in the case of any criminal proceeding, an act or omission that such Indemnitee had reasonable cause to believe was unlawful, or (iii) any transaction in which such Indemnitee actually received an improper personal benefit in violation or breach of any provision of this Agreement.

(f) In no event may an Indemnitee subject any of the Holders to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this Section 7.7 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the Company's liability to any Indemnitee under this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(i) It is the intent of the parties that any amounts paid by the Company to the Managing Member pursuant to this Section 7.7 shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Members' Capital Accounts.

Section 7.8 *Duties and Liability of the Managing Member*.

(a) To the maximum extent permitted under the Act, the only duties that the Managing Member owes to the Company, any Member or any other Person (including any creditor of any Member or assignee of any Membership Interest), fiduciary or otherwise, are to perform its contractual obligations as expressly set forth in this Agreement consistently with the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, the Managing Member, in its capacity as such, shall have no other duty, fiduciary or otherwise, to the Company, any Member or any other Person (including any creditor of any Member or any assignee of Membership Interest). The provisions of this Agreement other than this Section 7.8 shall create contractual obligations of the Managing Member only, and no such provision shall be interpreted to expand the fiduciary duties of the Managing Member under the Act as modified by this Agreement. To the fullest extent permitted by law, the provisions of this Section 7.8, to the extent they restrict or modify the duties and liabilities of the Managing Member or any other Person under the Act or otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities. The Managing Member is entitled to a presumption that any act or failure to act on the part of the Managing Member, and any decision or determination made by the Managing Member, is presumed to satisfy the duties of the Managing Member, whether under this Agreement or otherwise existing at law or in equity, and no act or failure to act by the Managing Member, or decision or determination made by the Managing Member (whether with respect to a change of control of the Company or otherwise) shall be subject to any duty, standard of conduct, burden of proof or scrutiny, whether at law or in equity, other than as set forth in this Section 7.8.

(b) The Members agree that (i) the Managing Member is acting for the benefit of the Company, the Members and the Managing Member's stockholders collectively and (ii) notwithstanding any duty otherwise existing at law or equity, in the event of a conflict between the interests of the Company or any Member, on the one hand, and the separate interests of the Managing Member or its stockholders, on the other hand, the Managing Member may give priority to the separate interests of the Managing Member or the stockholders of the Managing Member (including, without limitation, with respect to tax consequences to Members, Assignees or the Managing Member's stockholders), and, in the event of such a conflict, any action or failure to act on the part of the Managing Member (or the Managing Member's directors, officers or agents) that gives priority to the separate interests of the Managing Member or its stockholders that does not result in a violation of the contract rights of the Members under this Agreement does not violate any other duty owed by the Managing Member to the Company and/or the Members.

(c) Subject to its obligations and duties as Managing Member set forth in this Agreement and applicable law, the Managing Member may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its employees or agents. The Managing Member shall not be responsible to the Company or any Member for any misconduct or negligence on the part of any such employee or agent appointed by it in good faith.

(d) Any obligation or liability whatsoever of the Managing Member which may arise at any time under this Agreement or any other instrument, transaction, or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the Managing Member or the Company only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, any of the Managing Member's directors, stockholders, officers, employees, or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise. Notwithstanding anything to the contrary set forth in this Agreement, and to the fullyest extent permitted by law, none of the directors or officers of the Managing Member shall be directly liable or accountable in damages or otherwise to the Company, any Members, or any Assignees for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission or by reason of their service as such. This Agreement is executed by the officers of the Managing Member solely as officers of the same and not in their own individual capacities.

(e) Notwithstanding anything herein to the contrary and to the fullest extent permitted by law, except for liability for fraud, willful misconduct or gross negligence on the part of the Managing Member, or pursuant to any express indemnities given to the Company by the Managing Member pursuant to any other written instrument, the Managing Member shall not have any personal liability whatsoever, to the Company or to the other Members, for any action or omission taken in its capacity as the Managing Member or for the debts or liabilities of the Company or the Company's obligations hereunder, except pursuant to Section 15.1 or as expressly required by the Act. Without limitation of the foregoing, and except for liability for fraud, willful misconduct or gross negligence, or pursuant to Section 15.1 or any such express indemnity, no property or assets of the Managing Member, other than its interest in the Company, shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) in favor of any other Member(s) and arising out of, or in connection with, this Agreement.

(f) To the extent that, under applicable law, the Managing Member has duties (including fiduciary duties) and liabilities relating thereto to the Company or the Members, to the fullest extent permitted by law, the Managing Member shall not be liable to the Company or to any other Member for its good faith reliance on the provisions of this Agreement. In accordance with and subject to Section 4A-102 of the Act, the provisions of this Agreement, to the extent that they restrict or modify the duties and liabilities of the Managing Member under the Act or otherwise existing under applicable law, are agreed by the Members to operate as an express limitation of any such duties and liabilities and to replace such other duties and liabilities of such Managing Member and further acknowledged and agreed that such provisions are fundamental elements to the agreement of the Members and the Managing Member to enter into this Agreement and without such provisions the Members and the Managing Member would not have entered into this Agreement.

(g) Whenever in this Agreement the Managing Member is permitted or required to make a decision in its "sole and absolute discretion," "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Managing Member shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest or factors affecting the Company or the Members or any of them, and any such decision or determination made by the Managing Member that does not consider such interests or factors affecting the Company of the Members, or any of them, that does not result in a violation of the contract rights of the Members under this Agreement or any other duty owed by the Managing Member to the Company and/or the Members pursuant to express terms of this Agreement. If any question should arise with respect to the operation of the Company, which is not otherwise specifically provided for in this Agreement or the Act, or with respect to the interpretation of this Agreement, the Managing Member is hereby authorized to make a final determination with respect to any such question and to interpret this Agreement in such a manner as it shall deem, in its sole discretion, to be fair and equitable, and its determination and interpretations so made shall be final and binding on all parties. The Managing Member's "sole and absolute discretion," "sole discretion" and "discretion" under this Agreement shall be exercised consistently with good faith reliance on the provisions of this Agreement and the obligation of good faith and fair dealing under the Act (as modified by the Agreement).

(h) The Managing Member may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties. In performing its duties under this Agreement, the Managing Member shall be entitled to rely on the provisions of this Agreement and on any information, opinion, report or statement, including any financial statement or other financial data or the records or books of account of the Company or any subsidiary of the Company, prepared or presented by any officer, employee or agent of the Managing Member, any agent of the Company or any such subsidiary, or by any lawyer, certified public accountant, appraiser or other person engaged by the Managing Member, the Company or any such subsidiary as to any matter within such person's professional or expert competence, and any act taken or omitted to be taken in reliance upon any such information, opinion, report or statement as to matters that the Managing Member reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such information, opinion, report or statement.

(i) No director, officer or agent of the Managing Member shall have any duties directly to the Company or any Member. No director, officer or agent of the Managing Member shall be directly liable to the Company or any Member for money damages by reason of their service as such.

(j) Notwithstanding any other provision of this Agreement or the Act, any action of the Managing Member on behalf of the Company or any decision of the Managing Member to refrain from acting on behalf of the Company, undertaken in the good faith belief that such action or omission is necessary or advisable in order (i) to protect the ability of the Managing Member to continue to qualify as a REIT, (ii) for the Managing Member otherwise to satisfy the REIT Requirements, (iii) for the Managing Member to avoid incurring any taxes under Code Section 857 or Code Section 4981, or (iv) for any Managing Member Affiliate to continue to qualify as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)) or "taxable REIT subsidiary" (within the meaning of Code Section 856(l)), is expressly authorized under this Agreement and is deemed approved by all of the Members.

(k) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the Managing Member's and its officers' and directors' liability to the Company and the Members under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(l) In exercising its authority under this Agreement and subject to Section 7.8(b), the Managing Member may, but shall be under no obligation to, take into account the tax consequences to any Member of any action taken (or not taken) by it. The Managing Member and the Company shall not have liability to a Member under any circumstances as a result of any tax liability incurred by such Member as a result of an action (or inaction) by the Managing Member pursuant to its authority under this Agreement.

Section 7.9 *Title to Company Assets.* Title to Company assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively with other Members or Persons, shall have any ownership interest in such Company assets or any portion thereof. Title to any or all of the Company assets may be held in the name of the Company, the Managing Member or one or more nominees, as the Managing Member may determine, including Affiliates of the Managing Member. The Managing Member hereby declares and warrants that any Company assets for which legal title is held in the name of the Managing Member or any nominee or Affiliate of the Managing Member shall be held by the Managing Member or such nominee or Affiliate for the use and benefit of the Company in accordance with the provisions of this Agreement. All Membership assets shall be recorded as the property of the Company in its books and records, irrespective of the name in which legal title to such Company assets is held.

Section 7.10 *Reliance by Third Parties*. Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Company shall be entitled to assume that the Managing Member has full power and authority, without the consent or approval of any other Member, or Person, to encumber, sell or otherwise use in any manner any and all assets of the Company and to enter into any contracts on behalf of the Company, and take any and all actions on behalf of the Company, and such Person shall be entitled to deal with the Managing Member as if it were the Company's sole party in interest, both legally and beneficially. To the fullest extent permitted by law, each Member hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the Managing Member in connection with any such dealing. In no event shall any Person dealing with the Managing Member or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expediency of any act or action of the Managing Member or its representatives. Each and every certificate, document or other instrument executed on behalf of the Company by the Managing Member or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Company and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Company.

## ARTICLE 8
## RIGHTS AND OBLIGATIONS OF NON-MANAGING MEMBERS

Section 8.1 *Duties; Limitation of Liability*. To the maximum extent permitted under the Act, except as set forth in Section 7.8 with respect to the Managing Member, the only duties that a Member owes to the Company, any Member or any other Person (including any creditor of any Member or assignee of any Membership Interest), fiduciary or otherwise, are to perform its contractual obligations as expressly set forth in this Agreement consistently with the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, no Member, other than the Managing Member, in its capacity as such, shall have any other duty, fiduciary or otherwise, to the Company, any Member or any other Person (including any creditor of any Member or any assignee of Membership Interest). The provisions of this Agreement other than this Section 8.1 shall create contractual obligations of the Members only, and no such provision shall be interpreted to expand, modify or impose fiduciary duties of the Members set forth in this Agreement. To the fullest extent permitted by law, the provisions of this Section 8.1, to the extent they restrict or modify the duties and liabilities of the Members or any other Person under the Act or otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities. No Non-Managing Member shall have any liability under this Agreement except for intentional harm or gross negligence on the part of such Non-Managing Member or as expressly provided in this Agreement (including, without limitation, Section 10.4 hereof) or under the Act.

Section 8.2 *Management of Business*. Subject to the rights and powers of the Managing Member hereunder, no Member or Assignee (other than the Managing Member, any of its Affiliates or any officer, director, member, employee, partner, agent or trustee of the Managing Member, the Company or any of their Affiliates, in their capacity as such) shall take part in the operations, management or control of the Company's business, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company. The transaction of any such business by the Managing Member, any of its Affiliates or any officer, director, member, employee, partner, agent, representative, or trustee of the Managing Member, the Company or any of their Affiliates, in their capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Members or Assignees under this Agreement.

Section 8.3 *Outside Activities of Members.* Subject to any agreements entered into pursuant to Section 7.6 hereof and any other agreements entered into by a Member (other than the Managing Member) or any of its Affiliates with the Managing Member, the Company or a Subsidiary (including, without limitation, any employment agreement), any Member (other than the Managing Member) and any Assignee, officer, director, employee, agent, trustee, Affiliate, member or stockholder of any Member (other than the Managing Member) shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Company, including business interests and activities that are in direct or indirect competition with the Company or that are enhanced by the activities of the Company notwithstanding any duty otherwise existing at law or in equity. Neither the Company nor any Member (other than the Managing Member) shall have any rights by virtue of this Agreement in any business ventures of any Member (other than the Managing Member) or Assignee. Subject to such agreements, none of the Members (other than the Managing Member) nor any other Person shall have any rights by virtue of this Agreement or the Company relationship established hereby in any business ventures of any other Person (other than the Managing Member), and such Person shall have no obligation pursuant to this Agreement, subject to Section 7.6 hereof and any other agreements entered into by a Member (other than the Managing Member) or its Affiliates with the Managing Member, the Company or a Subsidiary, to offer any interest in any such business ventures to the Company, any Member (other than the Managing Member), or any such other Person, even if such opportunity is of a character that, if presented to the Company, any Member (other than the Managing Member) or such other Person, could be taken by such Person. In deciding whether to take any actions in such capacity, the Members (other than the Managing Member) and their respective Affiliates shall be under no obligation to consider the separate interests of the Company or its subsidiaries and to the maximum extent permitted by applicable law shall have no fiduciary duties or similar obligations to the Company or any other Members (other than the Managing Member), or to any subsidiary of the Company, and, to the fullest extent permitted by law, shall not be liable for monetary damages for losses sustained, liabilities incurred or benefits not derived by the other Members (other than the Managing Member) in connection with such acts except for liability for fraud, willful misconduct or gross negligence.

Section 8.4 *Return of Capital*. Except pursuant to the rights of Redemption set forth in Section 15.1 hereof or any Membership Unit Designation, no Member shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent of distributions made pursuant to this Agreement or upon dissolution of the Company as *provided* herein. Except to the extent provided in Article 5 and Article 6 hereof or otherwise expressly provided in this Agreement or in any Membership Unit Designation, no Member or Assignee shall have priority over any other Member or Assignee either as to the return of Capital Contributions or as to profits, losses or distributions.

Section 8.5 *Rights of Members Relating to the Company*.

(a) In addition to other rights provided by this Agreement or by the Act, and except as limited by Section 8.5(c) hereof, the Managing Member shall deliver to each Member a copy of any information mailed or electronically delivered to all of the common stockholders of the Managing Member as soon as practicable after such mailing.

(b) The Company shall notify any Member that is a Qualifying Party, on request, of the then current Adjustment Factor and any change made to the Adjustment Factor shall be set forth in the quarterly report required by Section 9.3(b) hereof immediately following the date such change becomes effective.

(c) Notwithstanding any other provision of this Section 8.5, the Managing Member may keep confidential from the Members (or any of them), for such period of time as the Managing Member determines in its sole and absolute discretion to be reasonable, any information that (i) the Managing Member believes to be in the nature of trade secrets or other information the disclosure of which the Managing Member believes is not in the best interests of the Company or the Managing Member or (ii) the Company or the Managing Member is required by law or by agreement to keep confidential.

(d) Upon written request by any Member, the Managing Member shall cause the ownership of Membership Units by such Member to be evidenced by a certificate for units in such form as the Managing Member may determine with respect to any class of Membership Units issued from time to time under this Agreement. Any officer of the Managing Member may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated. Unless otherwise determined by an officer of the Managing Member, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or such owner's legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Company a bond in such sums as the Managing Member may direct as indemnity against any claim that may be made against the Company.

Section 8.6 *Company Right to Call Common Units*.

(a) Notwithstanding any other provision of this Agreement: (i) on and after the date on which the aggregate Percentage Interests of the Common Units held by Holders (other than the Managing Member) are less than one percent (1%) of the outstanding Common Units, the Company shall have the right, but not the obligation, from time to time and at any time to redeem any and all outstanding Common Units and (ii) at any time a Holder holds less than fifty thousand (50,000) Common Units (as adjusted, if applicable, by the Adjustment Factor then in effect), the Company shall have the right in its sole discretion, but not the obligation to such Holders or Holder, from time to time and at any time to redeem all or any portion of the outstanding Common Units held by such Holders or Holder, in each case by treating any such Holder thereof as a Tendering Party who has delivered a Notice of Redemption pursuant to Section 15.1 hereof for the amount of Common Units to be specified by the Managing Member, by notice to such Holder that the Company has elected to exercise its rights under this Section 8.6(a). Such notice given by the Company to a Holder pursuant to this Section 8.6(a) shall be treated as if it were a Notice of Redemption delivered to the Managing Member by such Holder. For purposes of this Section 8.6(a), (i) the Managing Member may treat any Holder (whether or not otherwise a Qualifying Party) as a Qualifying Party that is a Tendering Party and (ii) the provisions of Sections 15.1(f)(ii) and 15.1(f)(iii) hereof shall not apply, but the remainder of Section 15.1 hereof shall apply, *mutatis mutandis*.

(b) Notwithstanding any other provision of this Agreement, if at any time any of the representations or warranties of a Holder set forth in a Non-Referral Source Certification substantially in the form attached hereto as Exhibit E delivered by such Holder to the Company ceases to be true, accurate and correct or if such Holder shall breach a covenant or agreement set forth therein (each, a "*Non-Referral Source Breach*"), the Company shall have the right in its sole discretion, but not the obligation to such Holder, from time to time and at any time to redeem all or any portion of the outstanding Common Units held by such Holder, by treating any such Holder thereof as a Tendering Party who has delivered a Notice of Redemption pursuant to Section 15.1(a) hereof for the amount of Common Units to be specified by the Managing Member, by notice to such Holder that the Company has elected to exercise its rights under this Section 8.6(b). Such notice given by the Company to a Holder pursuant to this Section 8.6(b) shall be treated as if it were a Notice of Redemption delivered to the Managing Member by such Holder. For purposes of this Section 8.6(b), (i) the Managing Member may treat any Holder (whether or not otherwise a Qualifying Party) as a Qualifying Party that is a Tendering Party, (ii) the provisions of Sections 15.1(b), 15.1(f)(ii), 15.1(f)(iii) and 15.1(f)(v) hereof shall not apply, but the remainder of Section 15.1 hereof shall apply, *mutatis mutandis*, (iii) the term "*Specified Redemption Date*" shall mean any time determined by the Managing Member, in its sole and absolute discretion, on or after the Managing Member becomes aware of a Non-Referral Source Breach by such Holder, (iv) the term "*Valuation Date*" shall mean the date the Managing Member becomes aware of a Non-Referral Source Breach by such Holder and (v) upon notice to such Holder that the Company has elected to exercise its rights under this Section 8.6(b) with respect to Common Units held by such Holder, such Holder will not be treated as a Member or an Assignee, as applicable, with respect to such Common Units for all purposes of this Agreement; *provided* that such Holder shall be entitled to the Cash Amount on the Specified Redemption Date, which shall occur no later than thirty (30) Business Day after delivery by the Managing Member of notice to such Holder that the Company has elected to exercise its rights under this Section 8.6(b); *provided*, *further*, that the Cash Amount to which such Holder shall be entitled shall be reduced by all out-of-pocket costs and expenses reasonably determined by the Managing Member to have been incurred or to be incurred by the Company (including the fees and expenses of its counsel) in connection with any Non-Referral Source Breach by such Holder. The remedies provided for in this Section 8.6(b) in connection with any Non-Referral Source Breach are not exclusive and shall not limit any rights or remedies which may otherwise be available to the Company at law or in equity.

Section 8.7 *Rights as Objecting Member*. No Member and no Holder of a Membership Interest shall be entitled to exercise any of the rights of an objecting stockholder provided for under Title 3, Subtitle 2 of the MGCL or any successor statute in connection with a merger or a conversion of the Company.

## ARTICLE 9
## BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 9.1 *Records and Accounting*.

(a) The Managing Member shall keep or cause to be kept at the principal place of business of the Company those records and documents, if any, required to be maintained by the Act and any other books and records deemed by the Managing Member to be appropriate with respect to the Company's business, including, without limitation, all books and records necessary to provide to the Members any information, lists and copies of documents required to be provided pursuant to Section 8.5(a), Section 9.3 or Article 13 hereof. Any records maintained by or on behalf of the Company in the regular course of its business may be kept on any information storage device, *provided* that the records so maintained are convertible into clearly legible written form within a reasonable period of time.

(b) The books of the Company shall be maintained, for financial and tax reporting purposes, on an accrual basis in accordance with generally accepted accounting principles, or on such other basis as the Managing Member determines to be necessary or appropriate. To the extent permitted by sound accounting practices and principles, the Company and the Managing Member may operate with integrated or consolidated accounting records, operations and principles.

Section 9.2 *Fiscal Year*. For purposes of this Agreement, the fiscal year of the Company shall be the Fiscal Year.

Section 9.3 *Reports*.

(a) As soon as practicable, but in no event later than one hundred five (105) days after the close of each Fiscal Year, the Managing Member shall cause to be mailed to each Member of record as of the close of the Fiscal Year, financial statements of the Company, or of the Managing Member if such statements are prepared solely on a consolidated basis with the Managing Member, for such Fiscal Year, presented in accordance with generally accepted accounting principles, such statements to be audited by a nationally recognized firm of independent public accountants selected by the Managing Member.

(b) As soon as practicable, but in no event later than sixty (60) days after the close of each calendar quarter (except the last calendar quarter of each year), the Managing Member shall cause to be mailed to each Member of record as of the last day of the calendar quarter, a report containing unaudited financial statements of the Company for such calendar quarter, or of the Managing Member if such statements are prepared solely on a consolidated basis with the Managing Member, and such other information as may be required by applicable law or regulation or as the Managing Member determines to be appropriate.

(c) The Managing Member shall have satisfied its obligations under Section 9.3(a) and Section 9.3(b) by either (i) to the Managing Member or the Company being subject to periodic reporting requirements under the Exchange Act, and filing the quarterly and annual reports required thereunder within the time periods provided for the filing of such reports, including any permitted extensions, or (ii) posting or making available the reports required by this Section 9.3 on the website maintained from time to time by the Company or the Managing Member.

Section 9.4 *Waiver of Statutory Inspection Rights*. To the fullest extent permitted by law, each Member hereby waives any current or future rights Members may have under Section 4A-406 of the Act (and similar rights under other applicable law) to inspect, or make copies and extracts from, the Company's membership ledger, any list of its Members, or any other books and records of the Company or any of its affiliates or subsidiaries, in Member's capacity as a holder of membership units, shares, units, options, or any other equity instrument.

## ARTICLE 10
## TAX MATTERS

Section 10.1 *Preparation of Tax Returns*. The Managing Member shall arrange for the preparation and timely filing of all returns with respect to Company income, gains, deductions, losses and other items required of the Company for federal and state income tax purposes and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each taxable year, the drafts of the tax information reasonably required by Members for federal and state income tax and any other tax reporting purposes. Final versions of such information (including Schedule K-1) share be provided within two hundred ten (210) days of the close of each taxable year. The Members shall promptly provide the Managing Member with such information relating to the Contributed Properties as is readily available to the Members, including tax basis and other relevant information, as may be reasonably requested by the Managing Member from time to time.

Section 10.2 *Tax Elections*. Except as otherwise *provided* herein, the Managing Member shall, in its sole and absolute discretion, determine whether to cause the Company to make any available election pursuant to the Code, including, but not limited to, the election under Code Section 754. The Managing Member shall have the right to cause the Company to seek to revoke any such election (including, without limitation, any election under Code Section 754) upon the Managing Member's determination in its sole and absolute discretion that such revocation is in the best interests of the Members.

Section 10.3 *Company Representative*.

(a) The Managing Member shall be the "partnership representative" of the Company under Code Section 6223 for federal income tax purposes (the "*Company Representative*"). The Company Representative shall receive no compensation for its services. All third-party costs and expenses incurred by the Company Representative in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Company in addition to any reimbursement pursuant to Section 7.4 hereof. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the Company Representative in discharging its duties hereunder. The Managing Member shall appoint an individual (the "*Designated Individual*") through whom the Company Representative will act in accordance with Regulations Section 301.6223-1 and any other applicable IRS guidance. The Designated Individual is authorized to take any action the Company Representative is authorized to take under this Agreement.

(b) The Company Representative is authorized, but not required:

(i) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Company items required to be taken into account by a Member for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the Company Representative may expressly state that such agreement shall bind all Members;

(ii) in the event that a notice of a final administrative adjustment at the Company level of any item required to be taken into account by a Member for tax purposes (a "*Final Adjustment*") is mailed to the Company Representative, to seek judicial review of such Final Adjustment, including the filing of a petition for readjustment with the United States Tax Court or the United States Claims Court, or the filing of a complaint for refund with the District Court of the United States for the district in which the Company's principal place of business is located;

(iii) to intervene in any action brought by any other Member for judicial review of a final adjustment;

(iv) to file a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

(v) to enter into an agreement with the IRS to extend the period for assessing any tax that is attributable to any item required to be taken into account by a Member for tax purposes, or an item affected by such item;

(vi) to make an election under Code Section 6226; and

(vii) to take any other action on behalf of the Members or any of them in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the Company Representative in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the Company Representative and the provisions relating to indemnification of the Managing Member set forth in Section 7.7 hereof shall be fully applicable to the Company Representative in its capacity as such.

Section 10.4 *Withholding*. Each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Managing Member determines the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Company pursuant to Code Section 1441, Code Section 1442, Code Section 1445, Code Section 1446, Code Section 6225 or Code Section 6232. Any amount withheld with respect to a Member pursuant to this Section 10.4 shall be treated as paid or distributed, as applicable, to such Member for all purposes under this Agreement. Any amount paid on behalf of or with respect to a Member, in excess of any such withheld amount, shall constitute a loan by the Company to such Member, which loan shall be repaid by such Member within thirty (30) days after the affected Member receives written notice from the Managing Member that such payment must be made, *provided* that the Member shall not be required to repay such deemed loan if either (a) the Company withholds such payment from a distribution that would otherwise be made to the Member or (b) the Managing Member determines, in its sole and absolute discretion, that such payment may be satisfied out of the Available Cash of the Company that would, but for such payment, be distributed to the Member. Any amounts payable by a Member hereunder shall bear interest at the base rate on corporate loans at large United States money center commercial banks, as published from time to time in the Wall Street Journal (but not higher than the maximum lawful rate) from the date such amount is due (i.e., thirty (30) days after the Member receives written notice of such amount) until such amount is paid in full.

Section 10.5 *Organizational Expenses*. The Managing Member may cause the Company to elect to deduct expenses, if any, incurred by it in organizing the Company ratably over a 180-month period as provided in Section 709 of the Code.

Section 10.6 *Membership Provisions*. The Members acknowledge that, as of the date of this Agreement, the Company is a Disregarded Entity of the Managing Member for U.S. federal income tax purposes and will remain disregarded until such time as a Person other than the Managing Member or a Disregarded Entity thereof acquires an equity interest in the Company, at which point the Company would become a partnership for U.S. federal income tax purposes. Accordingly, notwithstanding anything to the contrary in this Agreement, the provisions of this Agreement that (i) relate to the maintenance of Capital Accounts, (ii) reference or apply the provisions of Subchapter K of the Code, or (iii) otherwise are, in the Managing Member's determination, not relevant to the Company for so long as it is a Disregarded Entity shall, in each case, apply only if and to the extent the Company becomes a partnership for U.S. federal income tax purposes.

Section 10.7 *Survival*. Each Member's obligations and the Company's rights under this Article X shall survive the dissolution, liquidation, and winding up of the Company.

## ARTICLE 11
## MEMBER TRANSFERS AND WITHDRAWALS

Section 11.1 *Transfer*.

(a) No part of the interest of a Member shall be subject to the claims of any creditor, to any spouse for alimony or support, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered except as may be specifically provided for in this Agreement.

(b) No Membership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article 11. To the fullest extent permitted by law, any Transfer or purported Transfer of a Membership Interest not made in accordance with this Article 11 shall be void.

(c) No Transfer of any Membership Interest may be made to a lender to the Company or any Person who is related (within the meaning of Section 1.752-4(b) of the Regulations) to any lender to the Company whose loan constitutes a Nonrecourse Liability, without the Consent of the Managing Member; *provided*, *however*, that, as a condition to such Consent, the lender may be required to enter into an arrangement with the Company and the Managing Member to redeem or exchange for the REIT Shares Amount any Membership Units in which a security interest is held by such lender simultaneously with the time at which such lender would be deemed to be a partner in the Company for purposes of allocating liabilities to such lender under Section 752 of the Code (*provided* that, for purpose of calculating the REIT Shares Amount in this Section 11.1(c), "*Tendered Units*" shall mean all such Membership Units in which a security interest is held by such lender).

Section 11.2 *Transfer of Managing Member's Membership Interest*.

(a) Except as provided in Section 11.2(b) or Section 11.2(c), and subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member may not Transfer all or any portion of its Membership Interest (whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise) without the Consent of the Non-Managing Members (excluding, for purposes of such consent, any outstanding LTIP Units). It is a condition to any Transfer of a Membership Interest of a Managing Member otherwise permitted hereunder (including any Transfer permitted pursuant to Section 11.2(b) or Section 11.2(c)) that: (i) coincident with such Transfer, the transferee is admitted as a Managing Member pursuant to Section 12.1 hereof; (ii) the transferee assumes, by operation of law or express agreement, all of the obligations of the transferor Managing Member under this Agreement with respect to such Transferred Membership Interest; and (iii) the transferee has executed such instruments as may be necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Membership Interest so acquired and the admission of such transferee as a Managing Member.

(b) *Certain Transactions of the Managing Member*. Subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member may, without the Consent of the Non-Managing Members, Transfer all of its Membership Interest in connection with (x) a merger, consolidation or other combination of its or the Company's assets with another entity, (y) a sale of all or substantially all of its or the Company's assets not in the ordinary course of the Company's business or (z) a reclassification, recapitalization or change of any outstanding shares of the Managing Member's stock or other outstanding equity interests, other than in connection with a stock split, reverse stock split, stock dividend change in par value, increase in authorized shares, designation or issuance of new classes of equity securities or other event that does not require the approval of the Managing Member's stockholders (each, a "*Termination Transaction*") if:

(i) in connection with such Termination Transaction, all of the Members will receive, or will have the right to elect to receive (and shall be provided the opportunity to make such an election if the holders of REIT Shares generally are also provided such an opportunity), for each Common Unit an amount of cash, securities or other property equal to the product of the Adjustment Factor and the greatest amount of cash, securities or other property paid to a holder of one REIT Share in consideration of one REIT Share pursuant to the terms of such Termination Transaction; *provided*, that if, in connection with such Termination Transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of the outstanding REIT Shares, each holder of Common Units shall receive, or shall have the right to elect to receive, the greatest amount of cash, securities or other property which such holder of Common Units would have received had it exercised its right to Redemption pursuant to Article 15 hereof and received REIT Shares in exchange for its Common Units immediately prior to the expiration of such purchase, tender or exchange offer and had thereupon accepted such purchase, tender or exchange offer and then such Termination Transaction shall have been consummated; or

(ii) all of the following conditions are met: (A) substantially all of the assets directly or indirectly owned by the surviving entity are owned directly or indirectly by the Company or another limited liability company or entity which is the survivor of a merger, consolidation or combination of assets with the Company (in each case, the "*Surviving Company*"); (B) Members that held Common Units immediately prior to the consummation of such Termination Transaction own a percentage interest of the Surviving Company based on the relative fair market value of the net assets of the Company and the other net assets of the Surviving Company immediately prior to the consummation of such transaction; (C) the rights, preferences and privileges in the Surviving Company of such Members are at least as favorable as those in effect with respect to the Common Units immediately prior to the consummation of such transaction and as those applicable to any other non-managing members or owners of the Surviving Company; and (D) the rights of such Members include at least one of the following: (I) the right to redeem their interests in the Surviving Company for the consideration available to such persons pursuant to Section 11.2(b)(i) or (II) the right to redeem their interests in the Surviving Company for cash on terms substantially equivalent to those in effect with respect to their Common Units immediately prior to the consummation of such transaction, or, if the ultimate controlling person of the Surviving Company has publicly traded common equity securities, such common equity securities, with an exchange ratio based on the determination of relative fair market value of such securities and the REIT Shares.

(c) Notwithstanding the other provisions of this Article 11 (other than Section 11.6(d) hereof), the Managing Member may Transfer all of its Membership Interests at any time to any Person that is, at the time of such Transfer an Affiliate of the Managing Member, including any "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)), without the Consent of any Non-Managing Members. The provisions of Section 11.2(b), 11.3, 11.4(a) and 11.5 hereof shall not apply to any Transfer permitted by this Section 11.2(c).

(d) Except in connection with Transfers permitted in this Article 11 and as otherwise provided in Section 12.1 in connection with the Transfer of the Managing Member's entire Membership Interest, the Managing Member may not voluntarily withdraw as a Managing Member of the Company without the Consent of the Non-Managing Members.

Section 11.3 *Members' Rights to Transfer*.

(a) *General*. Prior to the end of the Initial Holding Period, no Member (other than, subject to Section 11.2, the Managing Member) shall Transfer all or any portion of its Membership Interest to any transferee without the Consent of the Managing Member; *provided*, *however*, that any Member may, at any time, without the consent or approval of the Managing Member, (x) Transfer all or part of its Membership Interest to any Family Member (including a Transfer by a Family Member that is an inter vivos or testamentary trust (whether revocable or irrevocable) to a Family Member that is a beneficiary of such trust), any Charity, any Controlled Entity or any Affiliate, or (y) except as provided in Section 11.1(c) hereof, pledge (a "*Pledge*") all or any portion of its Membership Interest to a lending institution as collateral or security for a bona fide loan or other extension of credit, and Transfer such pledged Membership Interest to such lending institution in connection with the exercise of remedies under such loan or extension of credit (any Transfer or Pledge permitted by this proviso is hereinafter referred to as a "*Permitted Transfer*"). After such Initial Holding Period, each Member (other than, subject to Section 11.2, the Managing Member), and each transferee of Membership Units or Assignee pursuant to a Permitted Transfer, shall have the right to Transfer all or any portion of its Membership Interest to any Person, without the Consent of the Managing Member but subject to the provisions of Section 11.1(c) and Section 11.4 hereof and to satisfaction of each of the following conditions:

(i) *Managing Member Right of First Refusal*. The transferor Member (or the Member's estate in the event of the Member's death) shall give written notice of the proposed Transfer to the Managing Member, which notice shall state (A) the identity and address of the proposed transferee and (B) the amount and type of consideration proposed to be received for the Transferred Membership Units. The Managing Member shall have ten (10) Business Days upon which to give the transferor Member notice of its election to acquire the Membership Units on the terms set forth in such notice. If the Managing Member so elects, it shall purchase the Membership Units on such terms within ten (10) Business Days after giving notice of such election; *provided*, *however*, that, in the event that the proposed terms involve a purchase for cash, the Managing Member may at its election deliver in lieu of all or any portion of such cash a note from the Managing Member payable to the transferor Member at a date as soon as reasonably practicable, but in no event later than one hundred eighty (180) days after such purchase, and bearing interest at an annual rate equal to the total dividends declared with respect to one (1) REIT Share for the four (4) preceding fiscal quarters of the Managing Member, divided by the Value as of the closing of such purchase; and *provided*, *further*, that such closing may be deferred to the extent necessary to effect compliance with the Hart-Scott-Rodino Act, if applicable, and any other applicable requirements of law. If the Managing Member does not so elect, the transferor Member may Transfer such Membership Units to a third party, on terms no more favorable to the transferee than the proposed terms, subject to the other conditions of this Section 11.3.

(ii) *Qualified Transferee*. Any Transfer of a Membership Interest shall be made only to a single Qualified Transferee; *provided*, *however*, that, for such purposes, all Qualified Transferees that are Affiliates, or that comprise investment accounts or funds managed by a single Qualified Transferee and its Affiliates, shall be considered together to be a single Qualified Transferee; and *provided*, *further*, that each Transfer meeting the minimum Transfer restriction of Section 11.3(a)(iv) hereof may be to a separate Qualified Transferee.

(iii) *Opinion of Counsel*. The transferor Member shall deliver or cause to be delivered to the Managing Member an opinion of counsel reasonably satisfactory to it to the effect that the proposed Transfer may be effected without registration under the Securities Act and will not otherwise violate the registration provisions of the Securities Act and the regulations promulgated thereunder or violate any state securities laws or regulations applicable to the Company or the Membership Interests Transferred; *provided*, *however*, that the Managing Member may, in its sole discretion, waive this condition upon the request of the transferor Member. If, in the opinion of such counsel, such Transfer would require the filing of a registration statement under the Securities Act or would otherwise violate any federal or state securities laws or regulations applicable to the Company or the Membership Units, the Managing Member may prohibit any Transfer otherwise permitted under this Section 11.3 by a Member of Membership Interests.

(iv) *Minimum Transfer Restriction*. Any Transferring Member must Transfer not less than the lesser of (A) five hundred (500) Membership Units or (B) all of the remaining Membership Units owned by such Transferring Member, without, in each case, the Consent of the Managing Member; *provided*, *however*, that, for purposes of determining compliance with the foregoing restriction, all Membership Units owned by Affiliates of a Member shall be considered to be owned by such Member.

(v) *Exception for Permitted Transfers*. The conditions of Sections 11.3(a)(i) through 11.3(a)(iv) hereof shall not apply in the case of a Permitted Transfer.

It is a condition to any Transfer otherwise permitted hereunder (whether or not such Transfer is effected during or after the Initial Holding Period) that the transferee assumes by operation of law or express agreement all of the obligations of the transferor Member under this Agreement with respect to such Transferred Membership Interest, and no such Transfer (other than pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Member are assumed by a successor corporation by operation of law) shall relieve the transferor Member of its obligations under this Agreement without the Consent of the Managing Member. Notwithstanding the foregoing, any transferee of any Transferred Membership Interest shall be subject to any restrictions on ownership and transfer of stock of the Managing Member contained in the Charter that may limit or restrict such transferee's ability to exercise its Redemption rights, including, without limitation, the Ownership Limit. Any transferee, whether or not admitted as a Substituted Member, shall take subject to the obligations of the transferor hereunder. Unless admitted as a Substituted Member, no transferee, whether by a voluntary Transfer, by operation of law or otherwise, shall have any rights hereunder, other than the rights of an Assignee as provided in Section 11.5 hereof.

(b) *Incapacity*. If a Member is subject to Incapacity, the executor, administrator, trustee, committee, guardian, conservator or receiver of such Member's estate shall have all the rights of a Member, but not more rights than those enjoyed by other Members, for the purpose of settling or managing the estate, and such power as the Incapacitated Member possessed to Transfer all or any part of its interest in the Company. The Incapacity of a Member, in and of itself, shall not dissolve or terminate the Company.

(c) *Adverse Tax Consequences*. Notwithstanding anything to the contrary in this Agreement, the Managing Member shall have the authority (but shall not be required) to take any steps it determines are necessary or appropriate in its sole and absolute discretion to prevent the Company from being taxable as a corporation for federal income tax purposes. Except with the Consent of the Managing Member, no Transfer by a Member of its Membership Interests (including any Redemption, any conversion of LTIP Units into Common Units, any other acquisition of Membership Units by the Managing Member or any acquisition of Membership Units by the Company) may be made to or by any Person if such Transfer could (i) result in the Company being treated as an association taxable as a corporation; (ii) result in a termination of the Company for state income tax purposes; (iii) be treated as effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Code Section 7704 and the Regulations promulgated thereunder, (iv) result in the Company (A) being unable to qualify for the "private placements" safe harbor from treatment as a "publicly traded partnership" under Regulations Section 1.7704-1(h), (B) being unable to qualify for the "lack of actual trading" safe harbor from treatment as a "publicly traded partnership" under Regulations Section 1.7704-1(j), or (C) otherwise being unable to qualify for at least one of the "safe harbors" set forth in Regulations Section 1.7704-1 (or such other guidance subsequently published by the IRS setting forth safe harbors under which interests will not be treated as "readily tradable on a secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code) (the "*Safe Harbors*") as selected by the Managing Member in its sole discretion or (v) based on the advice of counsel to the Company or the Managing Member, adversely affect the ability of the Managing Member to continue to qualify as a REIT or subject the Managing Member to any additional taxes under Code Section 857 or Code Section 4981.

(d) In addition to any other restrictions on Transfer herein contained, in no event may any Transfer of a Membership Interest by any Member, other than the Managing Member (including any Redemption, any conversion of LTIP Units into Common Units, any acquisition of Membership Units by the Managing Member or any other acquisition of Membership Units by the Company) be made, without the Consent of the Managing Member: (i) to any person or entity who lacks the legal right, power or capacity to own a Membership Interest; (ii) in violation of applicable law; (iii) of any component portion of a Membership Interest, such as the Capital Account, or rights to distributions, separate and apart from all other components of a Membership Interest; (iv) in the event that such Transfer could cause either the Managing Member or any Managing Member Affiliate to cease to comply with the REIT Requirements or to cease to qualify as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)); (v) if such Transfer could, based on the advice of counsel to the Company or the Managing Member, cause a termination of the Company for state income tax purposes (except as a result of the Redemption (or acquisition by the Managing Member) of all Common Units held by all Members); (vi) if such Transfer could, based on the advice of legal counsel to the Company or the Managing Member, cause the Company to cease to be classified as a partnership for federal income tax purposes (except as a result of the Redemption (or acquisition by the Managing Member) of all Common Units held by all Members); (vii) if such Transfer would cause the Company to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in ERISA Section 3(14)) or a "disqualified person" (as defined in Code Section 4975(c)) or result in a "prohibited transaction" (within the meaning of ERISA or the Code); (viii) if such Transfer could, based on the advice of legal counsel to the Company or the Managing Member, cause any portion of the assets of the Company to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.3-101, as modified by Section 3(42) of ERISA; (ix) if such Transfer requires the registration of such Membership Interest pursuant to any applicable federal or state securities laws; (x) if such Transfer could (A) be treated as effectuated through an "established securities market" or a "secondary market" (or the substantial equivalent thereof) within the meaning of Section 7704 of the Code and the Regulations promulgated thereunder, (B) cause the Company to become a "publicly traded partnership," as such term is defined in Sections 469(k)(2) or 7704(b) of the Code, or (C) cause the Company to fail to qualify for at least one of the Safe Harbors; (xi) if such Transfer causes the Company (as opposed to the Managing Member) to become a reporting company under the Exchange Act; (xii) if such Transfer subjects the Company to regulation under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or ERISA, each as amended. The Managing Member shall, in its sole discretion, be permitted to take all action necessary to prevent the Company from being classified as a "publicly traded partnership" under Code Section 7704; or (xiii) if such Transfer would result in a Non-Referral Source Breach, including by virtue of any direct or indirect Transfer and, at any time, and from time to time, the Managing Member may require that any Holder deliver a new Non-Referral Source Certification substantially in the form attached hereto as Exhibit E.

(e) Transfers of the Membership Interest of a Member, other than the Managing Member, pursuant to this Article 11 may only be made on the first day of a fiscal quarter of the Company, unless the Managing Member otherwise Consents.

Section 11.4 *Admission of Substituted Members*.

(a) No Member shall have the right to substitute a transferee (including any transferees pursuant to Transfers permitted by Section 11.3 hereof) as a Member in its place. A transferee of a Member Interest may be admitted as a Substituted Member only with the Consent of the Managing Member. The failure or refusal by the Managing Member to permit a transferee of any such interests to become a Substituted Member shall not give rise to any cause of action against the Company or the Managing Member. Subject to the foregoing, an Assignee shall not be admitted as a Substituted Member until and unless it furnishes to the Managing Member (i) evidence of acceptance, in form and substance satisfactory to the Managing Member, of all the terms, conditions and applicable obligations of this Agreement, (ii) a counterpart signature page to this Agreement executed by such Assignee and (iii) such other documents and instruments as the Managing Member may require in its sole discretion to effect such Assignee's admission as a Substituted Member.

(b) Concurrently with, and as evidence of, the admission of a Substituted Member, the Managing Member shall update the Member Registry and the books and records of the Company to reflect the name, address and number and class and/or series of Membership Units of such Substituted Member and to eliminate or adjust, if necessary, the name, address and number of Membership Units of the predecessor of such Substituted Member.

(c) A transferee who has been admitted as a Substituted Member in accordance with this Article 11 shall have all the rights and powers and be subject to all the restrictions and liabilities of a Member under this Agreement.

Section 11.5 *Assignees*. If the Managing Member does not Consent to the admission of any permitted transferee under Section 11.3 hereof as a Substituted Member, as described in Section 11.4 hereof, or in the event that any Membership Interest is deemed to have been Transferred notwithstanding the restrictions set forth in this Article 11, such transferee shall be considered an Assignee for purposes of this Agreement. An Assignee shall be entitled to all the rights of an assignee of a limited liability company interest under the Act, including the right to receive distributions from the Company and the share of Net Income, Net Losses and other items of income, gain, loss, deduction and credit of the Company attributable to the Membership Interest assigned to such transferee and the rights to Transfer the Membership Interest provided in this Article 11, but shall not be deemed to be a holder of a Membership Interest for any other purpose under this Agreement (other than as expressly provided in Section 15.1 hereof with respect to a Qualifying Party that becomes a Tendering Party), and shall not be entitled to effect a Consent or vote with respect to such Membership Interest on any matter presented to the Members for approval (such right to Consent or vote, to the extent provided in this Agreement or under the Act, fully remaining with the transferor Member). In the event that any such transferee desires to make a further Transfer of any such Membership Interest, such transferee shall be subject to all the provisions of this Article 11 to the same extent and in the same manner as any Member desiring to make a Transfer of a Member Interest.

Section 11.6 *General Provisions*.

(a) No Member may withdraw from the Company other than as a result of: (i) a permitted Transfer of all of such Member's Membership Interest in accordance with this Article 11 with respect to which the transferee becomes a Substituted Member; (ii) pursuant to a redemption (or acquisition by the Managing Member) of all of its Membership Interest pursuant to a Redemption under Section 15.1 hereof and/or pursuant to Section 4.7 of this Agreement or any Membership Unit Designation or (iii) the acquisition by the Managing Member of all of such Member's Membership Interest, whether or not pursuant to Section 15.1(b) hereof.

(b) Any Member who shall Transfer all of its Membership Units in a Transfer (i) permitted pursuant to this Article 11 where such transferee was admitted as a Substituted Member, (ii) pursuant to the exercise of its rights to effect a redemption of all of its Membership Units pursuant to a Redemption under Section 15.1 hereof and/or pursuant to Section 4.7 of this Agreement or any Membership Unit Designation, or (iii) to the Managing Member, whether or not pursuant to Section 15.1(b) hereof, shall cease to be a Member.

(c) If any Membership Unit is Transferred in compliance with the provisions of this Article 11, or is redeemed by the Company, or acquired by the Managing Member pursuant to Section 15.1 hereof, on any day other than the first day of a Fiscal Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit attributable to such Membership Unit for such Fiscal Year shall be allocated to the transferor Member or the Tendering Party (as the case may be) and, in the case of a Transfer other than a Redemption, to the transferee Member, by taking into account their varying interests during the Fiscal Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the Managing Member in its sole and absolute discretion. The Members hereby agree that any such selection by the Managing Member is made by "agreement of the partners" within the meaning of Regulations Section 1.706-4(f). Solely for purposes of making such allocations, unless the Managing Member decides in its sole and absolute discretion to use another method permitted under the Code, each of such items for the calendar month in which a Transfer occurs shall be allocated to the transferee Member and none of such items for the calendar month in which a Transfer or a Redemption occurs shall be allocated to the transferor Member, or the Tendering Party (as the case may be) if such Transfer occurs on or before the fifteenth (15th) day of the month, otherwise such items shall be allocated to the transferor. All distributions of Available Cash attributable to such Membership Unit with respect to which the Company Record Date is before the date of such Transfer, assignment or Redemption shall be made to the transferor Member or the Tendering Party (as the case may be) and, in the case of a Transfer other than a Redemption, all distributions of Available Cash thereafter attributable to such Membership Unit shall be made to the transferee Member.

## ARTICLE 12
## ADMISSION OF MEMBERS

Section 12.1 *Admission of Successor Managing Member*. A successor to all of the Managing Member's Managing Member Interest pursuant to a Transfer permitted by Section 11.2 hereof who is proposed to be admitted as a successor Managing Member shall be admitted to the Company as the Managing Member, effective immediately upon such Transfer. Upon any such Transfer and the admission of any such transferee as a successor Managing Member in accordance with this Section 12.1, the transferor Managing Member shall be relieved of its obligations without any further liability under this Agreement and shall cease to be a Managing Member of the Company without any separate Consent of the Non-Managing Members or the consent or approval of any other Members. Any such successor Managing Member shall carry on the business and affairs of the Company without dissolution. In each case, the admission shall be subject to the successor Managing Member executing and delivering to the Company an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect the admission of such Person as a Managing Member. Upon any such Transfer, the transferee shall become the successor Managing Member for all purposes herein, and shall be vested with the powers and rights of the transferor Managing Member, and shall be liable for all obligations and responsible for all duties of the Managing Member. Concurrently with, and as evidence of, the admission of a successor Managing Member, the Managing Member shall update the Member Registry and the books and records of the Company to reflect the name, address and number and classes and/or series of Membership Units of such successor Managing Member. In the event that the Managing Member withdraws from the Company, or transfers its entire Membership Interest, in violation of this Agreement, or otherwise dissolves or terminates or ceases to be the Managing Member of the Company, a Majority in Interest of the Members may elect to continue the Company by selecting a successor Managing Member in accordance with Section 13.1(a) hereof.

Section 12.2 *Admission of Additional Members*.

(a) A Person (other than an existing Member) who makes a Capital Contribution to the Company in exchange for Membership Units and in accordance with this Agreement or is issued LTIP Units in exchange for no consideration in accordance with Section 4.2(b) hereof shall be admitted to the Company as an Additional Member only upon furnishing to the Managing Member (i) evidence of acceptance, in form and substance satisfactory to the Managing Member, of all of the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Section 2.4 hereof, (ii) a counterpart signature page to this Agreement executed by such Person and (iii) such other documents or instruments as the Managing Member may require in its sole and absolute discretion in order to effect such Person's admission as an Additional Member. Concurrently with, and as evidence of, the admission of an Additional Member, the Managing Member shall update the Member Registry and the books and records of the Company to reflect the name, address and number and classes and/or series of Membership Units of such Additional Member.

(b) Notwithstanding anything to the contrary in this Section 12.2, no Person shall be admitted as an Additional Member without the Consent of the Managing Member. The admission of any Person as an Additional Member shall become effective on the date upon which the name of such Person is recorded on the books and records of the Company, following the Consent of the Managing Member to such admission and the satisfaction of all the conditions set forth in Section 12.2(a).

(c) If any Additional Member is admitted to the Company on any day other than the first day of a Fiscal Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit allocable among Holders for such Fiscal Year shall be allocated among such Additional Member and all other Holders by taking into account their varying interests during the Fiscal Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the Managing Member. The Members hereby agree that any such selection by the Managing Member is made by "agreement of the partners" within the meaning of Regulations Section 1.706-4(f). Solely for purposes of making such allocations, each of such items for the calendar month in which an admission of any Additional Member occurs shall be allocated among all the Holders including such Additional Member, in accordance with the principles described in Section 11.6(c) hereof. All distributions of Available Cash with respect to which the Company Record Date is before the date of such admission shall be made solely to Members and Assignees other than the Additional Member, and all distributions of Available Cash thereafter shall be made to all the Members and Assignees including such Additional Member.

(d) Any Additional Member admitted to the Company that is an Affiliate of the Managing Member shall be deemed to be a "Managing Member Affiliate" hereunder and shall be reflected as such on the Member Registry and the books and records of the Company.

Section 12.3 *Amendment of Agreement and Articles of Organization*. For the admission to the Company of any Member, the Managing Member shall take all steps necessary and appropriate under the Act to update the Member Registry, amend the records of the Company and, if necessary, to prepare as soon as practical an amendment of this Agreement and, if required by law, shall prepare and file an amendment to the Articles of Organization and may for this purpose exercise the power of attorney granted pursuant to Section 2.4 hereof.

Section 12.4 *Limit on Number of Members*. Unless otherwise permitted by the Managing Member in its sole and absolute discretion, no Person shall be admitted to the Company as an Additional Member if the effect of such admission would be to cause the Company to have a number of Members that would cause the Company to become a reporting company under the Exchange Act.

Section 12.5 *Admission*. A Person shall be admitted to the Company as a Member of the Company or a Managing Member of the Company only upon strict compliance, and not upon substantial compliance, with the requirements set forth in this Agreement for admission to the Company as a Member or a Managing Member.

## ARTICLE 13
## DISSOLUTION, LIQUIDATION AND TERMINATION

Section 13.1 *Dissolution*. The Company shall not be dissolved by the admission of Substituted Members or Additional Members or by the admission of a successor Managing Member in accordance with the terms of this Agreement. Upon the withdrawal of the Managing Member, any successor Managing Member shall continue the business and affairs of the Company without dissolution. However, the Company shall dissolve, and its affairs shall be wound up, upon the first to occur of any of the following (each a "*Liquidating Event*"):

(a) an event of withdrawal of the Managing Member (including, without limitation, bankruptcy, but excluding the admission of a successor Managing Member in accordance with this Agreement) unless, within ninety (90) days after the withdrawal, a Majority in Interest of the Members remaining agree in writing, in their sole and absolute discretion, to continue the Company and to the appointment, effective as of the date of such withdrawal, of a successor Managing Member;

(b) an election to dissolve the Company made by the Managing Member in its sole and absolute discretion, with or without the Consent of the Members;

(c) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act; or

(d) entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Act;

Section 13.2 *Winding Up*.

(a) Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and the Holders. After the occurrence of a Liquidating Event, no Holder shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The Managing Member (or, in the event that there is no remaining Managing Member or the Managing Member has dissolved, become bankrupt within the meaning of the Act or ceased to operate, any Person elected by a Majority in Interest of the Members (the Managing Member or such other Person being referred to herein as the "*Liquidator*")) shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and property, and the Company property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom (which may, to the extent determined by the Managing Member, include shares of stock in the Managing Member) shall be applied and distributed in the following order:

(i) First, to the satisfaction of all of the Company's debts and liabilities to creditors other than the Holders (whether by payment or the making of reasonable provision for payment thereof);

(ii) Second, to the satisfaction of all of the Company's debts and liabilities to the Managing Member (whether by payment or the making of reasonable provision for payment thereof), including, but not limited to, amounts due as reimbursements under Section 7.4 hereof;

(iii) Third, to the satisfaction of all of the Company's debts and liabilities to the other Holders (whether by payment or the making of reasonable provision for payment thereof); and

(iv) Fourth, to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for all prior periods and the Company taxable year during which the liquidation occurs (other than those made as a result of the liquidating distribution set forth in this Section 13.2(a)(iv)).

The Managing Member shall not receive any additional compensation for any services performed pursuant to this Article 13 other than reimbursement of its expenses as set forth in Section 7.4.

(b) Notwithstanding the provisions of Section 13.2(a) hereof that require liquidation of the assets of the Company, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Company, the Liquidator determines that an immediate sale of part or all of the Company's assets would be impractical or would cause undue loss to the Holders, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Company (including to those Holders as creditors) and/or distribute to the Holders, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.2(a) hereof, undivided interests in such Membership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Holders, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

(c) If any Holder has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), except as otherwise agreed to by such Holder, such Holder shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

(d) In the sole and absolute discretion of the Managing Member or the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Holders pursuant to this Article 13 may be:

(i) distributed to a trust established for the benefit of the Managing Member and the Holders for the purpose of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent, conditional or unmantured liabilities or obligations of the Company or of the Managing Member arising out of or in connection with the Company and/or Company activities. The assets of any such trust shall be distributed to the Holders, from time to time, in the discretion of the Managing Member, in the same proportions and amounts as would otherwise have been distributed to the Holders pursuant to this Agreement; or

(ii) withheld or escrowed to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, *provided* that such withheld or escrowed amounts shall be distributed to the Holders in the manner and order of priority set forth in Section 13.2(a) hereof as soon as practicable.

(e) The provisions of Section 7.8 hereof shall apply to any Liquidator appointed pursuant to this Article 13 as though the Liquidator were the Managing Member of the Company.

Section 13.3 *Rights of Holders*. Except as otherwise provided in this Agreement and subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation , (a) each Holder shall look solely to the assets of the Company for the return of its Capital Contribution, (b) no Holder shall have the right or power to demand or receive property other than cash from the Company and (c) no Holder shall have priority over any other Holder as to the return of its Capital Contributions, distributions or allocations.

Section 13.4 *Notice of Dissolution*. In the event that a Liquidating Event occurs or an event occurs that would, but for an election or objection by one or more Members pursuant to Section 13.1 hereof, result in a dissolution of the Company, the Managing Member or Liquidator shall, within thirty (30) days thereafter, provide written notice thereof to each Holder and, in the Managing Member's or Liquidator's sole and absolute discretion or as required by the Act, to all other parties with whom the Company regularly conducts business (as determined in the sole and absolute discretion of the Managing Member or Liquidator), and the Managing Member or Liquidator may, or, if required by the Act, shall, publish notice thereof in a newspaper of general circulation in each place in which the Company regularly conducts business (as determined in the sole and absolute discretion of the Managing Member or Liquidator).

Section 13.5 *Articles of Cancellation*. Upon the completion of the liquidation of the Company cash and property as provided in Section 13.2 hereof, the Company shall be terminated, articles of cancellation shall be filed with the SDAT and all qualifications of the Company as a foreign limited liability company or association in jurisdictions other than the State of Maryland shall be cancelled, and such other actions as may be necessary to terminate the Company shall be taken.

Section 13.6 *Reasonable Time for Winding-Up*. A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 13.2 hereof, in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between and among the Members during the period of liquidation; *provided*, *however*, reasonable efforts shall be made to complete such winding-up within twenty-four (24) months after the adoption of a plan of liquidation of the Managing Member, as provided in Section 562(b)(1)(B) of the Code, if necessary, in the sole and absolute discretion of the Managing Member.

## ARTICLE 14
## PROCEDURES FOR ACTIONS AND CONSENTS OF MEMBERS; AMENDMENTS; MEETINGS

Section 14.1 *Procedures for Actions and Consents of Members*. The actions requiring Consent of any Member or Members pursuant to this Agreement, including Section 7.3 hereof, or otherwise pursuant to applicable law, are subject to the procedures set forth in this Article 14.

Section 14.2 *Amendments*. Amendments to this Agreement may be proposed by the Managing Member or by Members holding twenty-five percent (25%) or more of the Membership Interests held by Members and, except as set forth in Section 7.3(b) and Section 7.3(c) and subject to Section 7.3(d), Section 16.10 and the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, shall be approved by the Consent of the Members. Following such proposal, the Managing Member shall submit to the Members entitled to vote thereon any proposed amendment that, pursuant to the terms of this Agreement, requires the consent, approval or vote of such Members. The Managing Member shall seek the consent, approval or vote of the Members entitled to vote thereon on any such proposed amendment in accordance with Section 14.3 hereof. Upon obtaining any such Consent, or any other Consent required by this Agreement, and without further action or execution by any other Person, including any Member, (a) any amendment to this Agreement may be implemented and reflected in a writing executed solely by the Managing Member, and (b) the Members shall be deemed a party to and bound by such amendment of this Agreement. For the avoidance of doubt, notwithstanding anything to the contrary in this Agreement, this Agreement may not be amended without the Consent of the Managing Member.

Section 14.3 *Actions and Consents of the Members*.

(a) Meetings of the Members may be called only by the Managing Member to transact any business that the Managing Member determines. The call shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all Members entitled to act at the meeting not less than seven (7) days nor more than sixty (60) days prior to the date of such meeting. Members may vote in person or by proxy at such meeting. Unless approval by a different number or proportion of the Members is required by this Agreement, the affirmative vote of a Majority in Interest of the Members entitled to act on any proposal shall be sufficient to approve such proposal at a meeting of the Members. Whenever the vote, consent or approval of Members is permitted or required under this Agreement, such vote, consent or approval may be given at a meeting of Members or in accordance with the procedure prescribed in Section 14.3(b) hereof.

(b) Any action requiring the Consent of any Member or group of Members pursuant to this Agreement or that is required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing or by electronic transmission setting forth the action so taken or consented to is given by Members whose affirmative vote would be sufficient to approve such action or provide such Consent at a meeting of the Members. Such consent may be in one instrument or in several instruments, and shall have the same force and effect as the affirmative vote of such Members at a meeting of the Members. Such consent shall be filed with the Managing Member. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified. For purposes of obtaining a Consent in writing or by electronic transmission, the Managing Member may require a response within a reasonable specified time, but not less than fifteen (15) days, and failure to respond in such time period shall constitute a Consent that is consistent with the Managing Member's recommendation with respect to the proposal; *provided*, *however*, that an action shall become effective at such time as requisite Consents are received even if prior to such specified time.

(c) Each Member entitled to act at a meeting of the Members may authorize any Person or Persons to act for it by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Each proxy must be signed by the Member or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy (or there is receipt of a proxy authorizing a later date). Every proxy shall be revocable at the pleasure of the Member executing it, such revocation to be effective upon the Company's receipt of written notice of such revocation from the Member executing such proxy, unless such proxy states that it is irrevocable and is coupled with an interest.

(d) The Managing Member may set a record date for the purpose of determining the Members (i) entitled to Consent to any action, (ii) entitled to receive notice of or vote at any meeting of the Members or (iii) in order to make a determination of Members for any other proper purpose. Such date, in any case, shall not be more than ninety (90) days and, in the case of a meeting of the Members, not less than five (5) days, before the date on which the meeting is to be held or Consent is to be given. If no record date is fixed, the record date for the determination of Members entitled to notice of or to vote at a meeting of the Members shall be at the close of business on the day on which the notice of the meeting is sent, and the record date for any other determination of Members shall be the effective date of such Member action, distribution or other event. When a determination of the Members entitled to vote at any meeting of the Members has been made as provided in this section, such determination shall apply to any adjournment thereof.

(e) Each meeting of Members shall be conducted by the Managing Member or such other Person as the Managing Member may appoint pursuant to such rules for the conduct of the meeting as the Managing Member or such other Person deems appropriate in its sole and absolute discretion. Without limitation, meetings of Members may be conducted in the same manner as meetings of the Managing Member's stockholders and may be held at the same time as, and as part of, the meetings of the Managing Member's stockholders.

**ARTICLE 15**
**GENERAL PROVISIONS**

Section 15.1 *Redemption Rights of Qualifying Parties*.

(a) After the applicable Initial Holding Period, a Qualifying Party shall have the right (subject to the terms and conditions set forth herein) to require the Company to redeem all or a portion of Common Units held by such Tendering Party (Common Units that have in fact been tendered for redemption being hereafter referred to as "*Tendered Units*") in exchange (a "*Redemption*") for the Cash Amount payable on the Specified Redemption Date. The Company may, in the Managing Member's sole and absolute discretion, redeem Tendered Units at the request of the Holder thereof prior to the end of the applicable Initial Holding Period (subject to the terms and conditions set forth herein) (a "*Special Redemption*"); *provided*, *however*, that the Managing Member first receives an opinion of counsel reasonably satisfactory to it to the effect that the proposed Special Redemption will not cause the Company or the Managing Member to violate any federal or state securities laws or regulations applicable to the Special Redemption, the issuance and sale of the Tendered Units to the Tendering Party or the issuance and sale of REIT Shares to the Tendering Party pursuant to Section 15.1(b) of this Agreement. Any Redemption shall be exercised pursuant to a Notice of Redemption delivered to the Managing Member by the Qualifying Party when exercising the Redemption right (the "*Tendering Party*"). The Company's obligation to effect a Redemption, however, shall not arise or be binding against the Company until the earlier of (i) the date the Managing Member notifies the Tendering Party that the Managing Member declines to acquire some or all of the Tendered Units under Section 15.1(b) hereof following receipt of a Notice of Redemption and (ii) the Business Day following the Cut-Off Date. In the event of a Redemption, the Cash Amount shall be delivered as a certified or bank check payable to the Tendering Party or, in the Managing Member's sole and absolute discretion, in immediately available funds, in each case, on or before the Specified Redemption Date; *provided*, *however*, that the Managing Member may elect to cause the Specified Redemption Date to be delayed for up to an additional 60 Business Days to the extent required for the Managing Member to cause additional REIT Shares to be issued to provide financing to be used to make such payment of the Cash Amount.

(b) Notwithstanding the provisions of Section 15.1(a) hereof, on or before the close of business on the Cut-Off Date, the Managing Member may, in the Managing Member's sole and absolute discretion but subject to the Ownership Limit, elect to acquire some or all (such percentage being referred to as the "*Applicable Percentage*") of the Tendered Units from the Tendering Party in exchange for REIT Shares. If the Managing Member elects to acquire some or all of the Tendered Units pursuant to this Section 15.1(b), the Managing Member shall give written notice thereof to the Tendering Party on or before the close of business on the Cut-Off Date. If the Managing Member elects to acquire any of the Tendered Units for REIT Shares, the Managing Member shall issue and deliver such REIT Shares to the Tendering Party pursuant to the terms of this Section 15.1(b), in which case (i) the Managing Member shall assume directly the obligation with respect thereto and shall satisfy the Tendering Party's exercise of its Redemption right with respect to such Tendered Units and (ii) such transaction shall be treated, for federal income tax purposes, as a transfer by the Tendering Party of such Tendered Units to the Managing Member in exchange for the REIT Shares Amount. If the Managing Member so elects, on the Specified Redemption Date, the Tendering Party shall sell such number of the Tendered Units to the Managing Member in exchange for a number of REIT Shares equal to the product of the REIT Shares Amount and the Applicable Percentage; *provided*, *however*, that the Managing Member may elect to cause the Specified Redemption Date to be delayed for up to an additional 60 Business Days to the extent required for the Managing Member to cause additional REIT Shares to be issued. The Tendering Party shall submit (A) such information, certification or affidavit as the Managing Member may reasonably require in connection with the application of the Ownership Limit to any such acquisition and (B) such written representations, investment letters, legal opinions or other instruments necessary, in the Managing Member's view, to effect compliance with the Securities Act. In the event of a purchase of the Tendered Units by the Managing Member pursuant to this Section 15.1(b), the Tendering Party shall no longer have the right to cause the Company to effect a Redemption of such Tendered Units and, upon notice to the Tendering Party by the Managing Member given on or before the close of business on the Cut-Off Date that the Managing Member has elected to acquire some or all of the Tendered Units pursuant to this Section 15.1(b), the obligation of the Company to effect a Redemption of the Tendered Units as to which the Managing Member's notice relates shall not accrue or arise. A number of REIT Shares equal to the product of the Applicable Percentage and the REIT Shares Amount, if applicable, shall be delivered by the Managing Member as duly authorized, validly issued, fully paid and non-assessable REIT Shares and, if applicable, Rights, free of any pledge, lien, encumbrance or restriction, other than the Ownership Limit, the Securities Act and relevant state securities or "blue sky" laws. Neither any Tendering Party whose Tendered Units are acquired by the Managing Member pursuant to this Section 15.1(b), any Member, any Assignee nor any other interested Person shall have any right to require or cause the Managing Member to register, qualify or list any REIT Shares owned or held by such Person, whether or not such REIT Shares are issued pursuant to this Section 15.1(b), with the SEC, with any state securities commissioner, department or agency, under the Securities Act or the Exchange Act or with any stock exchange; *provided*, *however*, that this limitation shall not be in derogation of any registration or similar rights granted pursuant to any other written agreement between the Managing Member and any such Person. Notwithstanding any delay in such delivery, the Tendering Party shall be deemed the owner of such REIT Shares and Rights for all purposes, including, without limitation, rights to vote or consent, receive dividends, and exercise rights, as of the Specified Redemption Date. REIT Shares issued upon an acquisition of the Tendered Units by the Managing Member pursuant to this Section 15.1(b) may contain such legends regarding restrictions under the Securities Act and applicable state securities laws as the Managing Member determines to be necessary or advisable in order to ensure compliance with such laws.

(c) Notwithstanding the provisions of Section 15.1(a) and 15.1(b) hereof:

(i) The Tendering Parties shall have no rights under this Agreement that would otherwise be prohibited by the Charter and shall have no rights to require the Company to redeem Common Units if the acquisition of such Common Units by the Managing Member pursuant to Section 15.1(b) hereof would cause any Person to violate the Ownership Limit. To the extent that any attempted Redemption or acquisition of the Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof would be in violation of this Section 15.1(c)(i), to the fullest extent permitted by law, it shall be void, and the Tendering Party shall not acquire any rights or economic interests in REIT Shares otherwise issuable by the Managing Member under Section 15.1(b) hereof or cash otherwise payable under Section 15.1(a) hereof.

(ii) No Tendering Party may exercise its Redemption right pursuant to this Agreement more than one (1) time during any fiscal quarter of the Company.

(iii) No Tendering Party may deliver a Notice of Redemption during the period from December 1 of any year through January 1 of the following year, nor shall any Specified Redemption Date occur during the period from December 21 of any year through January 22 of the following year.

(d) If the Managing Member does not elect to acquire the Tendered Units pursuant to Section 15.1(b) hereof:

(i) The Company may elect to raise funds for the payment of the Cash Amount either (A) by requiring that the Managing Member contribute to the Company funds from the proceeds of a registered public offering by the Managing Member of REIT Shares sufficient to purchase the Tendered Units or (B) from any other sources (including, but not limited to, the sale of any Property and the incurrence of additional Debt) available to the Company. Any proceeds from a public offering that are in excess of the Cash Amount shall be for the sole benefit of the Managing Member. The Managing Member shall make a Capital Contribution of any such amounts to the Company for an additional Managing Member Interest in accordance with Section 4.3(e).

(ii) If the Cash Amount is not paid on or before the Specified Redemption Date, interest shall accrue with respect to the Cash Amount from the day after the Specified Redemption Date to and including the date on which the Cash Amount is paid at a rate equal to the base rate on corporate loans at large United States money center commercial banks, as published from time to time in the Wall Street Journal (but not higher than the maximum lawful rate).

(e) Notwithstanding the provisions of Section 15.1(b) hereof, the Managing Member shall not, under any circumstances, elect to acquire any Tendered Units in exchange for REIT Shares if such exchange would be prohibited under the Charter.

(f) Notwithstanding anything herein to the contrary (but subject to Section 15.1(c) hereof), with respect to any Redemption (or any tender of Common Units for Redemption if the Tendered Units are acquired by the Managing Member pursuant to Section 15.1(b) hereof) pursuant to this Section 15.1:

(i) All Common Units acquired by the Managing Member pursuant to Section 15.1(b) hereof shall automatically, and without further action required, be converted into and deemed to be a Managing Member Interest comprised of the same number of Common Units.

(ii) Subject to the Ownership Limit, no Tendering Party may effect a Redemption for less than one thousand (1,000) Common Units or, if such Tendering Party holds (as a Member or, economically, as an Assignee) less than one thousand (1,000) Common Units, all of the Common Units held by such Tendering Party, without, in each case, the Consent of the Managing Member.

(iii) If (A) a Tendering Party surrenders its Tendered Units during the period after the Company Record Date with respect to a distribution and before the record date established by the Managing Member for a distribution to its stockholders of some or all of its portion of such Company distribution, and (B) the Managing Member elects to acquire any of such Tendered Units in exchange for REIT Shares pursuant to Section 15.1(b), such Tendering Party shall pay to the Managing Member on the Specified Redemption Date an amount in cash equal to the portion of the Company distribution in respect of the Tendered Units exchanged for REIT Shares, insofar as such distribution relates to the same period for which such Tendering Party would receive a distribution in respect of such REIT Shares.

(iv) The consummation of such Redemption (or an acquisition of Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof, as the case may be) shall be subject to the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Act.

(v) The Tendering Party shall continue to own (subject, in the case of an Assignee, to the provisions of Section 11.5 hereof) all Common Units subject to any Redemption, and be treated as a Member or an Assignee, as applicable, with respect to such Common Units for all purposes of this Agreement, until such Common Units are either paid for by the Company pursuant to Section 15.1(a) hereof or transferred to the Managing Member and paid for, by the issuance of the REIT Shares, pursuant to Section 15.1(b) hereof on the Specified Redemption Date. Until a Specified Redemption Date and an acquisition of the Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof, the Tendering Party shall have no rights as a stockholder of the Managing Member with respect to the REIT Shares issuable in connection with such acquisition.

(g) In connection with an exercise of Redemption rights pursuant to this Section 15.1, except as otherwise Consented to by the Managing Member, the Tendering Party shall submit the following to the Managing Member, in addition to the Notice of Redemption:

(i) A written affidavit, dated the same date as the Notice of Redemption, (A) disclosing the actual and constructive ownership, as determined for purposes of Code Sections 856(a)(6) and 856(h), of REIT Shares by (I) such Tendering Party and (II) to the best of their knowledge any Related Party and (B) representing that, after giving effect to the Redemption or an acquisition of the Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof, neither the Tendering Party nor to the best of their knowledge any Related Party will own REIT Shares in violation of the Ownership Limit;

(ii) A written representation that neither the Tendering Party nor to the best of their knowledge any Related Party has any intention to acquire any additional REIT Shares prior to the closing of the Redemption or an acquisition of the Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof on the Specified Redemption Date;

(iii) An undertaking to certify, at and as a condition of the closing of (A) the Redemption or (B) the acquisition of Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof on the Specified Redemption Date, that either (I) the actual and constructive ownership of REIT Shares by the Tendering Party and to the best of its knowledge any Related Party remain unchanged from that disclosed in the affidavit required by Section 15.1(g)(i) or (II) after giving effect to the Redemption or the acquisition of Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof, neither the Tendering Party nor, to the best of its knowledge, any other Person shall own REIT Shares in violation of the Ownership Limit; and

(iv) In connection with any Special Redemption, the Managing Member shall have the right to receive an opinion of counsel reasonably satisfactory to it to the effect that the proposed Special Redemption will not cause the Company or the Managing Member to violate any federal or state securities laws or regulations applicable to the Special Redemption, the issuance and sale of the Tendered Units to the Tendering Party or the issuance and sale of REIT Shares to the Tendering Party pursuant to Section 15.1(b) of this Agreement.

(h) Holders of LTIP Units shall not be entitled to the right of Redemption provided for in Section 15.1 of this Agreement, unless and until such LTIP Units have been converted into Common Units (or any other class or series of Common Units entitled to such right of Redemption) in accordance with their terms.

Section 15.2 *Addresses and Notice.* Any notice, demand, request or report required or permitted to be given or made to a Member or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written or electronic communication (including by telecopy, facsimile, electronic mail or commercial courier service) to the Member, or Assignee at the address set forth in the Member Registry or such other address of which the Member shall notify the Managing Member in accordance with this Section 15.2.

Section 15.3 *Titles and Captions*. All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically *provided* otherwise, references to "Articles" or "Sections" are to Articles and Sections of this Agreement.

Section 15.4 *Pronouns and Plurals*. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 15.5 *Further Action*. The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.6 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.7 *Waiver*.

(a) No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

(b) The restrictions, conditions and other limitations on the rights and benefits of the Members contained in this Agreement, and the duties, covenants and other requirements of performance or notice by the Members, are for the benefit of the Company and, except for an obligation to pay money to the Company, may be waived or relinquished by the Managing Member, in its sole and absolute discretion, on behalf of the Company in one or more instances from time to time and at any time; *provided*, *however*, that any such waiver or relinquishment may not be made if it would have the effect of (i) creating liability for any other Member, (ii) causing the Company to cease to qualify as a limited liability company, (iii) reducing the amount of cash otherwise distributable to the Members (other than any such reduction that affects all of the Members holding the same class or series of Membership Units on a uniform or pro rata basis, if approved by a Majority in Interest of the Members holding such class or series of Membership Units), (iv) resulting in the classification of the Company as an association or publicly traded partnership taxable as a corporation or (v) violating the Securities Act, the Exchange Act or any state "blue sky" or other securities laws; and *provided*, *further*, that any waiver relating to compliance with the Ownership Limit or other restrictions in the Charter shall be made and shall be effective only as provided in the Charter.

Section 15.8 *Counterparts*. This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 15.9 *Applicable Law; Consent to Jurisdiction; Waiver of Jury Trial*.

(a) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maryland, without regard to the principles of conflicts of law. In the event of a conflict between any provision of this Agreement and any non-mandatory provision of the Act, the provisions of this Agreement shall control and take precedence.

(b) Each Member hereby (i) submits to the non-exclusive jurisdiction of any state or federal court sitting in the State of Maryland (collectively, the "*Maryland Courts*"), with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute, (ii) to the fullest extent permitted by law, irrevocably waives, and agrees not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of any of the Maryland Courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper, (iii) agrees that notice or the service of process in any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be properly served or delivered if delivered to such Member at such Member's last known address as set forth in the Company's books and records, and (iv) irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby.

Section 15.10 *Entire Agreement*. This Agreement contains all of the understandings and agreements between and among the Members with respect to the subject matter of this Agreement and the rights, interests and obligations of the Members with respect to the Company. Notwithstanding the immediately preceding sentence, the Members hereby acknowledge and agree that the Managing Member, without the approval of any Member, may enter into side letters or similar written agreements with Members that are not Affiliates of the Managing Member, executed contemporaneously with the admission of such Member to the Company, affecting the terms hereof, as negotiated with such Member and which the Managing Member in its sole discretion deems necessary, desirable or appropriate. The parties hereto agree that any terms, conditions or provisions contained in such side letters or similar written agreements with a Member shall govern with respect to such Member notwithstanding the provisions of this Agreement.

Section 15.11 *Invalidity of Provisions*. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 15.12 *Limitation to Preserve REIT Status*. Notwithstanding anything else in this Agreement, to the extent that the amount to be paid, credited, distributed or reimbursed by the Company to any REIT Member or its officers, directors, employees or agents, whether as a reimbursement, fee, expense or indemnity (a "*REIT Payment*"), would constitute gross income to the REIT Member for purposes of Code Section 856(c)(2) or Code Section 856(c)(3), then, notwithstanding any other provision of this Agreement, the amount of such REIT Payments, as selected by the Managing Member in its discretion from among items of potential distribution, reimbursement, fees, expenses and indemnities, shall be reduced for any Fiscal Year so that the REIT Payments, as so reduced, for or with respect to such REIT Member shall not exceed the lesser of:

(a) an amount equal to the excess, if any, of (i) four percent (4%) of the REIT Member's total gross income (but excluding the amount of any REIT Payments and any amounts excluded from gross income pursuant to Section 856(c) of the Code) for the Fiscal Year that is described in subsections (A) through (I) of Code Section 856(c)(2) over (ii) the amount of gross income (within the meaning of Code Section 856(c)(2)) derived by the REIT Member from sources other than those described in subsections (A) through (I) of Code Section 856(c)(2) (but not including the amount of any REIT Payments or any amounts excluded from gross income pursuant to Section 856(c) of the Code); or

(b) an amount equal to the excess, if any, of (i) twenty-four percent (24%) of the REIT Member's total gross income (but excluding the amount of any REIT Payments and any amounts excluded from gross income pursuant to Section 856(c) of the Code) for the Fiscal Year that is described in subsections (A) through (I) of Code Section 856(c)(3) over (ii) the amount of gross income (within the meaning of Code Section 856(c)(3)) derived by the REIT Member from sources other than those described in subsections (A) through (I) of Code Section 856(c)(3) (but not including the amount of any REIT Payments or any amounts excluded from gross income pursuant to Section 856(c) of the Code);

*provided*, *however*, that REIT Payments in excess of the amounts set forth in clauses (a) and (b) above may be made if the Managing Member, as a condition precedent, obtains an opinion of tax counsel that the receipt of such excess amounts should not adversely affect the REIT Member's ability to qualify as a REIT. To the extent that REIT Payments may not be made in a Fiscal Year as a consequence of the limitations set forth in this Section 15.12, such REIT Payments shall carry over and shall be treated as arising in the following Fiscal Year if such carry over does not adversely affect the REIT Member's ability to qualify as a REIT, *provided*, *however*, that any such REIT Payment shall not be carried over more than three Fiscal Years, and any such remaining payments shall no longer be due and payable. The purpose of the limitations contained in this Section 15.12 is to prevent any REIT Member from failing to qualify as a REIT under the Code by reason of such REIT Member's share of items, including distributions, reimbursements, fees, expenses or indemnities, receivable directly or indirectly from the Company, and this Section 15.12 shall be interpreted and applied to effectuate such purpose.

Section 15.13 *No Partition*. No Member nor any successor-in-interest to a Member shall have the right while this Agreement remains in effect to have any property of the Company partitioned, or to file a complaint or institute any proceeding at law or in equity to have such property of the Company partitioned, and to the fullest extent permitted by law, each Member, on behalf of itself and its successors and assigns hereby waives any such right. It is the intention of the Members that the rights of the parties hereto and their successors-in-interest to Membership property, as among themselves, shall be governed by the terms of this Agreement, and that the rights of the Members and their respective successors-in-interest shall be subject to the limitations and restrictions as set forth in this Agreement.

Section 15.14 *No Third-Party Rights Created Hereby*. The provisions of this Agreement are solely for the purpose of defining the interests of the Holders, inter se; and no other person, firm or entity (i.e., a party who is not a signatory hereto or a permitted successor to such signatory hereto) shall have any right, power, title or interest by way of subrogation or otherwise, in and to the rights, powers, title and provisions of this Agreement. No creditor or other third party having dealings with the Company (other than as expressly *provided* herein with respect to Indemnitees) shall have the right to enforce the right or obligation of any Member to make Capital Contributions or loans to the Company or to pursue any other right or remedy hereunder or at law or in equity. None of the rights or obligations of the Members herein set forth to make Capital Contributions or loans to the Company shall be deemed an asset of the Company for any purpose by any creditor or other third party, nor may any such rights or obligations be sold, transferred or assigned by the Company or pledged or encumbered by the Company to secure any debt or other obligation of the Company or any of the Members.

Section 15.15 *No Rights as Stockholders*. Nothing contained in this Agreement shall be construed as conferring upon the Holders of Membership Units any rights whatsoever as stockholders of the Managing Member, including without limitation any right to receive dividends or other distributions made to stockholders of the Managing Member or to vote or to consent or receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the Managing Member or any other matter.

## ARTICLE 16
## LTIP UNITS

Section 16.1 *Designation*. A class of Membership Units in the Company designated as the "LTIP Units" is hereby established. The number of LTIP Units that may be issued is not limited by this Agreement.

Section 16.2 *Vesting*.

(a) *Vesting, Generally*. LTIP Units may, in the sole discretion of the Managing Member, be issued subject to vesting, forfeiture and additional restrictions on Transfer pursuant to the terms of the applicable LTIP Unit Agreement or Equity Plan. The terms of any LTIP Unit Agreement may be modified by the Managing Member from time to time in its sole discretion, subject to any restrictions on amendment imposed by the relevant LTIP Unit Agreement or by the Plan or any other applicable Equity Plan. LTIP Units that were fully vested and nonforfeitable when issued or that have vested and are no longer subject to forfeiture under the terms of an LTIP Unit Agreement are referred to as "*Vested LTIP Units*"; all other LTIP Units are referred to as "*Unvested LTIP Units*."

(b) *Forfeiture*. Upon the forfeiture of any LTIP Units in accordance with the applicable LTIP Unit Agreement and Equity Plan (including any forfeiture effected through repurchase), the LTIP Units so forfeited (or repurchased) shall immediately, and without any further action, be treated as cancelled and no longer outstanding for any purpose. Unless otherwise specified in the applicable LTIP Unit Agreement, no consideration or other payment shall be due with respect to any LTIP Units that have been forfeited, other than any distributions declared prior to the effective date of the forfeiture with respect to a Company Record Date and with respect to such LTIP Units. Except as otherwise provided in this Agreement (including without limitation Section 6.4(a)(ix)), the Plan (or other applicable Equity Plan) and the applicable LTIP Unit Agreement, in connection with any forfeiture (or repurchase) of such units, the balance of the portion of the Capital Account of the Holder of LTIP Units that is attributable to all of such Holder's LTIP Units shall be reduced by the amount, if any, by which it exceeds the target balance contemplated by Section 6.2(d), calculated with respect to such Holder's remaining LTIP Units, if any.

Section 16.3 *Adjustments.* The Company shall maintain at all times a one-to-one correspondence between LTIP Units and Common Units for conversion, distribution and other purposes, including, without limitation, complying with the following procedures; provided, that the foregoing is not intended to alter any of (a) the special allocations pursuant to Section 6.2(d) hereof, (b) differences between distributions to be made with respect to LTIP Units and Common Units pursuant to Section 13.2 and Section 16.4(b) hereof in the event that the Capital Accounts attributable to the LTIP Units are less than those attributable to Common Units due to insufficient special allocation pursuant to Section 6.2(d) or (c) any related provisions. If an Adjustment Event occurs, then the Managing Member shall take any action reasonably necessary, including any amendment to this Agreement, any LTIP Unit Agreement and/or any update to the Member Registry adjusting the number of outstanding LTIP Units or subdividing or combining outstanding LTIP Units, in any case, to maintain a one-for-one conversion and economic equivalence ratio between Common Units and LTIP Units. An "*Adjustment Event*" shall mean any of the following events: (i) the Company makes a distribution on all outstanding Common Units in Membership Units, (ii) the Company subdivides the outstanding Common Units into a greater number of units or combines the outstanding Common Units into a smaller number of units, (iii) the Company issues any Membership Units in exchange for its outstanding Common Units by way of a reclassification or recapitalization of its Common Units or (iv) any other non-recurring event or transaction that would, as determined by the Managing Member in its sole discretion, have the similar effect of diluting or expanding the rights or benefits (or potential benefits) intended to be conferred by outstanding LTIP Units. If more than one Adjustment Event occurs, any adjustment to the LTIP Units may be made only once using a single formula that takes into account each and every Adjustment Event as if all Adjustment Events occurred simultaneously. For the avoidance of doubt, the following shall not be Adjustment Events: (x) the issuance of Membership Units in a financing, reorganization, acquisition or other similar business transaction, (y) the issuance of Membership Units pursuant to any employee benefit or compensation plan or distribution reinvestment plan, or (z) the issuance of any Membership Units to the Managing Member in respect of a Capital Contribution to the Company of proceeds from the sale of securities by the Managing Member. If the Company takes an action affecting the Common Units other than actions specifically described above as "Adjustment Events" and in the opinion of the Managing Member such action would require an action to maintain the one-to-one correspondence described above, the Managing Member shall have the right to take such action, to the extent permitted by law, in such manner and at such time as the Managing Member, in its sole discretion, may determine to be reasonably appropriate under the circumstances to preserve the one-to-one correspondence described above. If an amendment is made to this Agreement adjusting the number of outstanding LTIP Units as herein provided, the Company shall promptly file in the books and records of the Company an officer's certificate setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after filing of such certificate, the Company shall mail a notice to each Holder of LTIP Units setting forth the adjustment to such Holder's LTIP Units and the effective date of such adjustment.

Section 16.4 *Distributions*.

(a) *Operating Distributions*. Except as otherwise provided in this Agreement, any LTIP Unit Agreement, the Plan (or any other applicable Equity Plan), or by the Managing Member with respect to any particular class or series of LTIP Units, Holders of LTIP Units shall be entitled to receive, if, when and as authorized by the Managing Member out of funds or other property legally available for the payment of distributions, regular, special, extraordinary or other distributions (other than distributions upon the occurrence of a Liquidating Event or proceeds from a Terminating Capital Transaction) which may be made from time to time, in an amount per unit equal to (i) with respect to any LTIP Units that are not Performance LTIP Units, the amount of any such distributions that would have been payable to such holders if the LTIP Units had been Common Units (if applicable, assuming such LTIP Units were held for the entire period to which such distributions relate) and (ii) with respect to any Performance LTIP Units, an amount equal to (A) in the case of Performance LTIP Units that have not satisfied the applicable performance vesting condition, the product of the distribution made to holders of Common Units per Common Unit multiplied by the Performance Unit Sharing Percentage, and (B) in the case of Performance LTIP Units that have satisfied the applicable performance vesting condition, the distribution made to holders of Common Units per Common Unit, in each case, if applicable, assuming such LTIP Units were held for the entire period to which such distributions relate.

(b) *Liquidating Distributions*. Holders of LTIP Units shall also be entitled to receive, if, when and as authorized by the Managing Member out of funds or other property legally available for the payment of distributions, distributions upon the occurrence of a Liquidating Event or representing proceeds from a Terminating Capital Transaction in an amount per LTIP Unit equal to the amount of any such distributions payable on one Common Unit, whether made prior to, on or after the LTIP Unit Distribution Payment Date, provided that the amount of such distributions shall not exceed the positive balances of the Capital Accounts of the holders of such LTIP Units to the extent attributable to the ownership of such LTIP Units.

(c) *Distributions Generally*. Distributions on the LTIP Units, if authorized, shall be payable on such dates and in such manner as may be authorized by the Managing Member (any such date, an "*LTIP Unit Distribution Payment Date*"). Absent a contrary determination by the Managing Member, the LTIP Unit Distribution Payment Date shall be the same as the corresponding date relating to the corresponding distribution on the Common Units. The record date for determining which Holders of LTIP Units are entitled to receive a distribution shall be the Company Record Date.

Section 16.5 *Allocations*.

(a) Holders of LTIP Units that are not Performance LTIP Units and Holders of Performance LTIP Units that have satisfied the applicable performance condition shall be allocated Net Income and Net Loss in amounts per LTIP Unit equal to the amounts allocated per Common Unit. The allocations provided by the preceding sentence shall be subject to Sections 6.2(a) and 6.2(b), and in addition to any special allocations required by Section 6.2(d).

(b) Holders of Performance LTIP Units that have not satisfied the applicable performance condition shall be allocated Net Income and Net Loss in amounts per Performance LTIP Unit equal to the amounts allocated per Performance LTIP Unit that has satisfied the applicable performance condition; provided, however, that for purposes of allocations of Net Income and Net Loss pursuant to Sections 6.2(a), 6.2(b), 6.3(c) and 6.4, the term Percentage Interest when used with respect to a Performance LTIP Unit that has not satisfied the applicable performance condition shall refer to the Percentage Interest of a Common Unit multiplied by the Performance Unit Sharing Percentage.

(c) The Managing Member is authorized in its discretion to delay or accelerate the participation of the LTIP Units in allocations of Net Income and Net Loss under this Section 16.5, or to adjust the allocations made under this Section 16.5, so that the ratio of (i) the total amount of Net Income or Net Loss allocated with respect to each LTIP Unit in the taxable year in which that LTIP Unit's LTIP Unit Distribution Payment Date falls (excluding special allocations under Section 6.2(d)), to (ii) the total amount distributed to that LTIP Unit with respect to such period, is more nearly equal to the ratio of (i) the Net Income and Net Loss allocated with respect to the Managing Member's Common Units in such taxable year to (ii) the amounts distributed to the Managing Member with respect to such Common Units and such taxable year.

Section 16.6 *Transfers*. Subject to the terms and limitations contained in an applicable LTIP Unit Agreement and the Plan (or any other applicable Equity Plan) and except as expressly provided in this Agreement with respect to LTIP Units, a Holder of LTIP Units shall be entitled to transfer such Holder's LTIP Units to the same extent, and subject to the same restrictions, as Holders of Common Units are entitled to transfer their Common Units pursuant to Article 11.

Section 16.7 *Redemption*. The Redemption right provided to Qualifying Parties under Section 15.1 shall not apply with respect to LTIP Units unless and until they are converted to Common Units as provided in Section 16.9 below.

Section 16.8 *Legend*. Any certificate evidencing an LTIP Unit shall bear an appropriate legend, as determined by the Managing Member, indicating that additional terms, conditions and restrictions on transfer, including without limitation under any LTIP Unit Agreement and the Plan (or any other applicable Equity Plan), apply to the LTIP Unit.

Section 16.9 *Conversion to Common Units*.

(a) A Qualifying Party holding LTIP Units shall have the right (the "*Conversion Right*"), at such Qualifying Party's option, at any time to convert all or a portion of such Qualifying Party's Vested LTIP Units into Common Units, taking into account all adjustments (if any) made pursuant to Section 16.3; provided, however, that a Qualifying Party may not exercise the Conversion Right for less than one thousand (1,000) Vested LTIP Units or, if such Qualifying Party holds less than one thousand (1,000) Vested LTIP Units, all of the Vested LTIP Units held by such Qualifying Party to the extent not subject to the limitation on conversion under Section 16.9(b) below. Qualifying Parties shall not have the right to convert Unvested LTIP Units into Common Units until they become Vested LTIP Units; provided, however, that in anticipation of any event that will cause such Qualifying Party's Unvested LTIP Units to become Vested LTIP Units (and subject to the timing requirements set forth in Section 16.9(b) below), such Qualifying Party may give the Company a Conversion Notice conditioned upon and effective as of the time of vesting and such Conversion Notice, unless subsequently revoked by the Qualifying Party in writing prior to such vesting event, shall be accepted by the Company subject to such condition. In all cases, the conversion of any LTIP Units into Common Units shall be subject to the conditions and procedures set forth in this Section 16.9.

(b) A Qualifying Party may convert such Qualifying Party's Vested LTIP Units into an equal number of fully paid and non-assessable Common Units, giving effect to all adjustments (if any) made pursuant to Section 16.3. Notwithstanding the foregoing, in no event may a Qualifying Party convert a number of Vested LTIP Units that exceeds the Capital Account Limitation. In order to exercise such Qualifying Party's Conversion Right, a Qualifying Party shall deliver a written notice (a "*Conversion Notice*") in substantially the form attached as Exhibit C to the Company (with a copy to the Managing Member) not less than 3 calendar days nor more than 10 calendar days prior to the date (the "*Conversion Date*") specified in such Conversion Notice; provided, however, that if the Managing Member has not given to the Qualifying Party notice of a proposed or upcoming Transaction (as defined below) at least thirty (30) days prior to the effective date of such Transaction, then the Qualifying Party shall have the right to deliver a Conversion Notice until the earlier of (x) the tenth (10th) calendar day after such notice from the Managing Member of a Transaction or (y) the third Business Day immediately preceding the effective date of such Transaction. A Conversion Notice shall be provided in the manner provided in Section 15.2. Each Qualifying Party seeking to convert Vested LTIP Units covenants and agrees with the Company that all Vested LTIP Units to be converted pursuant to this Section 16.9 shall be free and clear of all liens and encumbrances. Notwithstanding anything herein to the contrary, if the Initial Holding Period with respect to the Common Units into which the Vested LTIP Units are convertible has elapsed, a Qualifying Party may deliver a Notice of Redemption pursuant to Section 15.1(a) relating to such Common Units in advance of the Conversion Date; provided, however, that the redemption of such Common Units by the Company shall in no event take place until on or after the Conversion Date. For clarity, it is noted that the objective of this paragraph is to put a Qualifying Party in a position where, if such Qualifying Party so wishes, the Common Units into which such Qualifying Party's Vested LTIP Units will be converted can be redeemed by the Company pursuant to Section 15.1(a) simultaneously with such conversion, with the further consequence that, if the Managing Member elects to assume the Company's redemption obligation with respect to such Common Units under Section 15.1(b) by delivering to such Qualifying Party REIT Shares rather than cash, then such Qualifying Party can have such REIT Shares issued to such Qualifying Party simultaneously with the conversion of such Qualifying Party's Vested LTIP Units into Common Units. The Managing Member shall use commercially reasonable efforts to cooperate with a Qualifying Party to coordinate the timing of the different events described in the foregoing sentence.

(c) Notwithstanding the provisions of Section 16.9(a) and 16.9(b) hereof: (i) no Qualifying Party may exercise its Conversion Right pursuant to this Agreement more than one (1) time during any fiscal quarter of the Company; and (ii) no Qualifying Party may deliver a Notice of Conversion during the period from December 1 of any year through January 1 of the following year, nor shall any Conversion Date occur during the period from December 21 of any year through January 22 of the following year.

(d) The Company, at any time at the election of the Managing Member, may cause any number of Vested LTIP Units to be converted (a "*Forced Conversion*") into an equal number of Common Units, giving effect to all adjustments (if any) made pursuant to Section 16.3; provided, however, that the Company may not cause a Forced Conversion of any LTIP Units that would not at the time be eligible for conversion at the election of such Qualifying Party pursuant to Section 16.9(b). In order to exercise its right of Forced Conversion, the Company shall deliver a notice (a "*Forced Conversion Notice*") in substantially the form attached hereto as Exhibit D to the applicable Holder of LTIP Units not less than 3 calendar days prior to the Conversion Date specified in such Forced Conversion Notice. A Forced Conversion Notice shall be provided in the manner provided in Section 15.2.

(e) A conversion of Vested LTIP Units for which the Holder thereof has given a Conversion Notice or the Company has given a Forced Conversion Notice shall occur automatically after the close of business on the applicable Conversion Date without any action on the part of such Holder of LTIP Units, other than the surrender of any certificate or certificates evidencing such Vested LTIP Units, as of which time such Holder of LTIP Units shall be credited on the books and records of the Company as of the opening of business on the next day with the number of Common Units into which such LTIP Units were converted. After the conversion of LTIP Units as aforesaid, the Company shall deliver to such Holder of LTIP Units, upon such Holder's written request, a certificate of the Managing Member certifying the number of Common Units and remaining LTIP Units, if any, held by such person immediately after such conversion. The Assignee of any Member pursuant to Article 11 hereof may exercise the rights of such Member pursuant to this Section 16.9 and such Member shall be bound by the exercise of such rights by the Assignee.

(f) For purposes of making future allocations under Section 6.2(d) and applying the Capital Account Limitation, the portion of the Economic Capital Account Balance of the applicable Holder of LTIP Units that is treated as attributable to such Holder's LTIP Units shall be reduced, as of the date of conversion, by the product of the number of LTIP Units converted and the Common Unit Economic Balance.

(g) If the Company or the Managing Member shall be a party to any transaction (including without limitation a merger, consolidation, unit exchange, self-tender offer for all or substantially all Common Units or other business combination or reorganization, or sale of all or substantially all of the Company's assets, but excluding any transaction which constitutes an Adjustment Event) in each case as a result of which Common Units shall be exchanged for or converted into the right, or the Holders shall otherwise be entitled, to receive cash, securities or other property or any combination thereof (each of the foregoing being referred to herein as a "*Transaction*"), then the Managing Member shall, immediately prior to the Transaction, exercise its right to cause a Forced Conversion with respect to the maximum number of LTIP Units then eligible for conversion, taking into account any allocations that occur in connection with the Transaction or that would occur in connection with the Transaction if the assets of the Company were sold at the Transaction price or, if applicable, at a value determined by the Managing Member in good faith using the value attributed to the Common Units in the context of the Transaction (in which case the Conversion Date shall be the effective date of the Transaction and the conversion shall occur immediately prior to the effectiveness of the Transaction). In anticipation of such Forced Conversion and the consummation of the Transaction, the Company shall use commercially reasonable efforts to cause each Holder of LTIP Units to be afforded the right to receive in connection with such Transaction in consideration for the Common Units into which such Holder's LTIP Units will be converted the same kind and amount of cash, securities and other property (or any combination thereof) receivable upon the consummation of such Transaction by a Holder of the same number of Common Units, assuming such Holder is not a Person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made, as the case may be (a "*Constituent Person*"), or an affiliate of a Constituent Person. In the event that Holders of Common Units have the opportunity to elect the form or type of consideration to be received upon consummation of the Transaction, prior to such Transaction the Managing Member shall give prompt written notice to each Holder of LTIP Units of such opportunity, and shall use commercially reasonable efforts to afford the Holder of LTIP Units the right to elect, by written notice to the Managing Member, the form or type of consideration to be received upon conversion of each LTIP Unit held by such Holder into Common Units in connection with such Transaction. If a Holder of LTIP Units fails to make such an election, such Holder (and any of such Holder's transferees) shall receive upon conversion of each LTIP Unit held by such Holder (or by any of such Holder's transferees) the same kind and amount of consideration that a Holder of Common Units would receive if such Holder of Common Units failed to make such an election. Subject to the rights of the Company and the Managing Member under any LTIP Unit Agreement and the relevant terms of the Plan or any other applicable Equity Plan, the Company shall use commercially reasonable effort to cause the terms of any Transaction to be consistent with the provisions of this Section 16.9(g) and to enter into an agreement with the successor or purchasing entity, as the case may be, for the benefit of any Holder of LTIP Units whose LTIP Units will not be converted into Common Units in connection with the Transaction that will (i) contain provisions enabling the Qualifying Parties that remain outstanding after such Transaction to convert their LTIP Units into securities as comparable as reasonably practicable under the circumstances to the Common Units and (ii) preserve as far as reasonably practicable under the circumstances the distribution, special allocation, conversion, and other rights set forth in the Agreement for the benefit of the Holder of LTIP Units.

Section 16.10 *Voting*. Except as expressly provided in this Agreement, Members holding LTIP Units shall have the same voting rights as Members holding Common Units, with the LTIP Units voting together as a single class with the Common Units and having one vote per LTIP Unit and Holders of LTIP Units shall not be entitled to approve, vote on or consent to any other matter. The foregoing voting provision will not apply if, at or prior to the time when the action with respect to which such vote would otherwise be required will be effected, all outstanding LTIP Units shall have been converted (or provision is made for such conversion to occur as of or prior to such time) into Common Units.

Section 16.11 *Section 83 Safe Harbor*. Each Member authorizes the Managing Member to elect to apply the safe harbor (the "*Section 83 Safe Harbor*") set forth in proposed Regulations Section 1.83-3(l) and proposed IRS Revenue Procedure published in Notice 2005-43 (together, the "*Proposed Section 83 Safe Harbor Regulation*") (under which the fair market value of a Membership Interest that is Transferred in connection with the performance of services is treated as being equal to the liquidation value of the interest), or in similar Regulations or guidance, if such Proposed Section 83 Safe Harbor Regulation or similar Regulations are promulgated as final or temporary Regulations. If the Managing Member determines that the Company should make such election, the Managing Member is hereby authorized to amend this Agreement without the consent of any other Member to provide that (i) the Company is authorized and directed to elect the Section 83 Safe Harbor, (ii) the Company and each of its Members (including any Person to whom a Membership Interest, including an LTIP Unit, is Transferred in connection with the performance of services) will comply with all requirements of the Section 83 Safe Harbor with respect to all Membership Interests Transferred in connection with the performance of services while such election remains in effect and (iii) the Company and each of its Members will take all actions necessary, including providing the Company with any required information, to permit the Company to comply with the requirements set forth or referred to in the applicable Regulations for such election to be effective until such time (if any) as the Managing Member determines, in its sole discretion, that the Company should terminate such election. The Managing Member is further authorized to amend this Agreement to modify Article 6 to the extent the Managing Member determines in its discretion that such modification is necessary or desirable as a result of the issuance of any applicable law, Regulations, notice or ruling relating to the tax treatment of the transfer of a Membership Interests in connection with the performance of services. Notwithstanding anything to the contrary in this Agreement, each Member expressly confirms that it will be legally bound by any such amendment.

*[Remainder of Page Left Blank Intentionally]*

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

**MANAGING MEMBER:**

HEALTHPEAK PROPERTIES, INC.,
a Maryland corporation

By: /s/ Jeffrey H. Miller
Name: Jeffrey H. Miller
Its: General Counsel

**Exhibit 10.2**

**EXECUTION VERSION**

CONSENT AND AMENDMENT NO. 1

Dated as of February 10, 2023

to

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of September 20, 2021

THIS CONSENT AND AMENDMENT NO. 1 (this "Amendment") is made as of February 10, 2023 by and among HEALTHPEAK OP, LLC, a Maryland limited liability company (formerly known as Healthpeak Properties, Inc., a Maryland corporation, and Healthpeak Properties Interim, Inc., a Maryland corporation, the "Borrower" or "Old Healthpeak"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation (formerly known as New Healthpeak, Inc., the "Parent Guarantor" or "New Healthpeak"), the financial institutions listed on the signature pages hereof (the "Lenders") and BANK OF AMERICA, N.A., as Administrative Agent (in such capacity, the "Administrative Agent'), L/C Issuer and Alternative Currency Fronting Lender.

WHEREAS, the Borrower, the Lenders party thereto, the Administrative Agent and the other parties thereto entered into that certain Second Amended and Restated Credit Agreement dated as of September 20, 2021 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Credit Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Amended Credit Agreement (as defined below).

WHEREAS, the Borrower has informed the Administrative Agent that the Borrower plans to convert the Borrower's current organizational structure into an Umbrella Partnership Real Estate Investment Trust (the "Reorganization"). In connection with the Reorganization on or about February 10, 2023, Old Healthpeak, by means of a holding company reorganization (the "Merger") pursuant to that certain Agreement and Plan of Merger, dated as of February 10, 2023 (the "Merger Agreement"), by and among Healthpeak Properties, Inc., New Healthpeak, Inc. and Healthpeak Merger Sub, Inc., a Maryland corporation, shall be re-named "Healthpeak Properties Interim, Inc." and become a subsidiary (the "Merger Change of Control") controlled by the Parent Guarantor (New Healthpeak, Inc., a newly-formed Maryland corporation, to be re-named "Healthpeak Properties, Inc."), which shall replace Old Healthpeak as the public company listed on the New York Stock Exchange. On or about February 10, 2023, the Borrower shall convert from a Maryland corporation to a Maryland limited liability company and be renamed to "Healthpeak OP, LLC" (the "Conversion") and shall continue to be the Borrower under the Amended Credit Agreement. Following consummation of the Merger, New Healthpeak shall guaranty the obligations of the Borrower under the Amended Credit Agreement on an unsecured basis. The Borrower has requested that the Administrative Agent and the Lenders consent to the Merger, the Merger Change of Control and the Conversion. The Administrative Agent and the Lenders have agreed to consent to the Merger, the Merger Change of Control and the Conversion, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties, set forth below.

WHEREAS, the Loan Parties, Administrative Agent, the L/C Issuers and the Lenders have agreed to amend the Credit Agreement in connection with the Reorganization, and to make additional amendments to the Credit Agreement, in each case, on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Loan Parties, Administrative Agent, the L/C Issuers and Lenders hereby agree to enter into this Amendment.

1. Amendments to the Credit Agreement. Effective as of the Amendment No. 1 Effective Date (as defined below), the parties hereto agree that the Credit Agreement (including the Exhibits and Schedule 10.02 thereto) is hereby amended as set forth in the marked terms on Exhibit A-1 attached hereto (the Exhibits, Schedule 10.02 and Credit Agreement as so amended being collectively referred to as the "Amended Credit Agreement"). In Exhibit A-1 hereto, deletions of text in the Amended Credit Agreement are indicated by struck-through text, and insertions of text are indicated by bold, double-underlined text. Exhibit A-2 attached hereto sets forth a clean copy of the Amended Credit Agreement, after giving effect to such amendments. As so amended, the Amended Credit Agreement shall continue in full force and effect.

2. Consent. Effective as of the Amendment No. 1 Effective Date, each of the Administrative Agent, each L/C Issuer and the Lenders hereby consent to the Merger, the Merger Change of Control and the Conversion; provided that this consent is limited to the matters set forth herein and shall not be deemed to be a consent to any other violation of the Credit Agreement or any other Loan Document.

3. Conditions of Effectiveness. The effectiveness of this Amendment is subject to the satisfaction or waiver of the following conditions precedent (the date of such satisfaction or waiver being the "Amendment No. 1 Effective Date"):

(a) the Administrative Agent shall have received copies of counterparts of this Amendment duly executed by the Borrower, the Parent Guarantor, the Administrative Agent, each of the Lenders and each L/C Issuer;

(b) the Administrative Agent shall have received (i) a favorable opinion of Latham & Watkins LLP, New York counsel to the Borrower and the Parent Guarantor and (ii) a favorable opinion of Ballard Spahr LLP, Maryland counsel to the Borrower and the Parent Guarantor, each addressed to the Administrative Agent and the Lenders;

(c) the Administrative Agent shall have received such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer authorized to act as a Responsible Officer in connection with this Amendment and the other Loan Documents;

(d) the Administrative Agent shall have received the certificate or articles of incorporation or formation, articles of organization, or other comparable organizational instrument of the Parent Guarantor and the Borrower to be filed with the State Department of Assessments and Taxation of Maryland;

(e) the Administrative Agent shall have received copies certified by a Responsible Officer of each such Person of (i) the by-laws or operating agreement (or the equivalent governing documents) of the Parent Guarantor and the Borrower and (ii) all necessary resolutions or other action taken by the board of directors of the Parent Guarantor to authorize the execution, delivery and performance of this Amendment by the Parent Guarantor and the Borrower;

(f) the Administrative Agent shall have received such documents and certifications as the Administrative Agent may reasonably require to evidence that each of the Borrower and the Parent Guarantor is validly existing, in good standing and qualified to engage in business in its state of organization and in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(g) the Administrative Agent shall have received a certificate, duly executed by a Responsible Officer, certifying that (i) the Merger and the Conversion has occurred or shall occur substantially simultaneously with the effectiveness of this Amendment and attaching a fully executed copy of the Merger Agreement; (ii) the Parent Guarantor and the Borrower have received all approvals, consents and waivers, and have made or given all necessary filings and notices as shall be required to consummate the Reorganization, the Merger, the Conversion and the other transactions contemplated hereby, which do not and will not as of the Amendment No. 1 Effective Date after giving effect to the consummation of the Merger and the Conversion (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Loan Party is party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (c) violate any Law; except in each case referred to in subclause (b) or (c), to the extent such conflict, breach, contravention or violation, or creation of any such Lien or required payment, could not reasonably be expected to have a Material Adverse Effect; and (iii) as of the Amendment No. 1 Effective Date, immediately following the Reorganization, the Merger, the Conversion and the other transactions contemplated hereby, the Borrower shall be a Wholly-Owned Subsidiary of the Parent Guarantor;

(h) the Borrower and the Parent Guarantor shall have provided to the Administrative Agent and the applicable Lender the documentation and other information reasonably requested in writing by the Administrative Agent or such Lender at least ten Business Days prior to the Amendment No. 1 Effective Date that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five Business Days prior to the Amendment No. 1 Effective Date;

(i) to the extent that the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, such Person shall have delivered to the Administrative Agent, and any Lender reasonably requesting, in writing at least ten (10) Business Days prior to the Amendment No. 1 Effective Date, the same, a Beneficial Ownership Certification in relation to the Borrower, in each case at least five Business Days prior to the Amendment No. 1 Effective Date; and

(j) the Administrative Agent shall have received payment of all fees and expenses (including fees and expenses of counsel for the Administrative Agent) due and payable in connection with this Amendment; provided that invoices for such fees and expenses have been presented to the Loan Parties a reasonable period of time (and in any event not less than one (1) Business Day) prior to the Amendment No. 1 Effective Date.

4. Representations and Warranties of the Borrower. Each of the Borrower and, if applicable, the Parent Guarantor hereby represents and warrants as follows:

(a) Each of the Borrower and the Parent Guarantor (a) is duly organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under this Amendment, the Amended and Restated Credit Agreement and the other Loan Documents to which it is a party and (c) is duly qualified to do business and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a) (other than with respect to any Loan Party or any Material Subsidiary), clause (b)(i) or clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. This Amendment has been duly executed and delivered by the duly authorized officers of the Borrower and the Parent Guarantor, and this Amendment and the Amended Credit Agreement constitute legal, valid and binding obligations of the Borrower and the Parent Guarantor and are enforceable against the Borrower and the Parent Guarantor in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) As of the date hereof and after giving effect to the terms of this Amendment, (i) no Default has occurred and is continuing, and (ii) the representations and warranties of the Loan Parties contained in the Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty is true and correct in all respects) on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty is true and correct in all respects) as of such earlier date.

(c) The Borrower:

(i) reaffirms and admits the validity and enforceability of the Amended Credit Agreement and the other Loan Documents and all of its Obligations thereunder;

(ii) agrees and admits that it has no valid defenses to or offsets against any of its Obligations to the Administrative Agent, the L/C Issuers and the Lenders under the Amended Credit Agreement and the Notes; and

(iii) agrees and acknowledges that all references to the "Obligations" contained in the Loan Documents include the Obligations under the Amended Credit Agreement.

5. Joinder. The Parent Guarantor hereby acknowledges, confirms and agrees that, by its execution of this Amendment, the Parent Guarantor will be deemed to be a "Loan Party" and a "Guarantor" under the Amended Credit Agreement, and shall have all of the obligations of a Loan Party and a Guarantor thereunder with the same force and effect as if it had originally executed the Credit Agreement. The Parent Guarantor hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Amended Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article V of the Amended Credit Agreement, (b) all of the covenants set forth in Articles VI and VII of the Amended Credit Agreement and (c) all of the guaranty obligations set forth in Article XI of the Amended Credit Agreement. The Parent Guarantor hereby represents and warrants that each of the representations and warranties in respect of itself as a Loan Party and a Guarantor contained in the Amended Credit Agreement, is true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as the date hereof as if made on and as of the date hereof.

6. Post-Closing Covenants. In consideration for the consents and amendments set forth herein, the Borrower agrees to deliver to the Administrative Agent the following:

(a) within five (5) Business Days following the Amendment No. 1 Effective Date (or such longer period as approved by the Administrative Agent), an updated Schedule 10.02 to the Amended Credit Agreement in form and substance satisfactory to the Administrative Agent;

(b) within ten (10) calendar days following the Amendment No. 1 Effective Date (or such longer period as approved by the Administrative Agent), certified copies of the material documents evidencing that the Merger has been consummated; and

(c) within ten (10) calendar days following the Conversion (or such longer period as approved by the Administrative Agent), certified copies of the material documents evidencing that the Conversion has been consummated.

The parties hereto agree that failure of the Borrower to satisfy the foregoing covenants in the time periods set forth herein (as the same may be extended by the Administrative Agent as set forth herein) shall result in an immediate Event of Default under the Amended Credit Agreement.

7. Reference to and Effect on the Credit Agreement.

(a) Upon the effectiveness hereof, each reference to the Credit Agreement in the Amended Credit Agreement or any other Loan Document shall mean and be a reference to the Amended Credit Agreement.

(b) Each Loan Document and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed. Upon the effectiveness hereof, this Amendment shall for all purposes constitute a Loan Document.

(c) Except with respect to the subject matter hereof, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Amended Credit Agreement, the other Loan Documents or any other documents, instruments and agreements executed and/or delivered in connection therewith.

8. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York.

9. SUBMISSION TO JURISDICTION, WAIVER OF VENUE, SERVICE OF PROCESS, WAIVER OF JURY TRIAL. The jurisdiction, venue, service of process and waiver of jury trial provisions set forth in Sections 10.14 and 10.15 of the Amended Credit Agreement are hereby incorporated by reference, *mutatis mutandis*.

10. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

11. Counterparts; Electronic Execution. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Signatures delivered by facsimile or PDF shall have the same force and effect as manual signatures delivered in person. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

HEALTHPEAK OP, LLC,
as the Borrower

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By: /s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

HEALTHPEAK PROPERTIES, INC.,
as the Parent Guarantor

By: /s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

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

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

Signature Page to Consent and Amendment No. l to
Second Amended and Restated Credit Agreement

**BANK OF AMERICA, N.A.**, as a Lender and an L/C Issuer

By: /s/ Darren Merten
Name: Darren Merten
Title: Director

Signature Page to Consent and Amendment No. l to
Second Amended and Restated Credit Agreement

**JPMorgan Chase Bank, N.A.**, as a Lender and an L/C Issuer

By: /s/ Jordan Santora
Name: Jordan Santora
Title: Vice President

Signature Page to Consent and Amendment No. l to
Second Amended and Restated Credit Agreement

**Wells Fargo Bank, National Association**, as a Lender and an L/C Issuer

By: /s/ Andrea Chen
Name: Andrea Chen
Title: Managing Director

Signature Page to Consent and Amendment No. l to
Second Amended and Restated Credit Agreement

The Bank of Nova Scotia, as a Lender

By: /s/ Robb Gass
Name: Robb Gass
Title: Managing Director

Signature Page to Consent and Amendment No. l to
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BARCLAYS BANK PLC, as a Lender

By: /s/ Warren Veech III
Name: Warren Veech III
Title: Vice President

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Credit Agricole Corporate and Investment Bank, as a Lender

By: /s/ Jill Wong
Name: Jill Wong
Title: Director

By: /s/ Gordon Yip
Name: Gordon Yip
Title: Director

CREDIT SUISSE AG, NEW YORK BRANCH, as a Lender

By: /s/ Doreen Barr
Name: Doreen Barr
Title: Authorized Signatory

By: /s/ Michael Dieffenbacher
Name: Michael Dieffenbacher
Title: Authorized Signatory

**GOLDMAN SACHS BANK USA**, as a Lender

By: /s/ Keshia Leday
Name: Keshia Leday
Title: Authorized Signatory

Signature Page to Consent and Amendment No. l to
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**MIZUHO BANK, LTD.**, as a Lender

By: /s/ Donna DeMagistris
Name: Donna DeMagistris
Title: Executive Director

Signature Page to Consent and Amendment No. l to
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**MORGAN STANLEY SENIOR FUNDING, INC.**,
as a Co-Documentation Agent

By: /s/ Jack Kuhns
Name: Jack Kuhns
Title: Authorized Signatory

**MORGAN STANLEY BANK, N.A.**, as a Lender

By: /s/ Jack Kuhns
Name: Jack Kuhns
Title: Authorized Signatory

**PNC BANK, NATIONAL ASSOCIATION,** as a Lender

By: /s/ James A. Harmann
Name: James A. Harmann
Title: Senior Vice President

Signature Page to Consent and Amendment No. l to
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**ROYAL BANK OF CANADA**

By: /s/ Brian Gross
Name: Brian Gross
Title: Authorized Signatory

Signature Page to Consent and Amendment No. l to
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**TRUIST BANK**, as a Lender

By: /s/ Tim Conway
Name: Tim Conway
Title: Vice President

CAPITAL ONE, NATIONAL ASSOCIATION, as a Lender

By: /s/ Jason LaGrippe
Name: Jason LaGrippe
Title: Duly Authorized Signatory

**Huntington National Bank**, as a Lender and an L/C Issuer

By: /s/ Michael J. Kinnick
Name: Michael J. Kinnick
Title: Managing Director

Signature Page to Consent and Amendment No. l to
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Regions Bank, as a Lender

By: /s/ Mark Hardison
Name: Mark Hardison
Title: Managing Director

Signature Page to Consent and Amendment No. l to
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SUMITOMO MITSUI BANKING CORPORATION,
as a Senior Managing Agent, Lender, and L/C Issuer

By: /s/ Cindy Hwee
Name: Cindy Hwee
Title: Director

TD Bank, NA, as a Lender

By: /s/ George Skoufis
Name: George Skoufis
Title: Vice President

Signature Page to Consent and Amendment No. l to
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U.S. Bank National Association, as a Lender

By: /s/ Travis H. Myers
Name: Travis H. Myers
Title: Vice President

Signature Page to Consent and Amendment No. l to
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KeyBank National Association, as a Lender

By: /s/ Kevin P. Murray
Name: Kevin P. Murray
Title: SVP

Signature Page to Consent and Amendment No. l to
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THE BANK OF NEW YORK MELLON, as a Lender

By: /s/ Cody Mainc
Name: Cody Mainc
Title: Vice President

Signature Page to Consent and Amendment No. l to
Second Amended and Restated Credit Agreement

**Fifth Third Bank, National Association**, as a Lender

By: /s/ Michael P. Perillo
Name: Michael P. Perillo
Title: Executive Director

**M&T Bank,** as a Lender

By: /s/ Andrew Ripple
Name: Andrew Ripple
Title: Assistant Vice President

Signature Page to Consent and Amendment No. l to
Second Amended and Restated Credit Agreement

EXHIBIT A-1

Marked Amended Credit Agreement

See attached.

**Exhibit A to Consent and Amendment No. 1 to Second Amended and Restated Credit Agreement**

~~EXECUTION~~FINAL VERSION
~~Published CUSIP Number: 42250UAA0~~
~~Revolving Facility CUSIP Number: 42250UAB8~~

---

**$3,000,000,000**

**SECOND AMENDED AND RESTATED CREDIT AGREEMENT**
(as amended, restated, supplemented and otherwise modified through and including that certain Consent and Amendment No. 1 dated as of February 10, 2023)

Dated as of September 20, 2021

among

**HEALTHPEAK ~~PROPERTIES~~OP, ~~INC.~~LLC,**
as Borrower,

**HEALTHPEAK PROPERTIES, INC.,**
as Parent Guarantor,

**THE LENDERS PARTY HERETO FROM TIME TO TIME,**

**BANK OF AMERICA, N.A.,**
as Administrative Agent, L/C Issuer and
Alternative Currency Fronting Lender,

**JPMORGAN CHASE BANK, N.A.**, and
**WELLS FARGO BANK, NATIONAL ASSOCIATION,**
as Co-Syndication Agents,

**THE BANK OF NOVA SCOTIA, BARCLAYS BANK PLC,**
**CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,**
**CREDIT SUISSE AG, NEW YORK BRANCH,**
**GOLDMAN SACHS BANK USA, MIZUHO BANK, LTD.,**
**MORGAN STANLEY SENIOR FUNDING, INC.,**
**PNC BANK, NATIONAL ASSOCIATION,**
**ROYAL BANK OF CANADA,** and
**TRUIST BANK,**
as Co-Documentation Agents,

and

**CAPITAL ONE NATIONAL BANK, THE HUNTINGTON NATIONAL BANK,**
**REGIONS BANK, SUMITOMO MITSUI BANKING CORPORATION,**
**TD BANK, N.A.,** and
**U.S. BANK NATIONAL ASSOCIATION,**
as Senior Managing Agents

---

**BOFA SECURITIES, INC.**, and
**JPMORGAN CHASE BANK, N.A.,**
as Joint Bookrunners, and

**BOFA SECURITIES, INC.**, **JPMORGAN CHASE BANK, N.A.**, and
**WELLS FARGO SECURITIES, LLC**,
as Joint Lead Arrangers

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603

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**EXHIBITS**

***Form of***


A Committed Loan Notice
B [Reserved]
C Negotiated Rate Loan Notice
D Revolving Note
E Compliance Certificate
F Assignment and Assumption
G Sustainability Metric Annual Certificate

**SECOND AMENDED AND RESTATED CREDIT AGREEMENT**

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT, dated as of September 20, 2021 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), among HEALTHPEAK OP, LLC, a Maryland limited liability company, HEALTHPEAK PROPERTIES, INC. ~~(formerly known as HCP, Inc.)~~, a Maryland corporation ~~(the "Borrower")~~, the lending institutions party hereto from time to time (each, a "Lender" and collectively, the "Lenders"), BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and Alternative Currency Fronting Lender, JPMORGAN CHASE BANK, N.A. and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Co-Syndication Agents, THE BANK OF NOVA SCOTIA, BARCLAYS BANK PLC, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CREDIT SUISSE AG, NEW YORK BRANCH, GOLDMAN SACHS BANK USA, MIZUHO BANK, LTD., MORGAN STANLEY SENIOR FUNDING, INC., PNC BANK, NATIONAL ASSOCIATION, ROYAL BANK OF CANADA, and TRUIST BANK, as Co-Documentation Agents, and CAPITAL ONE NATIONAL BANK, THE HUNTINGTON NATIONAL BANK, REGIONS BANK, SUMITOMO MITSUI BANKING CORPORATION, TD BANK, N.A., and U.S. BANK NATIONAL ASSOCIATION, as Senior Managing Agents.

WHEREAS, a revolving credit facility and a delayed-draw term loan facility was established pursuant to the terms of the Existing Credit Agreement (hereafter defined);

WHEREAS, the Borrower has requested that the Lenders provide a revolving credit facility pursuant to the terms of this Agreement in amendment and restatement of the Existing Credit Agreement, and the Lenders are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

## DEFINITIONS AND ACCOUNTING TERMS

### 1.01 Defined Terms.

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

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

"Administrative Agent's Office" means, with respect to any currency, the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

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

"Affected Financial Institution" means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

"Affected Loan" has the meaning specified in Section 3.02.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent Parties" has the meaning specified in Section 10.02(c).

"Agents" means the Administrative Agent, the Arrangers, the Co-Syndication Agents, the Co-Documentation Agents, the Senior Managing Agents, the L/C Issuer and the Alternative Currency Fronting Lender.

"Aggregate Revolving Commitments" means the Revolving Commitments of all Revolving Lenders, which as of the Closing Date are $3,000,000,000, which may be increased pursuant to Section 2.16 or decreased pursuant to Section 2.07.

"Agreed Currency" means Dollars or any Alternative Currency, as applicable.

"Agreement" has the meaning specified in the introductory paragraph hereto.

"Agreement Currency" has the meaning specified in Section 10.19.

"Alternative Currency" means each of the following currencies: Australian Dollars, Canadian Dollars, Euro, Sterling, Swiss Francs, Yen and each other currency (other than Dollars) that is approved in accordance with Section 1.06.

"Alternative Currency Daily Rate" means, for any day, with respect to an Alternative Currency Daily Rate Loan:

(a) denominated in Sterling, the rate per annum equal to SONIA determined pursuant to the definition of "SONIA" plus the SONIA Adjustment;

(b) denominated in Swiss Francs, the rate per annum equal to SARON determined pursuant to the definition of "SARON" plus the SARON Adjustment; and

(c) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a daily rate), the daily rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a);

provided that, if any Alternative Currency Daily Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Any change in an Alternative Currency Daily Rate shall be effective from and including the date of such change without further notice.

"Alternative Currency Daily Rate Loan" means a Committed Revolving Loan that bears interest at a rate based on the definition of "Alternative Currency Daily Rate." All Alternative Currency Daily Rate Loans must be denominated in an Alternative Currency.

"Alternative Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the

Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

"Alternative Currency Fronting Lender" means Bank of America, or any other Revolving Lender designated by the Borrower and the Administrative Agent (such designation shall be consented to by such Revolving Lender), in its capacity as an Alternative Currency Funding Lender for Revolving Loans denominated in an Alternative Currency in which any Alternative Currency Participating Lender purchases Alternative Currency Risk Participations and in which Bank of America (or such other appointed Revolving Lender) advances to the Borrower the amount of all such Alternative Currency Participating Lenders' respective Applicable Percentages of such Revolving Loans in accordance with Sections 2.02(b) and 2.02(f).

"Alternative Currency Funding Applicable Percentage" means, with respect to any Revolving Loan denominated in an Alternative Currency, (a) for each Alternative Currency Funding Lender other than the Alternative Currency Fronting Lender, its Applicable Percentage, and (b) for the Alternative Currency Fronting Lender, the sum of (i) the Applicable Percentage of the Alternative Currency Fronting Lender and (ii) the sum of the respective Applicable Percentages of the Alternative Currency Participating Lenders.

"Alternative Currency Funding Lender" means, with respect to each Revolving Loan denominated in an Alternative Currency, each Revolving Lender other than an Alternative Currency Participating Lender with respect to such Alternative Currency.

"Alternative Currency Loan" means an Alternative Currency Daily Rate Loan or an Alternative Currency Term Rate Loan, as applicable.

"Alternative Currency Loan Credit Exposure" means, with respect to any Revolving Loan denominated in an Alternative Currency, (a) for each Alternative Currency Funding Lender other than the Alternative Currency Fronting Lender, the aggregate outstanding principal amount of its Alternative Currency Funding Applicable Percentage thereof advanced by such Alternative Currency Funding Lender, (b) for the Alternative Currency Fronting Lender, the aggregate outstanding principal amount of its Alternative Currency Funding Applicable Percentage thereof advanced thereby, net of all Alternative Currency Risk Participations purchased or funded, as applicable, therein, and (c) for each Alternative Currency Participating Lender, the aggregate outstanding principal amount of all Alternative Currency Risk Participations purchased or funded, as applicable, by such Alternative Currency Participating Lender in such Revolving Loan.

"Alternative Currency Participant's Share" means, for any Alternative Currency Participating Lender in respect of a Revolving Loan denominated in an Alternative Currency, a fraction (expressed as a percentage), the numerator of which is such Alternative Currency Participating Lender's Applicable Percentage in respect of such Revolving Loan and the denominator of which is the sum of (i) the Applicable Percentage of the Alternative Currency Fronting Lender in respect of such Revolving Loan and (ii) the sum of the respective Applicable Percentages of all of the Alternative Currency Participating Lenders in respect of such Revolving Loan.

"Alternative Currency Participating Lender" means, with respect to each Revolving Loan denominated in an Alternative Currency, any Revolving Lender that has given notice to the Administrative Agent and the Borrower that it is unable to fund in the applicable Alternative Currency, unless and until such Revolving Lender delivers to the Administrative Agent and the Borrower a written

notice pursuant to Section 2.02(f)(ix) requesting that such Revolving Lender's designation be changed to an Alternative Currency Funding Lender with respect to such Alternative Currency.

"Alternative Currency Participation Payment Date" has the meaning specified in Section 2.02(f)(iii).

"Alternative Currency Risk Participation" means, with respect to each Revolving Loan denominated in an Alternative Currency advanced by the Alternative Currency Fronting Lender, the risk participation purchased by each of the Alternative Currency Participating Lenders in such Revolving Loan in an amount determined in accordance with such Alternative Currency Participating Lender's Applicable Percentage of such Revolving Loan, as provided in Section 2.02(f).

"Alternative Currency Sublimit" means, at any time, an amount equal to the lesser of (a) the Aggregate Revolving Commitments at such time and (b) $1,000,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Alternative Currency Term Rate" means, for any Interest Period, with respect to any Alterative Currency Term Rate Loan:

(i) denominated in Euro, the rate per annum equal to the Euro Interbank Offered Rate ("EURIBOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the day that is two TARGET Days preceding the first day of such Interest Period with a term equivalent to such Interest Period;

(ii) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate ("CDOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "CDOR Rate") on the Rate Determination Date with a term equivalent to such Interest Period;

(iii) denominated in Yen, the rate per annum equal to the Tokyo Interbank Offer Rate ("TIBOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period;

(iv) denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate ("BBSY"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period; and

(v) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a term rate), the term rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a) plus the adjustment (if any)

determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a);

provided if any Alternative Currency Term Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

"Alternative Currency Term Rate Loan" means a Committed Revolving Loan that bears interest at a rate based on the definition of "Alternative Currency Term Rate." Committed Revolving Loans that are Alternative Currency Term Rate Loans must be denominated in an Alternative Currency.

"Anti-Corruption Laws" has the meaning specified in Section 5.21.

"Applicable Authority" means (a) with respect to SOFR, the ~~SOFR Administrator or any~~ Federal Reserve Bank of New York (or a successor administrator of such rate) or any relevant Governmental Authority having jurisdiction over the Administrative Agent or the ~~SOFR Administrator~~ Federal Reserve Bank of New York (or a successor administrator of such rate) with respect to its publication of SOFR, in each case acting in such capacity and (b) with respect to any Alternative Currency, the applicable administrator for the Relevant Rate for such Alternative Currency or any relevant Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of the applicable Relevant Rate, in each case acting in such capacity.

"Applicable Percentage" means (a) with respect to Revolving Loans (other than Negotiated Rate Loans) and L/C Obligations, for each Revolving Lender at any time, subject to adjustment as provided in Section 2.18, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of such Revolving Lender's Revolving Commitment and the denominator of which is the amount of the Aggregate Revolving Commitments at such time; provided that, if the Revolving Commitment of each Revolving Lender has been terminated in full or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender shall be determined based on the Applicable Percentage of such Revolving Lender in effect immediately prior to such termination or expiration, giving effect to any subsequent assignments; and (b) with respect to Negotiated Rate Loans, for each Revolving Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the Outstanding Amount of such Negotiated Rate Loan held by such Revolving Lender at such time and the denominator of which is the aggregate Outstanding Amount of such Negotiated Rate Loan at such time. The Applicable Percentages of each Lender as of the Closing Date are set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, for Revolving Loans, from time to time, the number of basis points per annum set forth in the relevant columns of the following table based upon the Debt Rating as set forth immediately below:

| | | Revolving Loans and Letter of Credit Fees | |
|---|---|---|---|
| Pricing Level | Debt Ratings (S&P/Moody's/Fitch) | Applicable Rate for Alternative Currency Daily Rate Loans, ~~Eurocurrency~~ Alternative Currency Term Rate Loans, ~~LIBOR~~Term SOFR Loans, Daily SOFR Loans and Letter of Credit Fees | Applicable Rate for Base Rate Loans |
| 1 | • A / • A2 / • A | 70.0 bps | 0 bps |
| 2 | A- / A3 / A- | 72.5 bps | 0 bps |
| 3 | BBB+ / Baa1 / BBB+ | 77.5 bps | 0 bps |
| 4 | BBB / Baa2 / BBB | 85.0 bps | 0 bps |
| 5 | BBB- / Baa3 / BBB- | 105.0 bps | 5.0 bps |
| 6 | <BBB- / <Baa3 / <BBB- or non-rated | 140.0 bps | 40.0 bps |

For purposes hereof, the term "Debt Rating" means, as of any date of determination, the rating by S&P, Moody's or Fitch of the Borrower's non-credit enhanced, senior unsecured long-term debt ~~rating by S&P, Moody's or Fitch~~; provided that, if at any time when the Borrower has only two (2) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used, and (B) if the difference between such Debt Ratings is two or more ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the median of the applicable Debt Ratings were used. If at any time when the Borrower has three (3) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the highest of the Debt Ratings were used, and (B) if the difference between such Debt Ratings is two or more ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the average of the two (2) highest Debt Ratings were used; provided that, if such average is not a recognized rating category, then the Applicable Rate shall be the rate per annum that would be applicable if the second highest Debt Rating of the three were used.

Initially, the Applicable Rate shall be determined based upon the Debt Rating specified in the certificate delivered pursuant to Section 4.01(a)(vi). Thereafter, each change in the Applicable Rate shall occur on the first Business Day following the effective change in the Debt Rating.

Notwithstanding the foregoing, with respect to any calendar year ending on or after December 31, 2021, if the Borrower delivers a Sustainability Metric Annual Certificate to the Administrative Agent, certifying that the Sustainability Metric as of December 31 of the most recently ended calendar year (the "Specified Test Year") satisfies either the Level 1 Sustainability Metric Election Threshold or the Level 2 Sustainability Metric Election Threshold for such Specified Test Year, and electing that the Applicable Rate instead be based on the table set forth below (the "Sustainability Metric Pricing Grid"), then the Applicable Rate with respect to the Revolving Facility shall be determined based on the relevant columns of the Sustainability Metric Pricing Grid (corresponding to the applicable level of the Sustainability Metric Election Threshold so certified in such Sustainability Metric Annual Certificate) for the period commencing on the fifth (5th) Business Day following the date such Sustainability Metric Annual Certificate is delivered to the Administrative Agent by the Borrower until the earlier to occur of (i) the date that is one (1) year after the date the Sustainability Metric Pricing Grid became effective for such period in connection with the delivery of such Sustainability Metric Annual Certificate and (ii) the date that is the fifth (5th) Business Day following the date of delivery by the Borrower of the Sustainability Metric Annual Certificate for the calendar year ending immediately after such Specified Test Year, which subsequent Sustainability Metric Annual Certificate indicates that (A) the Sustainability Metric for the calendar year ending immediately after such Specified Test Year did not satisfy either level of the Sustainability Metric Election Threshold (or satisfied a different level as compared to the level of the Sustainability Metric Election Threshold satisfied for such Specified Test Year) or (B) the Borrower does not elect to apply the Sustainability Metric Pricing Grid for the calendar year ending immediately after such Specified Test Year; provided that it is understood and agreed that (x) if the Sustainability Metric for any calendar year does not satisfy the Level 1 Sustainability Metric Election Threshold and/or the Level 2 Sustainability Metric Election Threshold, the Borrower shall not be restricted from making any subsequent election to apply the Sustainability Metric Pricing Grid (or from changing the applicable level of the Sustainability Metric Election Threshold to apply thereunder, as the case may be) pursuant to this paragraph if the Sustainability Metric for the calendar year most recently ended prior to such election satisfies either the Level 1 Sustainability Metric Election Threshold or the Level 2 Sustainability Metric Election Threshold, and (y) a Sustainability Metric Annual Certificate electing to apply the Sustainability Metric Pricing Grid pursuant to this paragraph may be delivered at any time by the Borrower so long as the Sustainability Metric for the calendar year most recently ended prior to such election satisfies either the Level 1 Sustainability Metric Election Threshold or the Level 2 Sustainability Metric Election Threshold.

If, as a result of (A) the agreement by the Borrower, the Administrative Agent and the Revolving Lenders that the Sustainability Metric for any calendar year as reported on any Sustainability Metric Annual Certificate was inaccurate or (B) the Borrower, the Administrative Agent or the Revolving Lenders becoming aware of any material inaccuracy in the Sustainability Metric for any calendar year as reported on any Sustainability Metric Annual Certificate (and, in the case of the Administrative Agent or the Revolving Lenders becoming aware thereof, written notice thereof has been delivered to the Borrower setting forth in reasonable detail the basis for such determination) (any such event referred to in clause (A) or (B) above, a "Sustainability Metric Annual Certificate Inaccuracy") and, in each case, the Borrower made an election to apply the Sustainability Metric Pricing Grid pursuant to such Sustainability Metric Annual Certificate and a proper calculation of the Sustainability Metric for such calendar year would not have resulted in any adjustment, or would have resulted in a smaller adjustment, to the Applicable Rate pursuant to the Sustainability Metric Pricing Grid for the relevant period covered by such election, then the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Revolving Lenders or L/C Issuers, as the case

may be, promptly (and in any event, within five (5) Business Days) following written demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, immediately, automatically and without further action by the Administrative Agent, any Revolving Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and Letter of Credit Fees that should have been paid for such period (or relevant portion thereof then elapsed in respect of which payments of interest and/or Letter of Credit Fees were previously made) over the amount of interest and Letter of Credit Fees actually paid for such period (or relevant portion thereof). Notwithstanding anything to the contrary herein, unless such amounts shall be due upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, (i) any additional amounts required to be paid pursuant to the immediately preceding sentence shall not be due and payable until a written demand is made for such payment by the Administrative Agent, (ii) any nonpayment of such additional amounts prior to or upon such demand for payment by Administrative Agent shall not constitute a Default or Event of Default or otherwise result in the failure of any condition precedent to any Credit Extension (whether retroactively or otherwise), and (iii) none of such additional amounts shall be deemed overdue prior to such a demand or shall accrue interest at the Default Rate prior to such a demand. It is understood and agreed that no Sustainability Metric Annual Certificate Inaccuracy shall constitute a Default or Event of Default or otherwise result in the failure of any condition precedent to any Credit Extension (whether retroactively or otherwise); provided that the Borrower complies with the terms of this paragraph with respect to such Sustainability Metric Annual Certificate Inaccuracy.

***Sustainability Metric Pricing Grid***

| | | **Revolving Loans and Letter of Credit Fees** | | | |
|---|---|---|---|---|---|
| | | **Level 1 Sustainability Metric Election Threshold** | | **Level 2 Sustainability Metric Election Threshold** | |
| **Pricing Level** | **Debt Ratings (S&P/Moody's/ Fitch)** | **Applicable Rate for Alternative Currency Daily Rate Loans, ~~Eurocurrency~~Alternative Currency Term Rate Loans, ~~LIBOR~~Term SOFR Loans, Daily SOFR Loans and Letter of Credit Fees** | **Applicable Rate for Base Rate Loans** | **Applicable Rate for Alternative Currency Daily Rate Loans, ~~Eurocurrency~~Alternative Currency Term Rate Loans, ~~LIBOR~~Term SOFR Loans, Daily SOFR Loans and Letter of Credit Fees** | **Applicable Rate for Base Rate Loans** |
| 1 | • A / • A2 / • A | 69.0 bps | 0 bps | 67.5 bps | 0 bps |
| 2 | A- / A3 / A- | 71.5 bps | 0 bps | 70.0 bps | 0 bps |
| 3 | BBB+ / Baa1 / BBB+ | 76.5 bps | 0 bps | 75.0 bps | 0 bps |
| 4 | BBB / Baa2 / BBB | 84.0 bps | 0 bps | 82.5 bps | 0 bps |
| 5 | BBB- / Baa3 / BBB- | 104.0 bps | 4.0 bps | 102.5 bps | 2.5 bps |
| 6 | <BBB- / <Baa3 / <BBB- or non-rated | 139.0 bps | 39.0 bps | 137.5 bps | 37.5 bps |

"Applicable Time" means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

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

"Arrangers" means BofA Securities, Inc., JPMorgan and Wells Fargo Securities, LLC, each in its capacity as a joint lead arranger.

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

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

"Attributable Indebtedness" means, on any date, (a) in respect of any Financing Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Financing Lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Australian Dollar" means the lawful currency of the Commonwealth of Australia.

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.03(b)(iii).

"Availability Period" means the period from and including the Closing Date to the earliest of (i) the Business Day preceding the Revolving Maturity Date, (ii) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.07, and (iii) the date of termination of the commitment of each Revolving Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Available Tenor" means, as of any date of determination and with respect to the then-current Canadian Benchmark, as applicable, (a) if the then-current Canadian Benchmark is a term rate, any tenor for such Canadian Benchmark that is or may be used for determining the length of an Interest Period or (b) otherwise, any payment period for interest calculated with reference to such Canadian Benchmark, as applicable, pursuant to this Agreement as of such date.

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

"Bail-In Legislation" means, (a) 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, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, as codified at 11 U.S.C. § 101 et seq., and the rules and regulations promulgated thereunder, or any successor provision thereto.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus ½ of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate" and (c) ~~the Eurocurrency Rate (as defined in clause (b) of the definition of "Eurocurrency Rate")~~Term SOFR plus 1%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If at any time of determination the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate at such time shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. If the Base Rate determined in accordance with the above is below 1.0%, such rate shall be deemed to be 1.0% for purposes of this Agreement.

"Base Rate Committed Revolving Loan" means a Committed Revolving Loan that is a Base Rate Loan.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

"BBSY" has the meaning specified in the definition of "~~Eurocurrency~~Alternative Currency Term Rate."

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the 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 Code) the assets of any such "employee benefit plan" or "plan."

"Borrower" ~~has the meaning specified in the introductory paragraph hereto.~~means (i) prior to the consummation of the First Amendment Merger and First Amendment Conversion, Healthpeak Properties, Inc., a Maryland corporation, (ii) following the First Amendment Merger, Healthpeak Properties Interim,

Inc., a Maryland corporation, and (iii) following the First Amendment Conversion, Healthpeak OP, LLC, a Maryland limited liability company.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means a Committed Borrowing or a Negotiated Rate Borrowing, as the context may require.

"Boundary Property" means any building that is part of the Borrower's portfolio of assets under management and that the Borrower identifies internally as under the Borrower's operational control. For purposes of this definition, such operational control shall mean that the Borrower or any of its Controlled Subsidiaries maintains, provides service to, and/or has the authority to implement operating policies with respect to energy usage, water usage and/or waste disposal, in any such case, for all or any portion of such building. Any reference herein to the square footage of a Boundary Property shall be a reference to the proportional percentage of total square footage of such Boundary Property that is under the Borrower's operational control with respect to such Boundary Property.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of California or the State of New York or the state where the Administrative Agent's Office with respect to Obligations denominated in Dollars is located, and:

(a) ~~(a)~~ if such day relates to any interest rate settings as to ~~a Eurocurrency Rate~~an Alternative Currency Loan denominated in ~~Dollars or a LIBOR Daily Loan~~Euro, any fundings, disbursements, settlements and payments in ~~Dollars~~Euro in respect of any such ~~Eurocurrency Rate Loan or LIBOR Daily~~Alternative Currency Loan, or any other dealings in ~~Dollars~~Euro to be carried out pursuant to this Agreement in respect of any such ~~Eurocurrency Rate Loan or LIBOR Daily~~Alternative Currency Loan, means ~~any such day~~a Business Day that is also a ~~London Banking~~TARGET Day;

~~(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day;~~

(b) ~~(c)~~ if such day relates to any interest rate settings as to ~~a Eurocurrency Rate~~an Alternative Currency Loan denominated in (i) Sterling, means a day other than a day banks are closed for general business in London because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom; (ii) Swiss Francs, means a day other than when banks are closed for settlement and payments of foreign exchange transactions in Zurich because such day is a Saturday, Sunday or a legal holiday under the laws of Switzerland; and (iii) Yen, means a day other than when banks are closed for general business in Japan;

(c) ~~(d)~~ if such day relates to any interest rate settings as to ~~a Eurocurrency Rate~~an Alternative Currency Loan denominated in a currency other than ~~Dollars~~, Euro, Sterling, Swiss Francs or Yen, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the ~~London or other~~ applicable offshore interbank market for such currency; and

(d) ~~(e)~~ if such day relates to any fundings, disbursements, settlements and payments in a currency other than ~~Dollars or~~ Euro in respect of ~~a Eurocurrency Rate~~an Alternative Currency Loan denominated in a currency other than ~~Dollars or~~ Euro, or any other

dealings in any currency other than ~~Dollars or~~ Euro to be carried out pursuant to this Agreement in respect of any such ~~Eurocurrency Rate~~Alternative Currency Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency~~; and~~.

~~(f) if such day relates to any interest rate settings as to an Alternative Currency Daily Rate Loan denominated in (i) Sterling, means a day other than a day banks are closed for general business in London because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom; and (ii) Swiss Francs, means a day other than when banks are closed for settlement and payments of foreign exchange transactions in Zurich because such day is a Saturday, Sunday or a legal holiday under the laws of Switzerland.~~

"Canadian Benchmark" means, initially, CDOR Rate; provided that if a replacement of the Canadian Benchmark has occurred pursuant to Section 3.03(c), then "Canadian Benchmark" means the applicable Canadian Benchmark Replacement to the extent that such Canadian Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Canadian Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Canadian Benchmark Replacement" means, for any Available Tenor:

(a) For purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Administrative Agent:

(i) the sum of: (i) Term CORRA and (ii) 0.29547% (29.547 basis points) for an Available Tenor of one-month's duration, and 0.32138% (32.138 basis points) for an Available Tenor of three-months' duration, or

(ii) the sum of: (i) Daily Compounded CORRA and (ii) 0.29547% (29.547 basis points) for an Available Tenor of one-month's duration, and 0.32138% (32.138 basis points) for an Available Tenor of three-months' duration; and

(b) For purposes of Section 3.03(c)(ii), the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement for such Available Tenor of such Canadian Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for Canadian dollar-denominated syndicated credit facilities at such time;

provided that, if the Canadian Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Canadian Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

Any Canadian Benchmark Replacement shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such Canadian Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

"Canadian Benchmark Transition Event" means, with respect to any then-current Canadian Benchmark other than CDOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Canadian Benchmark, the regulatory supervisor for the administrator of such Canadian Benchmark, any Governmental Authority with jurisdiction over such

administrator for such Canadian Benchmark, or the Bank of Canada, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Canadian Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Canadian Benchmark or (b) all Available Tenors of such Canadian Benchmark are or will no longer be representative of the underlying market and economic reality that such Canadian Benchmark is intended to measure and that representativeness will not be restored.

"Canadian Dollar" and "CAD" mean the lawful currency of Canada.

"Canadian Prime Rate" means, for any day a fluctuating rate of interest per annum equal to the greater of (a) the per annum rate of interest quoted or established as the "prime rate" of the Administrative Agent which it quotes or establishes for such day as its reference rate of interest in order to determine interest rates for commercial loans in Canadian Dollars in Canada to its Canadian borrowers; and (b) the average CDOR for a 30-day term plus ½ of one percent (1.00%) per annum, adjusted automatically with each quoted or established change in such rate, all without the necessity of any notice to the Borrower or any other Person; provided that if the Canadian Prime Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Such prime rate is based on various factors including cost and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate shall take effect at the opening of business on the day specified in the public announcement of such change.

"Canadian Prime Rate Loan" means a Loan that bears interest at a rate based on the Canadian Prime Rate.

"Cash Collateral" has the meaning specified in the definition of "Cash Collateralize."

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer or the Alternative Currency Fronting Lender (as applicable) and the Revolving Lenders, as collateral for L/C Obligations, Obligations in respect of Revolving Loans denominated in Alternative Currencies, or obligations of Revolving Lenders to fund participations in respect thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or the Alternative Currency Fronting Lender (as applicable) benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Alternative Currency Fronting Lender (as applicable). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"CDOR" has the meaning specified in the definition of "~~Eurocurrency~~Alternative Currency Term Rate."

"CDOR Rate" has the meaning specified in the definition of "~~Eurocurrency~~Alternative Currency Term Rate."

"Change in Law" means the occurrence, after the Closing Date, and with respect to any Person in particular, after the date such Person becomes a party to this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive

(whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted, issued or implemented.

"Change of Control" means an event or series of events by which, after the date of the First Amendment Merger:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 35% or more of the equity securities of the ~~Borrower~~Parent Guarantor having ordinary voting powers to elect a majority of the members of the board of directors or equivalent governing body of the ~~Borrower~~Parent Guarantor (irrespective of whether at such time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency) on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) and the Borrower shall not have repaid all of the outstanding Obligations in full in cash (other than contingent Obligations that are not then due and payable), Cash Collateralized all outstanding Letters of Credit in an amount equal to one hundred percent (100%) of the then current L/C Obligations and terminated the Aggregate Revolving Commitments within forty-five (45) days after such "person" or "group" shall have become the "beneficial owner" of such percentage of such stock; ~~or~~

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the ~~Borrower~~Parent Guarantor cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved or recommended by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved or recommended by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body~~.~~; or

(c) the Parent Guarantor shall, at any time, cease to Control the Borrower.

"Class" when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Committed Revolving Loans, Negotiated Rate Loans or a specific tranche of Incremental Term Loans.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"CME" means CME Group Benchmark Administration Limited.

"Co-Documentation Agent" means each of The Bank of Nova Scotia, Barclays Bank plc, Credit Agricole Corporate and Investment Bank, Credit Suisse AG, New York Branch, Goldman Sachs Bank USA, Mizuho Bank, Ltd., Morgan Stanley Senior Funding, Inc., PNC Bank, National Association, Royal Bank of Canada, and Truist Bank, in their capacity as Co-Documentation Agents.

"Co-Syndication Agent" means each of JPMorgan and Wells Fargo, in their capacities as Co-Syndication Agents.

"Code" means the Internal Revenue Code of 1986, as amended.

"Committed Borrowing" means a borrowing consisting of simultaneous Committed Revolving Loans of the same Type, in the same currency and, in the case of ~~Eurocurrency~~Term SOFR Loans or Alternative Currency Term Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Committed Loan Notice" means a notice of (a) a Committed Borrowing, (b) a conversion of Committed Revolving Loans from one Type to another Type, or (c) a continuation of ~~Eurocurrency Rate~~Term SOFR Loans or ~~LIBOR Daily~~Alternative Currency Term Rate Loans, in each case provided to the Administrative Agent pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"Committed Revolving Loan" has the meaning specified in Section 2.01 and includes Committed Revolving Loans pursuant to Section 2.03.

"Compliance Certificate" means a certificate substantially in the form of Exhibit E.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with ~~USD LIBOR,~~ SOFR, SONIA, SARON, EURIBOR, CDOR, TIBOR, BBSY, any Canadian Benchmark Replacement or any proposed Successor Rate for an Agreed Currency or Term SOFR, as applicable, any conforming changes to the definitions of "Base Rate," "Daily SOFR", "Daily Simple SOFR," "SOFR," "SONIA," "SARON," "EURIBOR," "CDOR," "TIBOR," "BBSY," "Term SOFR," "Term SOFR Screen Rate," "Interest Period," "Relevant Rate," timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day," timing of borrowing requests or prepayment, conversion or continuation notices, and the applicability and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent (after consultation in good faith with the Borrower), to reflect the adoption and implementation of such applicable rate(s) and to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice for such Agreed Currency (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate for such Agreed Currency exists, in such other manner of administration as the Administrative Agent (after consultation in good faith with the Borrower) determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

"Consolidated Intangible Assets" means, as of any date of determination, an amount equal to the Intangible Assets of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis.

"Consolidated Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the ~~Borrower and its Subsidiaries~~Group, as determined in accordance with GAAP.

"Consolidated Tangible Net Worth" means, as of any date of determination, for the ~~Borrower and its Subsidiaries~~Group on a consolidated basis, an amount equal to (a) Consolidated Shareholders' Equity on such date plus (b) accumulated depreciation and amortization, determined on a consolidated basis in accordance with GAAP, on such date, minus (c) Consolidated Intangible Assets on such date.

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

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

"CORRA" means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator).

"Covered Party" has the meaning specified in Section 10.24.

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

"Daily Compounded CORRA" means, for any day, CORRA with interest accruing on a compounded daily basis, with the methodology and conventions for this rate being established by the Administrative Agent.

"Daily Simple SOFR" means, with respect to any applicable determination date, a rate per annum equal to the Secured Overnight Financing Rate published on such date on the Federal Reserve Bank of New York's website (or any successor source).

"Daily SOFR" means the rate per annum equal to SOFR determined for any day pursuant to the definition thereof plus the SOFR Adjustment. Any change in Daily SOFR shall be effective from and including the date of such change without further notice. If the rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

"Daily SOFR Loan" means a Loan that bears interest at a rate based on Daily SOFR.

"Debt Rating" has the meaning specified in the definition of "Applicable Rate."

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

"deemed year" has the meaning specified in Section 2.09(d).

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

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a ~~Eurocurrency Rate~~Daily SOFR Loan, a ~~LIBOR Daily~~Term SOFR Loan or an Alternative Currency ~~Daily Rate~~ Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

"Defaulting Lender" means, subject to Section 2.18(b), any Lender that, as reasonably determined by the Administrative Agent, (a) has failed to (i) perform any of its funding obligations hereunder, including in respect of (x) its Loans or (y) participations in respect of L/C Obligations or Alternative Currency Risk Participations, in each case within two (2) Business Days of the date required to be funded by it hereunder, unless, in the case of clause (x) above, such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that a condition 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, the L/C Issuer, the Alternative Currency Fronting Lender or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or the L/C Issuer that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such notice or public statement states that such position is based on such Lender's good faith determination that a condition precedent (each of which conditions precedent, together with any applicable default, shall be specifically identified in such notice or public statement) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent or the Borrower, to confirm in writing in a manner satisfactory to the Administrative Agent and the Borrower that it will comply with its funding obligations hereunder, 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 a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) 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 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 one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.18(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer,the Alternative Currency Fronting Lender and each other Lender promptly following such determination.

"Delaware Divided LLC" means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

"Delaware LLC Division" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"Departing Lender" means each lender under the Existing Credit Agreement that is not a Lender hereunder on the Closing Date.

"Designated Jurisdiction" means any country, region or territory to the extent that such country, region or territory itself is the subject of comprehensive Sanctions (as of the date of the First Amendment, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic).

"Development Property" means any real property in which the development and construction with respect thereto are not complete.

"Disclosed Matters" means any event, circumstance, condition or other matter expressly disclosed in the reports and other documents furnished to or filed with the SEC by the Borrower and that are publicly available prior to the Closing Date.

"Disposition" or "Dispose" means the sale, transfer or assignment (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division, in any case other than sales or other dispositions of assets in the ordinary course of business.

"Dollar" and "$" mean lawful money of the United States.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"EBITDA" means, for any period, for a Person and its Subsidiaries on a consolidated basis, an amount equal to, without duplication, the Net Income of such Person and its Subsidiaries for such period plus (a) the following to the extent deducted in calculating such Net Income: (i) Interest Expense of such Person and its Subsidiaries for such period, (ii) the provision for Federal, state, local and foreign taxes on or measured by income of such Person and its Subsidiaries for such period (whether or not payable during that period), (iii) depreciation and amortization expense for such period and (iv) expenses of such Person and its Subsidiaries reducing such Net Income during such period which do not represent a cash expenditure in such period or any prior or future period and minus (b) (i) all items of such Person and its Subsidiaries increasing Net Income for such period which do not represent a cash receipt in such period or any prior or future period and (ii) any addition to EBITDA pursuant to clause (a)(ii) above taken or payable during such period to the extent added to EBITDA in any prior or future period.

"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 clause (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.

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

"EMU Legislation" means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

"Enterprise EBITDA" means, for any period, the sum of (a) EBITDA of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis for such period plus (b) without duplication, the Borrower's Pro Rata Share of EBITDA of each Material Joint Venture for such period.

"Enterprise Fixed Charges" means, for any period, with respect to the ~~Borrower and its Subsidiaries~~Group on a consolidated basis, the sum of, without duplication, (a) Enterprise Interest Expense paid in cash during such period plus (b) Scheduled Principal Payments during such period plus (c) cash dividends and distributions in respect of preferred stock of the ~~Borrower and its Subsidiaries~~Group during such period (but excluding (i) redemption payments or charges in connection with the redemption of preferred stock and (ii) amounts paid to the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries); provided that Enterprise Fixed Charges shall not include (i) any amounts with respect to any Intercompany Indebtedness, (ii) gains and losses from unwinding or break-funding of Swap Contracts, (iii) write-offs of unamortized deferred financing fees, (iv) prepayment fees, premiums and penalties, and (v) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

"Enterprise Gross Asset Value" means, as of any date of determination, the sum of (a) Gross Asset Value of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis plus (b) without duplication, the Borrower's Pro Rata Share of Gross Asset Value of each Material Joint Venture; provided that, without duplication, for purposes of calculating the Leverage Ratio, Enterprise Gross Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents deducted in the calculation of Enterprise Total Indebtedness pursuant to the first proviso of the definition of "Enterprise Total Indebtedness."

"Enterprise Interest Expense" means, for any period, the sum of (a) Interest Expense of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis for such period plus (b) without duplication, the Borrower's Pro Rata Share of Interest Expense of each Material Joint Venture for such period.

"Enterprise Secured Debt" means, as of any date of determination, that portion of Enterprise Total Indebtedness that is subject to a Lien (other than Permitted Specified Liens); provided that in no event shall the Obligations hereunder and under the other Loan Documents constitute "Enterprise Secured Debt" solely as a result of any security interest granted to the Administrative Agent or any L/C

Issuer, solely in any Cash Collateral or any account or other property, including proceeds thereof, established for the purpose of securing obligations in respect of Letters of Credit, exchange rate fluctuations or otherwise to the extent required pursuant to any of the cash collateralization provisions of the Loan Documents.

"Enterprise Total Indebtedness" means, as of any date of determination, an amount equal to, without duplication, (a) Indebtedness of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis outstanding on such date, plus (b) without duplication, the Borrower's Pro Rata Share of Indebtedness of each Material Joint Venture outstanding on such date; provided that for purposes of calculating the Leverage Ratio, (x) clause (a) shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of the ~~Borrower and its Subsidiaries~~Group and (ii) escrow and other deposits to the extent available on such date for the repayment of any of the Indebtedness included in the calculation of clause (a) above up to an amount in the aggregate for this clause (x) not to exceed the aggregate amount of Indebtedness reflected in clause (a) above maturing in the immediately succeeding 24 months and (y) clause (b) shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of each such applicable Material Joint Venture and (ii) escrow and other deposits to the extent available on such date for the repayment of any of the Indebtedness included in the calculation of clause (b) above up to an amount in the aggregate for this clause (y) not to exceed the aggregate amount of Indebtedness reflected in clause (b) above maturing in the immediately succeeding 24 months; provided, further, that Enterprise Total Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

"Enterprise Unencumbered Asset Value" means, as of any date of determination, the sum of (a) Unencumbered Asset Value of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis plus (b) without duplication, the Borrower's Pro Rata Share of Unencumbered Asset Value of each Material Joint Venture.

"Enterprise Unsecured Debt" means, as of any date of determination, that portion of Enterprise Total Indebtedness that is not Enterprise Secured Debt or a Guarantee of Enterprise Secured Debt.

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

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

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person and all of the warrants or options for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person (but excluding any debt security that is convertible into or exchangeable for capital stock).

"ERISA" means the Employee Retirement Income Security Act of 1974.

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

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by ~~the Borrower~~any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001 (a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by ~~the Borrower~~any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) 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 ~~the Borrower~~a Loan Party or any ERISA Affiliate in excess of the Threshold Amount.

"ESG Report" means the annual non-financial disclosure substantially similar to the GRI Standards as publicly reported by the Parent Guarantor or the Borrower and published on an Internet or intranet website to which each Revolving Lender and the Administrative Agent has or has been granted access free of charge.

"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.

"EURIBOR" has the meaning specified in the definition of "~~Eurocurrency~~Alternative Currency Term Rate."

"Euro" and "EUR" mean the single currency of the Participating Member States.

~~"Eurocurrency Rate" means:~~

~~(a) for any Interest Period with respect to a Eurocurrency Rate Loan:~~

~~(i) denominated in Dollars, the rate per annum equal to the London Interbank Offered Rate ("LIBOR") administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate), as published on the applicable Bloomberg screen page (or such other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) (the "LIBOR Screen Rate") at or about 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; provided that if any such rate referred to in this clause (a)(i) is not available at such time for any reason, then the "Eurocurrency Rate" for such Interest Period with respect to such Eurocurrency Rate Loan denominated in Dollars shall be determined by such alternate method as reasonably selected by the Administrative Agent;~~

(ii) denominated in Euro, the rate per annum equal to the Euro Interbank Offered Rate ("EURIBOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the day that is two TARGET Days preceding the first day of such Interest Period with a term equivalent to such Interest Period;

(iii) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate ("CDOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "CDOR Rate") on the Rate Determination Date with a term equivalent to such Interest Period;

(iv) denominated in Yen, the rate per annum equal to the Tokyo Interbank Offer Rate ("TIBOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period;

(v) denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate ("BBSY"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period; and

(vi) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a term rate), the term rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a); and

(b) for any rate calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) LIBOR, at approximately 11:00 a.m., London time determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by such alternate method as reasonably selected by the Administrative Agent;

provided that, if the Eurocurrency Rate determined in accordance with clause (a) or (b) above is below zero, such rate shall be deemed to be zero for purposes of this Agreement; provided, further, that to the extent a comparable or successor rate is approved by the Administrative Agent in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; provided, further, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

"Eurocurrency Rate Loan" means a Committed Revolving Loan that bears interest at a rate based on clause (a) of the definition of "Eurocurrency Rate." Committed Revolving Loans that are Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency. All Committed Revolving Loans that are denominated in an Alternative Currency must be Eurocurrency Rate Loans.

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Swap Obligations" means, with respect to the Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of the Guarantor of, or the grant by the Guarantor of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of the Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 11.11 and any other "keepwell", support or other agreement for the benefit of the Guarantor and any and all guarantees of the Guarantor's Swap Obligations by other guarantors (if any)) at the time the Guaranty of the Guarantor, or grant by the Guarantor of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of the Borrowerany Loan Party hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes in each case (i) imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower isany Loan Party is located, (c) any backup withholding tax that is required to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any U.S. withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the BorrowerLoan Parties with respect to such withholding tax pursuant to Section 3.01(a); provided that if the Alternative Currency Fronting Lender is a Foreign Lender, the Alternative Currency Fronting Lender shall be entitled to receive additional amounts from the BorrowerLoan Parties with respect to any withholding tax imposed on amounts payable to it pursuant to Section 3.01(a) and (e) United States federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means that certain Amended and Restated Credit Agreement, dated as of May 23, 2019, among the Borrower, Bank of America, N.A., as administrative agent, issuing bank and alternative currency fronting lender, and the lenders and other agents party thereto.

"Existing Letters of Credit" means the Letters of Credit issued under the Existing Credit Agreement and outstanding on the Closing Date and set forth on Schedule 2.03.

"Existing Revolving Notes" means the "Revolving Notes" as defined in the Existing Credit Agreement.

"Extended Letter of Credit" means any Letter of Credit with an expiration date occurring up to one year beyond the Letter of Credit Expiration Date pursuant to the terms of Section 2.03(a)(ii)(B).

"Facility Fee Rate" means, from time to time, the number of basis points per annum set forth in the following table, with reference to the Pricing Levels set forth in the definition of "Applicable Rate":

| Pricing Level | Facility Fee |
|---|---|
| 1 | 10.0 bps |
| 2 | 12.5 bps |
| 3 | 15.0 bps |
| 4 | 20.0 bps |
| 5 | 25.0 bps |
| 6 | 30.0 bps |

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the Closing Date (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, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Rate" means, for any day, the rate per annum ~~equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published~~calculated by the Federal Reserve Bank of New York ~~on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so~~ based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day~~, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent~~ by the Federal Reserve Bank of New York as the federal funds effective rate; provided~~, further,~~ that, if the Federal Funds Rate as so determined ~~in accordance with the above is below~~would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Financing Lease" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a financing lease on the balance sheet of that Person.

"First Amendment" means that certain Consent and Amendment No. 1 to Second Amended and Restated Credit Agreement dated as of February 10, 2023, by and among the Parent Guarantor, the Borrower, the Lenders party thereto and the Administrative Agent.

"First Amendment Conversion" means the "Conversion" (as defined in the First Amendment).

"First Amendment Merger" means the "Merger" (as defined in the First Amendment).

"Fitch" means Fitch Ratings, Inc. and any successor thereto.

"Fixed Charge Coverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise EBITDA for the twelve-month period ending on such date to (b) Enterprise Fixed Charges for the twelve-month period ending on such date.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to CDOR.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"FRB" ~~or "Federal Reserve Board"~~ means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, an amount equal to such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations, less the amount of such L/C Obligations as to which such Defaulting Lender has funded its participation obligation or as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Alternative Currency Fronting Lender, an amount equal to such Defaulting Lender's Alternative Currency Participant's Share of all outstanding Revolving Loans denominated in Alternative Currencies advanced by the Alternative Currency Fronting Lender, less the amount of such Revolving Loans as to which such Defaulting Lender has funded its Alternative Currency Risk Participation or as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Fund" means any Person (other than a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

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

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

"GRI Standards" means the Global Reporting Initiative Sustainability Reporting Standards (2016) (or successor standards) published by the Global Reporting Initiative.

"Gross Asset Value" means, as of any date of determination, an amount equal to (a) all assets of a Person and its Subsidiaries as determined in accordance with GAAP plus (b) all accumulated

depreciation and accumulated amortization associated with such assets minus (c) Intangible Assets of such Person and its Subsidiaries.

"Group" means the Parent Guarantor, the Borrower and their respective Subsidiaries.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any payment obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified in Section 11.01.

"Guarantor" means the Parent Guarantor.

"Guaranty" means the Guarantee made by the Parent Guarantor under Article XI in favor of the Administrative Agent and the Lenders.

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

"HMT" has the meaning specified in the definition of "Sanction(s)."

"Honor Date" has the meaning specified in Section 2.03(b)(v).

"Increase Effective Date" has the meaning specified in Section 2.16(d).

"Incremental Term Loan" has the meaning specified in Section 2.16(a).

"Incremental Term Loan Amendment" has the meaning specified in Section 2.16(e)(iii).

"Indebtedness" means, at any time and with respect to any Person, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money, whether secured or unsecured, and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, including, without limitation, recourse and non-recourse mortgage debt;

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

(c) aggregate net obligations of such Person under Swap Contracts;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable and other accrued obligations in the ordinary course of business and (ii) liabilities with respect to earnouts, reimbursements, true-ups and other similar obligations incurred in connection with the purchase or sale of assets except to the extent such liabilities are required to appear on the balance sheet of such Person prepared in accordance with GAAP);

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

(f) Financing Leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person (other than OP units or LTIP units issued by such Person) at any time prior to the date that is six (6) months after the latest Maturity Date then in effect (other than obligations that can solely be satisfied by delivery of Equity Interests of such Person), valued, in the case of a redeemable preferred interest, at the liquidation preference thereof; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, (i) the amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date (which shall be a positive number if such amount would be owed by the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries and a negative number if such amount would be owed to the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries) and the net obligations under Swap Contracts shall not be less than zero and (ii) the amount of any Financing Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. Any liability will be excluded so long as it is (1) secured by a letter of credit issued for the benefit of the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective

Subsidiaries in form and substance and from a financial institution reasonably acceptable to the Administrative Agent, but only to the extent neither the Parent Guarantor, the Borrower nor any ~~Subsidiary~~of their respective Subsidiaries has liability therefor, (2) any obligation (including obligations under so called "sandwich leases") against which a third party indemnifies the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries, or guarantees all loss suffered by the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries on account thereof, to the extent the indemnitor or guarantor has the financial wherewithal to satisfy its obligation, or (3) otherwise acceptable as a "Covered Liability" in the reasonable discretion of the Administrative Agent and the Required Lenders.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitee" has the meaning specified in Section 10.04(b).

"Initial Revolving Maturity Date" has the meaning specified in Section 2.15(a).

"Intangible Assets" means, as of any date of determination, assets of a Person and its Subsidiaries that are classified as intangible assets under GAAP, but excluding interests in real estate that are classified as intangible assets in accordance with GAAP.

"Intercompany Indebtedness" means, as of any date, Indebtedness to which the only parties are the Parent Guarantor, the Borrower and/or any of ~~its~~their respective Subsidiaries as of such date and which, if the Parent Guarantor or the Borrower is the borrower with respect to such Indebtedness, is subordinated to the obligations under this Agreement and the other Loan Documents.

"Interest Expense" means, for any period, for a Person and its Subsidiaries on a consolidated basis, the sum, without duplication, of all (a) interest expense for such period determined in accordance with GAAP (but excluding, to the extent included in Interest Expense, (i) any charges resulting from settlement of options to repurchase remarketable bonds, (ii) remaining unamortized fees paid pursuant to the Existing Credit Agreement, and (iii) amortization of deferred financing fees, amortization of debt discounts and swap breakage costs) and (b) interest that is capitalized in such period in accordance with GAAP.

"Interest Payment Date" means, (a) as to any ~~Eurocurrency~~ Term SOFR Loan, Alternative Currency Term Rate Loan or a Negotiated Rate Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date; provided, however, that, if any Interest Period for a ~~Eurocurrency~~Term SOFR Loan, Alternative Currency Term Rate Loan or a Negotiated Rate Loan exceeds three months, then the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, ~~LIBOR~~ Daily SOFR Loan or Alternative Currency Daily Rate Loan, the last Business Day of each calendar quarter and the applicable Maturity Date.

"Interest Period" means, (a) as to each ~~Eurocurrency~~Term SOFR Loan and each Alternative Currency Term Rate Loan, the period commencing on the date such ~~Eurocurrency~~Term SOFR Loan or Alternative Currency Term Rate Loan, as applicable, is disbursed or converted to or continued as a ~~Eurocurrency~~Term SOFR Loan or an Alternative Currency Term Rate Loan and ending on the ~~date~~numerically corresponding day in the calendar month that is one, three or six months (or, in the case of any ~~Eurocurrency~~Alternative Currency Term Rate Loan denominated in Canadian Dollars, one, two or three months) thereafter (in each case, subject to availability for the interest rate applicable to the relevant currency), as selected by the Borrower in its Committed Loan Notice ~~or such other period that is twelve months or less requested by the Borrower and consented to by all the Revolving Lenders~~

providing such Eurocurrency Rate Loan, and (b) as to each Negotiated Rate Loan, the period commencing on the date such Negotiated Rate Loan is disbursed and ending on the date not more than 180 days thereafter as selected by the Borrower in the applicable Negotiated Rate Loan Notice; provided that:

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

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

(iii) no Interest Period shall extend beyond the applicable Maturity Date.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IP Rights" has the meaning specified in Section 5.16.

"IRS" means the United States Internal Revenue Service.

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

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

"Joint Venture" means any Person in which the Borrower, directly or indirectly, has an ownership interest but does not consolidate the assets or income of such Person in preparing its consolidated financial statements.

"JPMorgan" means JPMorgan Chase Bank, N.A. and its successors.

"Judgment Currency" has the meaning specified in Section 10.19.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable

administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Revolving Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing. All L/C Borrowings shall be denominated in Dollars.

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

"L/C Issuer" means each of Bank of America, JPMorgan, Wells Fargo and any other Revolving Lender designated by the Borrower (to the extent such Lender has accepted such designation) and acceptable to the Administrative Agent (such acceptance not to be unreasonably withheld), in each case in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. For the avoidance of doubt, references to "L/C Issuer" in this Agreement shall refer to the L/C Issuers collectively; provided that the term "L/C Issuer" when used with respect to a Letter of Credit or L/C Obligations relating to a Letter of Credit shall refer to the L/C Issuer that issued such Letter of Credit.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section ~~1.09~~1.10. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lead Alternative Currency Fronting Lender" means Bank of America in its capacity as an Alternative Currency Fronting Lender.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Alternative Currency Fronting Lender, each Alternative Currency Funding Lender and each Alternative Currency Participating Lender, as applicable. For the avoidance of doubt, the term "Lenders" excludes the Departing Lenders.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Letter of Credit" means any standby letter of credit issued hereunder and shall include the Existing Letters of Credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

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

"Letter of Credit Expiration Date" means the day that is the fifth day prior to the Revolving Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(g).

"Letter of Credit Sublimit" means $100,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Level 1 Sustainability Metric Election Threshold" has the meaning specified in the definition of "Sustainability Metric Election Threshold."

"Level 2 Sustainability Metric Election Threshold" has the meaning specified in the definition of "Sustainability Metric Election Threshold."

"Leverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Total Indebtedness outstanding on such date to (b) Enterprise Gross Asset Value as of such date.

~~"LIBOR" has the meaning specified in the definition of "Eurocurrency Rate."~~

~~"LIBOR Daily Floating Rate" means, for any day, a fluctuating rate of interest per annum, which can change on each Business Day, equal to the LIBOR Screen Rate at or about 11:00 a.m., London time on such Business Day, for Dollar deposits with a term equivalent to a one (1) month term beginning on that date; provided that: (i) if such rate is not available at such time for any reason, then the "LIBOR Daily Floating Rate" for such Interest Period shall be determined by such alternate method as reasonably selected by the Administrative Agent, (ii) to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and (iii) if the LIBOR Daily Floating Rate shall be less than zero, such rate shall be deemed zero for purposes hereof.~~

~~"LIBOR Daily Loan" means a Revolving Loan bearing interest at a rate based on the LIBOR Daily Floating Rate. All LIBOR Daily Loans shall be denominated in Dollars.~~

~~"LIBOR Screen Rate" has the meaning specified in the definition of "Eurocurrency Rate."~~

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

"Loan" means an extension of credit by a Lender to the Borrower under Article II in the form of a Committed Revolving Loan ~~(including, for the avoidance of doubt, a LIBOR Daily Loan)~~ or a Negotiated Rate Loan.

"Loan Documents" means this Agreement, each Note, each Issuer Document, any Sustainability Metric Annual Certificate and any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.17.

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

"Loan Parties" means, collectively, the Borrower and the Guarantor.

"Master Agreement" has the meaning specified in the definition of "Swap Contract."

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, properties or financial condition of the ~~Borrower and its Subsidiaries~~Group, taken as a whole, (b) the ability of the ~~Borrower~~Loan Parties to perform any of ~~its~~their material obligations under the Loan Documents, or (c) the rights of or remedies available to the Administrative Agent and the Lenders under the Loan Documents.

"Material Group" has the meaning specified in the definition of "Material Subsidiary."

"Material Joint Venture" means a Joint Venture in which the Borrower has made a net equity investment of $15,000,000 or greater. For purposes of this definition, the Borrower's aggregate Investment in a Joint Venture will be valued at book value as shown on the consolidated balance sheet of the Borrower, as determined in accordance with GAAP.

"Material Recourse Indebtedness" means any Indebtedness of the Parent Guarantor, the Borrower and/or any ~~Subsidiary~~of their respective Subsidiaries (other than Indebtedness under the Loan Documents and Indebtedness under Swap Contracts) that (a) does not constitute Non-Recourse Indebtedness, and (b) individually or in the aggregate, has a principal amount (including, without duplication, undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount.

"Material Subsidiary" means each Subsidiary or any group of Subsidiaries (i) which, as of the most recent fiscal quarter of the Parent Guarantor or the Borrower, as applicable, for the period of four consecutive fiscal quarters then ended, for which financial statements have been delivered pursuant to Section 6.01, contributed greater than $100,000,000 of Enterprise EBITDA for such period or (ii) which contributed greater than $300,000,000 of Enterprise Gross Asset Value as of such date. A group of Subsidiaries (a "Material Group") each of which is not otherwise a Material Subsidiary (defined in the foregoing sentence) shall constitute a Material Subsidiary if the group taken as a single entity satisfies the requirements of the foregoing sentence.

"Maturity Date" means (a) with respect to the Revolving Facility, the Revolving Maturity Date, and/or (b) with respect to any tranche of Incremental Term Loans, subject to Section 2.16(e)(iii), the date set forth in the applicable Incremental Term Loan Amendment as the "Maturity Date" for such tranche of Incremental Term Loans, in each case, as the context may require.

"Maximum Rate" has the meaning specified in Section 10.09.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage Lien" means any Lien that encumbers a real property owned by a Person other than Permitted Specified Liens.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which ~~the Borrower~~a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Negative Pledge" means any provision of a document, instrument or agreement (other than this Agreement or any other Loan Document) that is binding on ~~the Borrower~~a Loan Party or any Wholly-Owned Subsidiary and prohibits the creation or assumption of any Lien on any assets of such Person to secure the Obligations; provided, however, that a provision conditioning a Person's ability to encumber its assets upon the maintenance of one or more specified ratios shall not constitute a Negative

Pledge so long as such provision does not generally prohibit the encumbrance of such Person's assets or the encumbrance of specific assets.

"Negotiated Rate Borrowing" means one or more Negotiated Rate Loans made to the Borrower by one or more of the Revolving Lenders and of which the Administrative Agent is given notice by a Negotiated Rate Loan Notice.

"Negotiated Rate Funding Date" shall have the meaning specified in Section 2.05(b).

"Negotiated Rate Loan" shall have the meaning specified in Section 2.05(a).

"Negotiated Rate Loan Notice" means the notice, in substantially the form of Exhibit C, pursuant to a Negotiated Rate Loan, and made pursuant to Section 2.05, duly completed and executed and personally delivered or transmitted by facsimile by the Borrower.

"Negotiated Rate Sublimit" means an amount equal to fifty percent (50%) of the Aggregate Revolving Commitments, which shall be available for negotiated rate advances. The Negotiated Rate Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Net Income" means, for any period, for a Person and its Subsidiaries on a consolidated basis, the net income of such Person and its Subsidiaries for such period as determined in accordance with GAAP (without giving effect to (i) any net after tax gains or losses attributable to sales of non-current assets out of the ordinary course of business and write-downs of non-current assets in anticipation of losses to the extent they have decreased net income, and (ii) gains and losses from dispositions of depreciable real estate investments, impairment charges, the early extinguishment of debt and transaction costs of acquisitions not permitted to be capitalized pursuant to GAAP and other non-recurring items, including, without limitation, charges resulting from settlement of options to repurchase remarketable bonds and other similar charges).

"New Lender Joinder Agreement" has the meaning specified in Section 2.16(c).

"Non-Extension Notice Date" has the meaning specified in Section 2.03(b)(iii).

"Non-Recourse Indebtedness" of a Person means any Indebtedness of such Person, the recourse for which is limited to the asset or assets securing such Indebtedness (and, if applicable, in the event such Person owns no assets other than real estate that secures such Indebtedness and assets incident to ownership of such real estate (e.g., personal property) and has no other Indebtedness, to such Person and/or such Person's Equity Interests), other than in respect of environmental liabilities, fraud, misrepresentation and other similar matters.

"Notes" means, collectively, the Revolving Notes and any promissory notes made by the Borrower evidencing any Incremental Term Loans in a form agreed between the Borrower and the Administrative Agent, as the context may require, and "Note" means any of them individually.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of ~~the Borrower~~any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against ~~the Borrower~~any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that,

without limiting the foregoing, the Obligations of the Guarantor shall exclude any Excluded Swap Obligations with respect to the Guarantor.

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

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

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

"Other Taxes" means all present or future stamp, court, documentary intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other 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 3.06 or Section 10.13).

"Outstanding Amount" means (a) with respect to Committed Revolving Loans and Negotiated Rate Loans on any date, the Dollar Equivalent of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Revolving Loans and Negotiated Rate Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the Dollar Equivalent of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by or on behalf of the Borrower of Unreimbursed Amounts or any refinancings thereof.

"Overnight Rate" means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, ~~the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.~~an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

"Parent Guarantor" means, upon completion of the First Amendment Merger, Healthpeak Properties, Inc., a Maryland corporation.

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

"Participant Register" has the meaning specified in Section 10.06(d).

"Participating Member State" means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with EMU Legislation.

"Patriot Act" has the meaning specified in Section 10.17.

"PBGC" means the Pension Benefit Guaranty Corporation.

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

"Permitted Specified Liens" means Liens permitted under Section 7.01(c) – (m) and (o) – (q).

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

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by ~~the Borrower~~a Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Platform" has the meaning specified in Section 6.02.

"Pro Forma Basis" means, for purposes of determining any financial covenant hereunder, that the subject transaction shall be deemed to have occurred as of the first day of the period of four (4) consecutive fiscal quarters ending as of the end of the most recent fiscal quarter for which annual or quarterly financial statements shall have been delivered in accordance with the provisions of this Agreement. Further, for purposes of making calculations on a "Pro Forma Basis" hereunder, (a) in the case of a Disposition, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such Disposition shall be excluded to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness paid or retired in connection with the subject transaction shall be deemed to have been paid and retired as of the first day of the applicable period; (b) in the case of an acquisition, development or redevelopment, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such acquisition, development or redevelopment shall be included to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness incurred in connection with the subject transaction shall be deemed to have been incurred as of the first day of the applicable period (and interest expense shall be imputed for the applicable period utilizing the actual interest rates thereunder or, if actual rates are not ascertainable, assuming prevailing interest rates hereunder) and (c) in the case of the issuance or exercise of Equity Interests, Indebtedness paid or retired in connection therewith shall be deemed to have been paid and retired as of the first day of the applicable period.

"Pro Rata Share" means (a) with respect to the EBITDA, Net Income, Interest Expense, Gross Asset Value and Unencumbered Asset Value of each Joint Venture, the Borrower's direct or indirect percentage ownership interest in such Joint Venture and (b) with respect to the Indebtedness of each Joint Venture (i) if the Indebtedness is recourse to the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries, the amount of such Indebtedness that is recourse to the Parent Guarantor, the Borrower or such Subsidiary and (ii) if the Indebtedness is not recourse to the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries, the Borrower's percentage ownership interest in such Joint Venture.

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

"Public Lender" has the meaning specified in Section 6.02.

"QFC Credit Support" has the meaning specified in Section 10.24.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Rate Determination Date" means, with respect to any Interest Period, two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as reasonably determined by the Administrative Agent; provided that, to the extent such market practice is not administratively feasible for the Administrative Agent, then "Rate Determination Date" means such other day as otherwise reasonably determined by the Administrative Agent).

"Recipient" means the Administrative Agent, any Lender and any L/C Issuer, as applicable.

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

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

"Related Indemnified Party" of an Indemnitee means (a) any trustees, members, administrators, managers, partners, Controlling Person or Controlled Affiliate of such Indemnitee, (b) the respective directors, officers or employees of such Indemnitee or any of its Controlling Persons or Controlled Affiliates and (c) the respective advisors, attorneys, accountants, agents and representatives of such Indemnitee or any of its Controlling Persons or Controlled Affiliates, in the case of this clause (c), acting on behalf of, or at the express instructions of, such Indemnitee, Controlling Person or such Controlled Affiliate.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Relevant Governmental Body" means ~~(a) with respect to Loans denominated in Dollars, the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto, (b) with respect to Loans denominated in Sterling,~~ the Bank of ~~England~~Canada, or a committee officially endorsed or convened by the Bank of ~~England~~Canada, or~~, in each case,~~ any

successor thereto~~, (c) with respect to Loans denominated in Euro, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto, (d) with respect to Loans denominated in Swiss Francs, the Swiss National Bank, or a committee officially endorsed or convened by the Swiss National Bank or, in each case, any successor thereto, (e) with respect to Loans denominated in Yen, the Bank of Japan, or a committee officially endorsed or convened by the Bank of Japan or, in each case, any successor thereto, and (f) with respect to Loans denominated in any other Agreed Currency, (i) the central bank for the currency in which such Loan is denominated or any central bank or other supervisor which is responsible for supervising either (x) such Successor Rate or (y) the administrator of such Successor Rate or (ii) any working group or committee officially endorsed or convened by (w) the central bank for the currency in which such Successor Rate is denominated, (x) any central bank or other supervisor that is responsible for supervising either (A) such Successor Rate or (B) the administrator of such Successor Rate, (y) a group of those central banks or other supervisors or (z) the Financial Stability Board or any part thereof.~~.

"Relevant Rate" means with respect to any Credit Extension denominated in (a) Dollars, initially, ~~USD LIBOR~~SOFR, (b) Sterling, SONIA, (c) Swiss Francs, SARON, (d) Euro, EURIBOR, (e) Canadian Dollars, the CDOR Rate, (f) Yen, TIBOR, and (g) Australian Dollars, BBSY, as applicable, and, in each case, if such rate is replaced pursuant to Section 3.03(b) ~~or~~, (c) or (d), any replacement rate in respect thereof.

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

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

"Required Class Lenders" means, at any time with respect to any Class of Loans (or any Class of commitments to make Loans), Lenders having Total Credit Exposures with respect to such Class representing more than 50% of the Total Credit Exposures of all Lenders of such Class. The Total Credit Exposure of any Defaulting Lender with respect to such Class shall be disregarded in determining Required Class Lenders at any time.

"Required Lenders" means, as of any date of determination, (a) Revolving Lenders having more than 50% of the Aggregate Revolving Commitments or (b) if the Revolving Commitment of each Revolving Lender to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Revolving Lenders holding in the aggregate more than 50% of the Total Revolving Outstandings (with the aggregate amount of each Revolving Lender's risk participation and funded participation in L/C Obligations and Alternative Currency Risk Participations being deemed "held" by such Revolving Lender for purposes of this definition); provided that (i) any Revolving Commitment of, and the portion of the Total Revolving Outstandings (other than risk participations in Letters of Credit, which risk participations shall be deemed to be held by the applicable Issuing Bank in its capacity as a Revolving Lender for purposes of making a determination of Required Lenders) held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders and (ii) the Alternative Currency Risk Participations of any Defaulting Lender at such time shall be deemed to be held by the Alternative Currency Fronting Lender for purposes of making a determination of Required Lenders.

"Rescindable Amount" has the meaning specified in Section 2.13(b)(ii).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, president, chief financial officer, each executive vice president and senior vice president, and the treasurer of ~~the Borrower~~any Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of ~~the Borrower~~a Loan Party or any entity authorized to act on behalf of ~~the Borrower~~such Loan Party, and, solely for purposes of notices given pursuant to Article II, any other officer or employee of ~~the Borrower~~a Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of ~~the Borrower~~such Loan Party designated in or pursuant to an agreement between ~~the Borrower~~such Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the ~~Borrower~~applicable Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of ~~the Borrower~~such Loan Party.

"Restricted Payment" means any payment (whether in cash, securities or other property) by the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any of the Parent Guarantor's or Borrower's capital stock or other Equity Interest, or on account of any return of capital to the Parent Guarantor's or the Borrower's stockholders, partners or members (or the equivalent Person thereof); provided that dividends to the extent in the form of Equity Interests shall not constitute Restricted Payments.

"Revaluation Date" means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of ~~a Eurocurrency Rate Loan denominated in~~ an Alternative Currency ~~or~~Loan, (ii) with respect to an Alternative Currency Daily Rate Loan, each Interest Payment Date, (~~ii~~iii) each date of a continuation of ~~a Eurocurrency Rate Loan denominated in~~ an Alternative Currency Term Rate Loan pursuant to Section 2.02, (~~iii~~iv) the date the Alternative Currency Fronting Lender has requested payment from the Alternative Currency Participating Lenders in Dollars, and with respect to all other instances pursuant to Section 2.02(f) the date on which payments in Dollars are made between the Alternative Currency Fronting Lender and Alternative Currency Participating Lenders with respect to such Loan, and (~~iv~~v) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit ~~denominated in an Alternative Currency,~~, each of the following: (i) each date of issuance ~~of such~~, amendment and/or extension of a Letter of Credit~~, (ii) each date of an amendment of such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii~~ denominated in an Alternative Currency, (ii) each date of any payment by the L/C Issuer under ~~such~~any Letter of Credit denominated in an Alternative Currency, and (~~iv~~iii) such additional dates as the Administrative Agent or the L/C Issuer shall determine or the Required Lenders shall require.

"Revolving Commitment" means, as to each Revolving Lender, its obligation to (a) make Committed Revolving Loans to the Borrower pursuant to Section 2.01, (b) purchase participations in L/C Obligations and (c) if such Lender is an Alternative Currency Participating Lender with respect to any Alternative Currency, purchase Alternative Currency Risk Participations in Loans denominated in such Alternative Currency, in an aggregate principal amount at any one time outstanding the Dollar Equivalent of which does not exceed the Dollar amount set forth opposite such Lender's name in the column entitled "Revolving Commitment" on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Credit Exposure" means, as to any Revolving Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's participation in L/C Obligations and Alternative Currency Risk Participations at such time.

"Revolving Facility" means, at any time, the aggregate amount of the Revolving Lenders' Revolving Commitments at such time.

"Revolving Lender" means a Lender with a Revolving Commitment or an outstanding Committed Revolving Loan or an outstanding Negotiated Rate Loan and, as the context requires, includes the L/C Issuer.

"Revolving Loan" means any extension of credit under the Revolving Facility in the form of a loan by a Revolving Lender to the Borrower under Article II.

"Revolving Maturity Date" means January 20, 2026, subject to extension in accordance with Section 2.15.

"Revolving Note" means a promissory note made by the Borrower in favor of a Revolving Lender evidencing Revolving Loans made by such Lender, substantially in the form of Exhibit D.

"Rolling Base Year Methodology" has the meaning specified in the definition of "Sustainability Metric."

"Rolling Base Year Percentage" has the meaning specified in the definition of "Sustainability Metric."

"S&P" means Standard & Poor's ~~Ratings~~Financial Services LLC, a ~~division of The McGraw-Hill Companies,~~subsidiary of S&P Global Inc., and any successor thereto.

"Same Day Funds" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

"Sanction(s)" means any international economic ~~sanction~~sanctions administered or enforced by the United States federal government (including, without limitation, OFAC), the United Nations Security Council, the European Union, ~~Her~~His Majesty's Treasury of the United Kingdom ("HMT") or other relevant sanctions authority.

"SARON" means, with respect to any applicable determination date, the Swiss Average Rate Overnight published on the fifth Business Day preceding such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time); provided, however, that, if such determination date is not a Business Day, SARON means such rate that applied on the first Business Day immediately prior thereto.

"SARON Adjustment" means, with respect to SARON, 0.0031% per annum.

"Scheduled Principal Payment" means, for any period, (a) all regularly scheduled principal payments during such period by the ~~Borrower~~Parent Guarantor and its Subsidiaries with respect to Indebtedness of the ~~Borrower~~Parent Guarantor and its Subsidiaries (other than payments due at final

maturity of any tranche of Indebtedness) and (b) without duplication, the Borrower's Pro Rata Share of all regularly scheduled principal payments during such period with respect to the Indebtedness (other than payments due at final maturity of any tranche of Indebtedness) of each Material Joint Venture. For purposes of determining Scheduled Principal Payments, Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

"Scheduled Unavailability Date" has the meaning specified in Section 3.03(~~b~~d).

"Scope 1" means direct greenhouse gas emissions relating to natural gas, transport fuel and refrigerants (or other similar categories) as disclosed in the applicable annual Sustainability Metric Report.

"Scope 2" means indirect greenhouse gas emissions relating to purchased electricity and purchased chilled water refrigerants (or other similar categories) as disclosed in the applicable annual Sustainability Metric Report.

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

"Secured Debt Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Secured Debt outstanding on such date to (b) Enterprise Gross Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Unsecured Leverage Ratio as of such date.

"Senior Managing Agents" means each of Capital One National Bank, The Huntington National Bank, Regions Bank, Sumitomo Mitsui Banking Corporation, TD Bank, N.A., and U.S. Bank National Association, in their capacity as Senior Managing Agents.

"Significant Acquisition" means the acquisition (in one or a series of related transactions) of all or substantially all of the assets or Equity Interests of a Person or any division, line of business or business unit of a Person for an aggregate consideration in excess of $450,000,000.

"SOFR" means, with respect to any applicable determination date, the Secured Overnight Financing Rate published on the fifth U.S. Government Securities Business Day preceding such date by the ~~SOFR Administrator~~Federal Reserve Bank of New York (or a successor administrator of such rate) on the Federal Reserve Bank of New York's website (or any successor source); provided~~,~~ however~~,~~ that~~,~~ if such determination date is not a U.S. Government Securities Business Day, then SOFR means such rate that applied on the first U.S. Government Securities Business Day immediately prior thereto.

"SOFR Adjustment" with respect to Daily Simple SOFR means 0.10% (10 basis points); with respect to Daily SOFR means 0.10% (10 basis points); and with respect to Term SOFR means 0.10% (10 basis points).

"SOFR Scheduled Unavailability Date" has the meaning specified in Section 3.03(b).

"SOFR Administrator" means the Federal Reserve Bank of New York, as the administrator of SOFR, or any successor administrator of SOFR designated by the Federal Reserve Bank of New York or other Person acting as the SOFR Administrator at such time.

"SOFR Successor Rate" has the meaning specified in Section 3.03(b).

"SONIA" means, with respect to any applicable determination date, the Sterling Overnight Index Average Reference Rate published on the fifth Business Day preceding such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time); provided, however, that, if such determination date is not a Business Day, SONIA means such rate that applied on the first Business Day immediately prior thereto.

"SONIA Adjustment" means, with respect to SONIA, 0.1193% per annum.

"Special Notice Currency" means at any time an Alternative Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

"Specified Default" means an Event of Default arising under Section 8.01(a) or 8.01(f).

"Specified Representations" means the representations and warranties set forth in the Loan Documents (or otherwise mutually agreed between the Borrower and the applicable Lenders providing any applicable Incremental Term Loans) relating to: corporate existence of the Borrowereach Loan Party and good standing of the Borrowersuch Loan Party in its jurisdiction of organization; power and authority, due authorization, execution and delivery and enforceability, in each case, relating to the Borrowersuch Loan Party entering into and performance of the Loan Documents; no conflicts with or consents under the Borrower'ssuch Loan Party's Organization Documents, applicable Law or material contractual obligations (in each case, as they relate to the entering into and performance of the Loan Documents); use of proceeds of the Incremental Term Loans on the relevant Increase Effective Date; solvency of the Borrower and itsLoan Parties and their Subsidiaries on a consolidated basis; Federal Reserve margin regulations; the Investment Company Act of 1940; the Patriot Act; OFAC; and Sanctions and Anti-Corruption Laws.

"Specified Test Year" has the meaning specified in the definition of "Applicable Rate."

"Spot Rate" for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; provided, further, that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

"Sterling" and "£" mean the lawful currency of the United Kingdom.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity the accounts of which are consolidated with the accounts of such Person in such Person's consolidated financial statements prepared in accordance with GAAP. Unless

otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of ~~the Borrower~~a Loan Party.

"Successor Rate" has the meaning specified in Section 3.03(~~e~~d).

"Supported QFC" has the meaning specified in Section 10.24.

"Sustainability Assurance Provider" means Cventure LLC, or any replacement sustainability assurance provider thereof as designated from time to time by the Borrower; provided that any such replacement Sustainability Assurance Provider (a) shall be (i) a qualified external reviewer, independent of the ~~Borrower and its~~Loan Parties and their Subsidiaries, believed in good faith by the Borrower to have relevant expertise, such as an auditor, environmental consultant and/or independent ratings agency or (ii) another firm designated by the Borrower and identified in writing to the Administrative Agent and the Revolving Lenders, so long as Revolving Lenders constituting the Required Lenders do not object to such designation pursuant to this clause (a)(ii) within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection), and (b) to the extent relevant to the Sustainability Metric Components, shall apply auditing standards and methodology that are the same as or substantially consistent with the auditing standards and methodology used in the Borrower's ESG Report for the calendar year ended December 31, 2020, except for any changes to such standards and/or methodology that (x) are not material, (y) are consistent with then generally accepted industry standards or (z) if not so consistent, are proposed by the Borrower and notified in writing to the Administrative Agent and the Revolving Lenders, so long as, in the case of this subclause (z), Revolving Lenders constituting Required Lenders do not object to such changes within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection).

"Sustainability Metric" means, for any given Specified Test Year, the percentage change of the Sustainability Metric Components relative to the Sustainability Metric Baseline, which percentage change for any Specified Test Year shall be determined and calculated based on the following methodology: (a) the Sustainability Metric Components for such Specified Test Year shall be compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of such Specified Test Year (such methodology described in this clause (a), the "Rolling Base Year Methodology," and the percentage change of such Sustainability Metric Components for a Specified Test Year relative to such Sustainability Metric Components for the immediately preceding calendar year being referred to as the "Rolling Base Year Percentage", which, for the avoidance of doubt, shall be expressed as a negative percentage in the event such Sustainability Metric Components for such Specified Test Year are less than such Sustainability Metric Components for the immediately preceding calendar year); (b) in the case of the Specified Test Year ending December 31, 2021, the Sustainability Metric for such Specified Test Year shall equal the Rolling Base Year Percentage for such Specified Test Year; and (c) in the case of a Specified Test Year ending after December 31, 2021, the Sustainability Metric for such Specified Test Year shall be the percentage equal to the sum of (i) the Rolling Base Year Percentage for such Specified Test Year and (ii) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021.

"Sustainability Metric Annual Certificate" means a certificate substantially in the form of Exhibit G (or such other form as may be approved by the Administrative Agent), signed by a Responsible Officer, and attaching a copy of the Sustainability Metric Report for the most recently ended calendar year (provided that such a copy shall not be required to be so attached if such Sustainability Metric Report has been published on an Internet or intranet website to which each Revolving Lender and the Administrative Agent has or has been granted access free of charge); provided that the Borrower may,

but shall not be required to, include a certification regarding whether or not any level of the Sustainability Metric Election Threshold has been satisfied as of December 31 of the then most recently ended calendar year (commencing with the calendar year ending December 31, 2021) in any Compliance Certificate delivered by the Borrower from time to time pursuant to Section 6.02(a), and any Compliance Certificate containing such a certification (and attaching a copy of the applicable Sustainability Metric Report, except to the extent such attachment is not required as described above) shall be deemed to be the Sustainability Metric Annual Certificate for the calendar year most recently ended prior to the delivery of such Compliance Certificate.

"Sustainability Metric Annual Certificate Inaccuracy" has the meaning specified in the definition of "Applicable Rate."

"Sustainability Metric Baseline" means the Borrower's Sustainability Metric Components for the calendar year ended December 31, 2020, as set forth in the applicable Sustainability Metric Report (for the avoidance of doubt, subject to the Rolling Base Year Methodology).

"Sustainability Metric Components" means, for any calendar year of the Borrower, the combined Scope 1 and Scope 2 greenhouse gas emissions of the Parent Guarantor, the Borrower and ~~its~~their respective Controlled Subsidiaries for such calendar year (determined in all material respects in conformity with the GRI Standards), less any qualified emissions offsets (including, but not limited to, renewable energy certificates) of the Parent Guarantor, the Borrower and ~~its~~their respective Controlled Subsidiaries during such calendar year, in each case, with respect to the Boundary Properties (subject to the Rolling Base Year Methodology). Qualified emissions offsets include any offsets used to calculate Scope 1 and Scope 2 emissions for reporting emissions in the applicable annual Sustainability Metric Report, including any offsets in which Parent Guarantor, Borrower and/or any of ~~its~~their respective Controlled Subsidiaries has an interest as a result of purchasing environmental attributes of projects other than those owned directly by the Parent Guarantor, the Borrower and/or any of their respective Controlled ~~Subsidiary~~Subsidiaries.

"Sustainability Metric Election Threshold" means, with respect to any Specified Test Year of the Borrower listed in the first column of the table set forth below, the percentage change specified opposite such Specified Test Year in either (a) the second column of the table below (such change specified in such column, the "Level 1 Sustainability Metric Election Threshold") or (b) the third column of the table below (such change specified in such column, the "Level 2 Sustainability Metric Election Threshold").

| Specified Test Year ending December 31 of | Required Sustainability Metric Reduction for Level 1 Sustainability Metric Election Threshold | Required Sustainability Metric Reduction for Level 2 Sustainability Metric Election Threshold |
|---|---|---|
| 2021 | -1.00% | -2.50% |
| 2022 | -2.00% | -5.00% |
| 2023 | -3.00% | -7.50% |
| 2024 | -4.00% | -10.00% |
| 2025 and thereafter | -5.00% | -12.50% |

For purposes hereof, (i) the Level 1 Sustainability Metric Election Threshold for any Specified Test Year shall be satisfied if the Sustainability Metric for such Specified Test Year is a negative number the absolute value of which is (x) equal to or greater than the absolute value of such Level 1 Sustainability Metric Election Threshold but (y) less than the absolute value of the Level 2 Sustainability Metric Election Threshold for such Specified Test Year, and (ii) the Level 2 Sustainability Metric Election Threshold for any Specified Test Year shall be satisfied if the Sustainability Metric for such Specified Test Year is a negative number the absolute value of which is equal to or greater than the absolute value

of such Level 2 Sustainability Metric Election Threshold. Any reference herein to any level of the Sustainability Metric Election Threshold for any Specified Test Year shall mean a reference to the Level 1 Sustainability Metric Election Threshold and/or the Level 2 Sustainability Metric Election Threshold for such Specified Test Year, as the context may require.

"Sustainability Metric Pricing Grid" has the meaning specified in the definition of "Applicable Rate."

"Sustainability Metric Report" means an annual report by the Parent Guarantor or the Borrower (it being understood that such annual report for any Specified Test Year may take the form of the annual ESG Report) that sets forth the Sustainability Metric Components for a specific calendar year and with respect to which a verification review of the Scope 1 and Scope 2 emissions reported therein for such calendar year has been conducted by the Sustainability Assurance Provider; provided that, to the extent relevant to such Sustainability Metric Components, the qualified or limited statement of assurance from the Sustainability Assurance Provider that is set forth in, or attached to, such report shall be the same as or substantially similar in all material respects to the statement of the Sustainability Assurance Provider set forth on page 54 of the ESG Report for the calendar year ended December 31, 2020, except for any changes that (x) are with respect to any additional or increased level of assurance or any expanded scope of review, (y) are with respect to accounting standards or methodology, so long as, in the case of this subclause (y), such changes are consistent with the requirements of clause (b) of the definition of "Sustainability Assurance Provider" (without regard to whether such Sustainability Assurance Provider is a replacement Sustainability Assurance Provider) or (z) are proposed by the Borrower and notified in writing to the Administrative Agent and the Revolving Lenders, so long as, in the case of this subclause (z), Revolving Lenders constituting Required Lenders do not object to such changes within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection).

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

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

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

provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

"Swiss Francs" means the lawful currency of Switzerland.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) any similar off-balance sheet financing product that is considered borrowed money indebtedness for tax purposes but classified as an operating lease under GAAP.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

"TARGET Day" means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

"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 CORRA" means, for the applicable corresponding tenor, the forward-looking term rate based on CORRA that has been selected or recommended by the Relevant Governmental Body, and that is published by an authorized benchmark administrator and is displayed on a screen or other information service, as identified or selected by the Administrative Agent in its reasonable discretion at approximately a time and as of a date prior to the commencement of an Interest Period determined by the Administrative Agent in its reasonable discretion in a manner substantially consistent with market practice.

"Term CORRA Notice" means the notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term CORRA Transition Event.

"Term CORRA Transition Date" means, in the case of a Term CORRA Transition Event, the date that is set forth in the Term CORRA Notice provided to the Lenders and the Borrower, for the replacement of the then-current Canadian Benchmark with the Canadian Benchmark Replacement described in clause (a)(i) of such definition, which date shall be at least thirty (30) Business Days from the date of the Term CORRA Notice.

"Term CORRA Transition Event" means the determination by the Administrative Agent that (a) Term CORRA has been recommended for use by the Relevant Governmental Body, and is determinable for any Available Tenor, (b) the administration of Term CORRA is administratively feasible for the Administrative Agent, (c) a Canadian Benchmark Replacement, other than Term CORRA, has replaced CDOR in accordance with Section 3.03(c) and (d) Borrower has provided a written request to Administrative Agent to transition to Term CORRA.

"Term SOFR" means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided

that, if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto for which such rate was published, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day; provided that, if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto for which such rate was published;

provided that, if Term SOFR determined in accordance with the provisions of either clause (a) or (b) above would otherwise be less than 0.00%, then Term SOFR shall be deemed 0.00% for purposes of this Agreement.

"Term SOFR Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "Term SOFR."

"Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

"Threshold Amount" means $150,000,000.

"TIBOR" has the meaning specified in the definition of "~~Eurocurrency~~Alternative Currency Term Rate."

"Total Credit Exposure" means, as to any Lender at any time, the unused Revolving Commitments and Revolving Credit Exposure of such Lender at such time.

"Total Revolving Outstandings" means the aggregate Outstanding Amount of all Committed Revolving Loans ~~(including LIBOR Daily Loans)~~, all L/C Obligations and all Negotiated Rate Loans.

"Treasury Management Agreement" means any treasury, depository or cash management arrangements, services or products, including, without limitation, overdraft services and automated clearinghouse transfers of funds.

"Treasury Management Lender" means any Person that, at the time it enters into a Treasury Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Treasury Management Agreement.

"Type" means, with respect to a Committed Revolving Loan, its character as a Base Rate Loan, ~~LIBOR~~a Daily SOFR Loan, a ~~Eurocurrency~~Term SOFR Loan, an Alternative Currency Term Rate Loan or an Alternative Currency Daily Rate Loan.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain

credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unencumbered Asset Value" means, for a Person and its Subsidiaries on a consolidated basis, as of any date of determination, the sum of (a) the aggregate net book value, as determined in accordance with GAAP, of all real property of a Person that is not subject to a Mortgage Lien plus (b) all accumulated depreciation and amortization with respect to such real properties plus (c) unrestricted cash and cash equivalents of such Person plus (d) the sum of (i) unencumbered mezzanine and mortgage loan receivables (at the value reflected in the consolidated financial statements of the ~~Borrower~~Parent Guarantor, in accordance with GAAP, as of such date, including the effect of any impairment charges) and (ii) unencumbered marketable securities (at the value reflected in the consolidated financial statements of the ~~Borrower~~Parent Guarantor, in accordance with GAAP, as of such date, including the effect of any impairment charges); provided that the items described in this clause (ii) and in the preceding clause (i) shall not be taken into account to the extent that the amounts of such items exceed, in the aggregate, 20% of Unencumbered Asset Value. For purposes of this definition, (1) "Mortgage Lien" shall not include any lien securing Intercompany Indebtedness and (2) for the avoidance of doubt, the value of any asset or property subject to Liens on assets of the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries securing obligations under Swap Contracts shall not be included in the calculation of Unencumbered Asset Value.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(b)(v).

"Unsecured Leverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Unsecured Debt outstanding on such date to (b) Enterprise Unencumbered Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Secured Debt Ratio as of such date.

~~"USD LIBOR" has the meaning specified in Section 3.03(b).~~

"U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

"U.S. Special Resolution Regimes" has the meaning specified in Section 10.24.

"Wells Fargo" means Wells Fargo Bank, National Association and its successors.

"Wholly-Owned Subsidiary" means any wholly-owned Subsidiary of the Parent Guarantor or the Borrower, as applicable, in each case, that is not a special purpose entity.

"Write-Down and Conversion Powers" means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

"Yen" and "¥" mean the lawful currency of Japan.

**1.02 Other Interpretive Provisions.**

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

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

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

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

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, ~~consolidation,~~ assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a

limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, ~~consolidation,~~ assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

(e) For the avoidance of doubt, the parties intend that the term "Enterprise" refer to financial calculations that cover (i) the ~~Borrower and its consolidated Subsidiaries~~Group and (ii) the Borrower's Pro Rata Share of Material Joint Ventures.

**1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the ~~Borrower~~Parent Guarantor and its Subsidiaries shall be deemed to be carried in accordance with GAAP, excluding the effects of FASB ASC 825 on financial liabilities.

(b) Changes in GAAP. 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 Required 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 Required Lenders and the Borrower); provided 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) the Borrower shall provide to the Administrative Agent financial statements and other documents required under this Agreement or as reasonably requested in writing hereunder by the Administrative Agent setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.04 Rounding.**

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

**1.05 Exchange Rates; Currency Equivalents.** (a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalents and/or Alternative Currency Equivalents of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies or Dollars. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by ~~the Borrower~~Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be its Dollar Equivalent as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Committed Borrowing, conversion, continuation or prepayment of ~~a Eurocurrency Rate Loan or~~ an Alternative Currency ~~Daily Rate~~ Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Committed Borrowing, ~~Eurocurrency Rate~~ Loan~~,~~ ~~Alternative Currency Daily Rate Loan~~ or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

~~(c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate," "LIBOR Daily Loan" or "Alternative Currency Daily Rate" or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any Benchmark Replacement) or the effect of any of the foregoing, or of any Conforming Changes, in any such case, except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct.~~

**1.06 Additional Alternative Currencies.** (a) With respect to (i) Revolving Loans to be made as ~~Eurocurrency Rate Loans or~~ Alternative Currency ~~Daily Rate~~ Loans and (ii) Letters of Credit, the Borrower may from time to time request that such Loans be made in, and/or Letters of Credit be issued in, a currency other than those specifically listed in the definition of "Alternative Currency"; provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Revolving Loans as ~~Eurocurrency Rate Loans or~~ Alternative Currency ~~Daily Rate~~ Loans, such request shall be subject to the approval of the Administrative Agent and each Revolving Lender; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent, the L/C Issuer issuing such Letter of Credit and each Revolving Lender.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., twenty (20) Business Days prior to the date of the desired Credit Extension (or such other time or date (but not less than eleven (11) Business Days prior) as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Revolving Loans to be made as ~~Eurocurrency Rate Loans or~~ Alternative Currency ~~Daily Rate~~ Loans, the Administrative Agent shall promptly notify each Revolving Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Revolving Lender (in the case of any such request pertaining to Revolving Loans to be made as ~~Eurocurrency Rate Loans or~~ Alternative Currency ~~Daily Rate~~ Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of such ~~Eurocurrency Rate Loans or~~ Alternative Currency ~~Daily Rate~~ Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Revolving Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Revolving Lender or the L/C Issuer, as the case may be, to permit Revolving Loans to be made as ~~Eurocurrency Rate Loans or~~ Alternative Currency ~~Daily Rate~~ Loans, or Letters of Credit to be issued, in such requested currency. If the Administrative Agent and the Revolving Lenders consent to making ~~Eurocurrency Rate Loans or~~ Alternative Currency ~~Daily Rate~~ Loans in such requested currency and the

Administrative Agent and such Revolving Lenders reasonably determine that an appropriate interest rate is available to be used for such requested currency, the Administrative Agent shall so notify the Borrower and the Revolving Lenders and (i) the Administrative Agent and the Borrower may amend the definition of ~~Eurocurrency~~Alternative Currency Term Rate and/or Alternative Currency Daily Rate, as applicable, to the extent necessary to add the applicable ~~Eurocurrency~~ rate for such currency and any applicable adjustment for such rate and (ii) to the extent the definition of Alternative Currency Term Rate and/or Alternative Currency Daily Rate, as applicable~~, for such currency and (ii) to the extent the definition of Eurocurrency Rate and/or Alternative Currency Daily Rate, as applicable~~, reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Committed Borrowings of ~~Eurocurrency Rate Loans and~~ Alternative Currency ~~Daily Rate~~ Loans~~, as applicable; and if~~. If the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and the Revolving Lenders and (i) the Administrative Agent, the Borrower and ~~such~~the L/C Issuer may amend the definition of ~~Eurocurrency~~Alternative Currency Term Rate and/or Alternative Currency Daily Rate, as applicable, to the extent necessary to add the applicable ~~Eurocurrency Rate and/or Alternative Currency Daily Rate, as applicable,~~rate for such currency and any applicable adjustment for such rate and (ii) to the extent the definition of ~~Eurocurrency~~Alternative Currency Term Rate and/or Alternative Currency Daily Rate, as applicable, reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain any consent required to any request for an additional currency under this Section 1.06, the Administrative Agent shall promptly so notify the Borrower and the Revolving Lenders.

**1.07 Change of Currency.** (a) Each obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the ~~London~~applicable interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Committed Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Committed Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent (in consultation with the Borrower) may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to such change in currency.

**1.08 Interest Rates.** Except as specifically set forth herein, the Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related

spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate or any Canadian Benchmark Replacement) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate or any Canadian Benchmark Replacement) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate or any Canadian Benchmark Replacement) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any such rate (or component thereof) provided by any such information source or service.

~~1.08~~1.09 **Times of Day.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

~~1.09~~1.10 **Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit at any given time shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all increases that are scheduled to occur at any time thereafter (notwithstanding that such maximum stated amount is not in effect at such time).

## ARTICLE II

## THE REVOLVING COMMITMENTS AND CREDIT EXTENSIONS

**2.01 Committed Revolving Loans**. Prior to the Closing Date, certain revolving loans were previously made to the Borrower under the Existing Credit Agreement which remain outstanding as of the Closing Date (such outstanding loans being hereinafter referred to as the "Existing Loans"). Subject to the terms and conditions set forth in this Agreement, the parties hereto agree that (x) on the Closing Date, the Existing Loans shall be re-evidenced as Committed Revolving Loans under this Agreement and the terms of the Existing Loans shall be restated in their entirety and shall be evidenced by this Agreement and (y) in connection therewith, the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Revolving Lender's credit exposure under the Existing Credit Agreement as are necessary in order that each such Lender's Revolving Credit Exposure hereunder reflects such Lender's Applicable Percentage of the Total Revolving Outstandings on the Closing Date. In addition, subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make revolving loans (each such loan, a "Committed Revolving Loan") to the Borrower in Dollars or (subject to the provisions of Section 2.02(f)) in one or more Alternative Currencies from time to time, on any Business Day during the Availability Period for the Revolving

Facility, in an aggregate amount not to exceed at any time outstanding the amount of such Revolving Lender's Revolving Commitment; provided, however, that after giving effect to any Committed Borrowing, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (ii) the aggregate Outstanding Amount of the Committed Revolving Loans of any Revolving Lender (less, with respect only to the Alternative Currency Fronting Lender, the aggregate Alternative Currency Risk Participations in all Committed Revolving Loans denominated in Alternative Currencies), plus, with respect only to the Alternative Currency Participating Lenders, the Outstanding Amount of such Lender's Alternative Currency Risk Participations in Loans denominated in Alternative Currencies and advanced by the Alternative Currency Fronting Lender, plus such Revolving Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Revolving Lender's Revolving Commitment, (iii) the aggregate Outstanding Amount of all Revolving Loans denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit and (iv) the aggregate Outstanding Amount of all Committed Revolving Loans denominated in an Alternative Currency fronted by any Alternative Currency Fronting Lender shall not exceed $37,500,000. Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.06, and reborrow under this Section 2.01. Committed Revolving Loans may be Base Rate Loans, ~~LIBOR~~ Daily SOFR Loans, ~~Eurocurrency~~Term SOFR Loans, Alternative Currency Term Rate Loans or Alternative Currency Daily Rate Loans, as further provided herein.

**2.02 Borrowings, Conversions and Continuations of Committed Revolving Loans.**

(a) Each Committed Borrowing, each conversion of Committed Revolving Loans from one Type to another Type, and each continuation of ~~Eurocurrency~~Term SOFR Loans and Alternative Currency Term Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such Committed Loan Notice must be received by the Administrative Agent not later than 12:00 Noon (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of ~~Eurocurrency Rate~~Term SOFR Loans ~~denominated in Dollars~~ or of any conversion of ~~Eurocurrency Rate~~Term SOFR Loans ~~denominated in Dollars~~ to Base Rate Committed Revolving Loans ~~or LIBOR Daily Loans~~, (ii) on the requested date of any Borrowing of, or conversion to Daily SOFR Loans or of any conversion of Daily SOFR Loans to Base Rate Committed Revolving Loans, (iii) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency and any Alternative Currency Daily Rate Loan denominated in Sterling or Swiss Francs) prior to the requested date of any Borrowing or continuation of ~~Eurocurrency Rate Loans denominated in Alternative Currencies or~~ Alternative Currency ~~Daily Rate~~ Loans, and (~~iii~~iv) on the requested date of any Borrowing of Base Rate Committed Revolving Loans ~~or LIBOR Daily Loans~~. Each Borrowing of or conversion to ~~Eurocurrency Rate~~Term SOFR Loans, Daily SOFR Loans, Alternative Currency Daily Rate Loans and ~~LIBOR Daily Loans~~Alternative Currency Term Rate Loans, or continuation of ~~Eurocurrency~~Term SOFR Loans and Alternative Currency Term Rate Loans, shall be in a principal amount the Dollar Equivalent of which is $1,000,000 or a whole multiple of $100,000 in excess thereof. Except as provided in Section 2.03(b), each Borrowing of or conversion to Base Rate Committed Revolving Loans shall be in a principal amount the Dollar Equivalent of which is $500,000 or a whole multiple of $100,000 in excess thereof.

Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Committed Borrowing, a conversion of Committed Revolving Loans from one Type to another Type, or a continuation of ~~Eurocurrency~~Term SOFR Loans or Alternative Currency Term Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Revolving Loans to be

borrowed, converted or continued, (iv) the Type and Class of Committed Revolving Loans to be borrowed or to which existing Committed Revolving Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) the currency of the Committed Revolving Loans to be borrowed or continued. If the Borrower fails to specify a Type of Committed Revolving Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Committed Revolving Loans shall be made as, or converted to, Base Rate Loans; provided, however, that, in the case of a failure to timely request a continuation of ~~Committed Revolving Loans denominated in an~~Term SOFR Loans or Alternative Currency Term Rate Loans, such Loans shall be continued as ~~Eurocurrency Rate Loans in their~~ a Term SOFR Loan or an Alternative Currency Term Rate Loan in its original currency, as applicable, with an Interest Period of one month (unless an Event of Default exists and is continuing at such time and the Administrative Agent has notified the Borrower that the Required Lenders have determined that such a continuation as Term SOFR Loans or Alternative Currency Term Rate Loans, as applicable, is not appropriate in accordance with Section 2.02(c)). Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable ~~Eurocurrency~~Term SOFR Loans or Alternative Currency Term Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of ~~Eurocurrency~~Term SOFR Loans or Alternative Currency Term Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Except as provided pursuant to Section 3.03, no Committed Revolving Loan may be converted into or continued as a Committed Revolving Loan denominated in a different currency, but instead must be prepaid in the original currency of such Committed Revolving Loan and reborrowed in the other currency.

(b) Following receipt of a Committed Loan Notice requesting a Committed Borrowing denominated in Dollars or in an Alternative Currency with respect to which the Administrative Agent has not received notice that any Revolving Lender is an Alternative Currency Participating Lender, the Administrative Agent shall promptly notify each applicable Lender of the amount (and, with respect to Committed Revolving Loans, currency) of its Applicable Percentage of the applicable Committed Revolving Loans. Following receipt of a Committed Loan Notice requesting a Committed Borrowing denominated in an Alternative Currency with respect to which the Administrative Agent and the Borrower have received notice that one or more Revolving Lenders is an Alternative Currency Participating Lender, the Administrative Agent shall on or prior to the next following Business Day notify (i) each Alternative Currency Funding Lender of both the Dollar Equivalent and the Alternative Currency Equivalent of its Alternative Currency Funding Applicable Percentage, (ii) the Alternative Currency Fronting Lender of both the Dollar Equivalent and the Alternative Currency Equivalent of the aggregate Alternative Currency Risk Participations in such Committed Borrowing, (iii) each Alternative Currency Participating Lender of both the Dollar Equivalent and the Alternative Currency Equivalent of its Alternative Currency Risk Participation in such Committed Borrowing, and (iv) all Revolving Lenders and the Borrower of the aggregate Alternative Currency Equivalent and the Dollar Equivalent of such Committed Borrowing and the applicable Spot Rate used by the Administrative Agent to determine such Dollar Equivalent and Alternative Currency Equivalent. If no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Committed Revolving Loans denominated in a currency other than Dollars, in each case as described in Section 2.02(a).

In the case of a Committed Borrowing in Dollars or in an Alternative Currency with respect to which the Administrative Agent has not received notice that any Revolving Lender is an Alternative Currency Participating Lender, each applicable Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds for the applicable currency at the Administrative Agent's Office not later than 1:00 p.m., in the case of any Committed Revolving Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any

Committed Revolving Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Committed Loan Notice. In the case of a Committed Borrowing in an Alternative Currency with respect to which the Administrative Agent has received notice that any Revolving Lender is an Alternative Currency Participating Lender, each Alternative Currency Funding Lender shall make the amount of its Alternative Currency Funding Applicable Percentage of such Revolving Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than the Applicable Time, on the Business Day specified in the applicable Committed Loan Notice. In any event, a Revolving Lender may cause any foreign or domestic branch or Affiliate to fund or make the amount of its Revolving Loan available in accordance with the foregoing provisions. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to a Committed Borrowing denominated in Dollars is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and, second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, ~~a Eurocurrency~~Term SOFR Loans and Alternative Currency Term Rate ~~Loan~~Loans may be continued or converted only on the last day of an Interest Period for ~~such Eurocurrency~~the applicable Term SOFR Loan or Alternative Currency Term Rate Loan. During the existence of an Event of Default that is continuing, (i) no Loans may be requested as, converted to or continued as ~~Eurocurrency Rate Loans (whether in Dollars or any~~Term SOFR Loans, Daily SOFR Loans, Alternative Currency~~), LIBOR Daily~~ Term Rate Loans or Alternative Currency Daily Rate Loans if the Administrative Agent has notified the Borrower that the Required Lenders have determined that such a continuation or conversion is not appropriate, and (ii) the Required Lenders may require that any or all of the then outstanding ~~Eurocurrency~~Alternative Currency Term Rate Loans ~~denominated in an Alternative Currency~~ be prepaid, or redenominated into Base Rate Loans denominated in Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for ~~Eurocurrency~~Term SOFR Loans and Alternative Currency Term Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Committed Borrowings, all conversions of Committed Revolving Loans from one Type to another Type, and all continuations of Committed Revolving Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect with respect to all Committed Revolving Loans.

(f) Alternative Currency Funding and Participation.

(i) Subject to all the terms and conditions set forth in this Agreement, including the provisions of Section 2.01, and without limitation of the provisions of Section 2.02, with respect to any Revolving Loans denominated in an Alternative Currency with respect to which one or more Revolving Lenders has given notice to the Administrative Agent that it is an Alternative Currency Participating Lender, (A) each Revolving Lender agrees from time to time on any Business Day during the Availability Period for the Revolving Facility to fund its Applicable

Percentage of Revolving Loans denominated in an Alternative Currency with respect to which it is an Alternative Currency Funding Lender; and (B) each Revolving Lender severally agrees to acquire an Alternative Currency Risk Participation in Revolving Loans denominated in an Alternative Currency with respect to which it is an Alternative Currency Participating Lender.

(ii) Each Revolving Loan denominated in an Alternative Currency shall be funded upon the request of the Borrower in accordance with Section 2.02(b). Immediately upon the funding by the Alternative Currency Fronting Lender of its Alternative Currency Funding Applicable Percentage of any Revolving Loan denominated in an Alternative Currency with respect to which one or more Revolving Lenders is an Alternative Currency Participating Lender, each Alternative Currency Participating Lender shall be deemed to have absolutely, irrevocably and unconditionally purchased (and the Administrative Agent may apply any Cash Collateral that is available with respect to such purchase by any Alternative Currency Participating Lender) from such Alternative Currency Fronting Lender an Alternative Currency Risk Participation in such Loan in an amount such that, after such purchase, each Revolving Lender (including the Alternative Currency Funding Lenders, the Alternative Currency Fronting Lender and the Alternative Currency Participating Lenders) will have an Alternative Currency Loan Credit Exposure with respect to such Revolving Loan equal in amount to its Applicable Percentage of such Revolving Loan.

(iii) Upon the occurrence and during the continuance of an Event of Default, the Alternative Currency Fronting Lender may, by written notice to the Administrative Agent delivered not later than 11:00 a.m., on the second Business Day preceding the proposed date of funding and payment by Alternative Currency Participating Lenders of their Alternative Currency Risk Participations purchased in such Revolving Loans as shall be specified in such notice (the "Alternative Currency Participation Payment Date"), request each Alternative Currency Participating Lender to fund the Dollar Equivalent of its Alternative Currency Risk Participation purchased with respect to such Revolving Loans to the Administrative Agent on the Alternative Currency Participation Payment Date in Dollars. Following receipt of such notice, the Administrative Agent shall promptly notify each Alternative Currency Participating Lender of the Dollar Equivalent of its Alternative Currency Risk Participation purchased with respect to each such Revolving Loan (determined at the Spot Rate on the date of advance of such Revolving Loan) and the applicable Alternative Currency Participation Payment Date. Any notice given by the Alternative Currency Fronting Lender or the Administrative Agent pursuant to this Section 2.02(f) may be given by telephone if immediately confirmed in writing; provided that the absence of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(iv) On the applicable Alternative Currency Participation Payment Date, each Alternative Currency Participating Lender in the Revolving Loans specified for funding pursuant to this Section 2.02(f) shall deliver the Dollar Equivalent of such Alternative Currency Participating Lender's Alternative Currency Risk Participation with respect to such specific Revolving Loans in Dollars and in Same Day Funds to the Administrative Agent; provided, however, that no Alternative Currency Participating Lender shall be (i) responsible for any default by any other Alternative Currency Participating Lender in such other Alternative Currency Participating Lender's obligation to pay such amount and/or (ii) required to fund an amount under this Section 2.02(f) that would exceed the amount of such Revolving Lender's Revolving Commitment. Upon receipt of any such amounts from the Alternative Currency Participating Lenders, the Administrative Agent shall distribute such Dollar amounts in Same Day Funds to the Alternative Currency Fronting Lender.

(v) In the event that any Alternative Currency Participating Lender fails to make available to the Administrative Agent the Dollar Equivalent of its Alternative Currency Risk Participation as provided herein, the Administrative Agent shall be entitled to recover such amount on behalf of the Alternative Currency Fronting Lender on demand from such Alternative Currency Participating Lender together with interest at the Overnight Rate for three (3) Business Days and thereafter at a rate per annum equal to the Default Rate. A certificate of the Administrative Agent submitted to any Alternative Currency Participating Lender with respect to amounts owing hereunder shall be conclusive in the absence of demonstrable error.

(vi) In the event that the Alternative Currency Fronting Lender receives a payment in respect of any Revolving Loan, whether directly from the Borrower or otherwise, in which Alternative Currency Participating Lenders have fully funded in Dollars their purchase of Alternative Currency Risk Participations, the Alternative Currency Fronting Lender shall promptly distribute to the Administrative Agent, for its distribution to each such Alternative Currency Participating Lender, the Dollar Equivalent of such Alternative Currency Participating Lender's Alternative Currency Participant's Share of such payment in Dollars and in Same Day Funds. If any payment received by the Alternative Currency Fronting Lender with respect to any Revolving Loan in an Alternative Currency made by it shall be required to be returned by the Alternative Currency Fronting Lender after such time as the Alternative Currency Fronting Lender has distributed such payment to the Administrative Agent pursuant to the immediately preceding sentence, each Alternative Currency Participating Lender that has received a portion of such payment shall pay to the Alternative Currency Fronting Lender an amount equal to its Alternative Currency Participant's Share in Dollars of the amount to be returned; provided, however, that no Alternative Currency Participating Lender shall be responsible for any default by any other Alternative Currency Participating Lender in that other Alternative Currency Participating Lender's obligation to pay such amount.

(vii) Anything contained herein to the contrary notwithstanding, each Alternative Currency Participating Lender's obligation to acquire and pay for its purchase of Alternative Currency Risk Participations as set forth herein shall be absolute, irrevocable and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right which such Alternative Currency Participating Lender may have against the Alternative Currency Fronting Lender, the Administrative Agent, the Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default; (iii) any adverse change in the condition (financial or otherwise) of the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries; (iv) any breach of this Agreement or any other Loan Document by, the Parent Guarantor, the Borrower or any other Lender; or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(viii) In no event shall (i) the Alternative Currency Risk Participation of any Alternative Currency Participating Lender in any Revolving Loans denominated in an Alternative Currency pursuant to this Section 2.02(f) be construed as a loan or other extension of credit by such Alternative Currency Participating Lender to the Borrower, any Revolving Lender or the Administrative Agent or (ii) this Agreement be construed to require any Revolving Lender that is an Alternative Currency Participating Lender with respect to a specific Alternative Currency to make any Revolving Loans in such Alternative Currency under this Agreement or under the other Loan Documents, subject to the obligation of each Alternative Currency Participating Lender to give notice to the Administrative Agent and the Borrower at any time such Revolving Lender acquires the ability to make Revolving Loans in such Alternative Currency.

(ix) The Administrative Agent shall change a Revolving Lender's designation from Alternative Currency Participating Lender to Alternative Currency Funding Lender with respect to an Alternative Currency for which such Lender previously has been designated an Alternative Currency Participating Lender, upon receipt of a written notice to the Administrative Agent and the Borrower from such Alternative Currency Participating Lender requesting that its designation be so changed. Each Alternative Currency Participating Lender agrees to give such notice to the Administrative Agent and the Borrower promptly upon its acquiring the ability to make Revolving Loans in such Alternative Currency. Schedule 2.02 hereto lists each Alternative Currency Participating Lender as of the Closing Date in respect of each Alternative Currency.

(g) With respect to any Alternative Currency Daily Rate, Alternative Currency Term Rate, SOFR, Daily SOFR or Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

**2.03 Letters of Credit.**

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of the Borrower or its Subsidiaries, and to amend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (y) the Outstanding Amount of the Committed Revolving Loans of any Revolving Lender (less, with respect only to the Alternative Currency Fronting Lender, the aggregate Alternative Currency Risk Participations in all Revolving Loans denominated in Alternative Currencies), plus, with respect only to the Alternative Currency Participating Lenders, such Lender's Alternative Currency Risk Participations in Revolving Loans denominated in Alternative Currencies advanced by the Alternative Currency Fronting Lender for such Lender, plus such Revolving Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Revolving Lender's Revolving Commitment and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit; provided, further, that unless the applicable L/C Issuer shall otherwise consent, no L/C Issuer shall be obligated to issue Letters of Credit hereunder in an aggregate face amount at any time outstanding in excess of an amount equal to the lesser of (i) one-third of the Letter of Credit Sublimit at such time and (ii) the Revolving Commitment of the Revolving Lender acting as such L/C Issuer at such time. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's

ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. The Existing Letters of Credit shall be deemed to have been issued hereunder by the issuer thereof, to the extent such issuer is a Revolving Lender, and such issuer shall have the obligation to amend, renew, extend or otherwise modify any such Existing Letter of Credit, subject to terms, conditions and limitations hereunder. From and after the Closing Date, the Existing Letters of Credit shall be subject to and governed by the terms and conditions hereof.

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

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Lenders have approved such expiry date; provided that a Letter of Credit may expire up to one year beyond the Letter of Credit Expiration Date so long as the Borrower Cash Collateralizes 105% of the face amount of such Letter of Credit no later than the Letter of Credit Expiration Date.

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

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

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

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than $500,000;

(D) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) the L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency;

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

(G) any Revolving Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.18(a)(iv)) with respect to such Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has Fronting Exposure, as it may elect in its sole discretion.

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

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

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

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof, (C) the expiry date thereof, (D) the name and address of the beneficiary thereof, (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such

other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Percentage of the Aggregate Revolving Commitments times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve (12) month period to be agreed upon by the Borrower and the applicable L/C Issuer at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date (except as set forth in Section 2.03(a)(ii)(B)); provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

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

(v) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall promptly notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative

Currency, the Borrower shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that the Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. If a notice of such payment with respect to a Letter of Credit is received by the Borrower (x) on or prior to 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), then, not later than 1:00 p.m. on the Honor Date, the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency or (y) after 11:00 a.m. or the Applicable Time, as the case may be, on the Honor Date, then, not later than 11:00 a.m. on the first Business Day following the Honor Date, the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Committed Borrowing of Base Rate Committed Revolving Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Committed Revolving Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(b)(v) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(vi) Each Revolving Lender shall upon any notice pursuant to Section 2.03(b)(v) make funds available to the Administrative Agent (and the Administrative Agent may apply Cash Collateral that has been provided for such purpose) for the account of the L/C Issuer, in Dollars, at the Administrative Agent's Office for Dollar-denominated payments in an amount equal to its Applicable Percentage of the Dollar Equivalent of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(b)(vii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Committed Revolving Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars and such funds shall be applied to reimburse the L/C Issuer for the applicable draw under the Letter of Credit.

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

Section 2.03(b)(vi) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

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

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

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

(c) Repayment of Participations.

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

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

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

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

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

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

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

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally; or

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

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

(e) Role of L/C Issuer. Each Revolving Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Revolving Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(d); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final and non-appealable judgment or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit or the L/C Issuer's payment under any Letter of Credit without presentation to it of a draft, certificates and/or other documents that substantially comply with the terms and conditions of the Letter of Credit, except where any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms have enjoined or restrained, or purported to enjoin or restrain, such L/C Issuer from making such payment. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

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

(g) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage in Dollars a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to Section 2.03(a)(iii) shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Lenders in accordance with the upward adjustments, if any, in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.18(a)(iv), with the balance of such fee, if any, retained by the Borrower, if it has provided Cash Collateral in respect of such Defaulting Lender's Fronting Exposure, or if the Borrower has not provided Cash Collateral in respect of such Fronting Exposure, payable to the L/C Issuer for its own account. For

purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section ~~1.09~~1.10. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable on the first Business Day after the end of each calendar quarter, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(h) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, a fronting fee per annum with respect to each Letter of Credit issued by it, equal to the greater of (i) the rate per annum of 12.5 basis points of the face amount of the Letter of Credit, in each case computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit and (ii) $1,500 per annum. The amount of such fronting fees shall be determined on a quarterly basis in arrears, and due and payable on the first Business Day after the end of each calendar quarter, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section ~~1.09~~1.10. In addition, the Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit issued by it as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

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

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

(k) Outstanding Letters of Credit. The L/C Issuer shall deliver to the Administrative Agent, for distribution to the Revolving Lenders, an accounting of all Letters of Credit outstanding as of the end of each fiscal quarter of the Borrower.

(l) L/C Issuer Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each L/C Issuer shall, in addition to its notification obligations set forth elsewhere in this Section 2.03, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such L/C Issuer, including all issuances, extensions, amendments and renewals, all expirations and cancellations and all disbursements and reimbursements, (ii) within five (5) Business Days following the time that such L/C Issuer issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the face amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such L/C Issuer makes any payment under any Letter of Credit, the date and amount of such

payment, (iv) on any Business Day on which the Borrower fails to reimburse a payment under a Letter of Credit required to be reimbursed to such L/C Issuer on such day, the date of such failure and the amount of such payment and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such L/C Issuer.

**2.04 [Reserved].**

**2.05 Negotiated Rate Loans.**

(a) Negotiated Rate Loans. Subject to the terms and conditions set forth herein, each Revolving Lender, severally and for itself alone, may (but is not obligated to) make one or more loans (which loans may be made in Dollars or in any Alternative Currency) (each such loan, a "Negotiated Rate Loan") to the Borrower from time to time on any Business Day during the Availability Period for the Revolving Facility in an aggregate Outstanding Amount not to exceed at any time (i) the Negotiated Rate Sublimit and (ii) with respect to Negotiated Rate Loans made in an Alternative Currency (plus the aggregate Outstanding Amount of all Committed Revolving Loans denominated in an Alternative Currency), the Alternative Currency Sublimit, notwithstanding the fact that such Negotiated Rate Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Committed Revolving Loans and L/C Obligations of such Lender may exceed the amount of such Lender's Revolving Commitment; provided that Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments; provided, further, that Negotiated Rate Loans shall be available to the Borrower for periods of one day to 180 days, so long as two of the three Debt Ratings from S&P, Moody's and Fitch are BBB- or better (Baa3 or better in the case of Moody's). It is understood that should a Revolving Lender make a Negotiated Rate Loan it shall not relieve such Lender from its obligation to make its pro rata share of any future Committed Revolving Loan even if after making such Committed Revolving Loan the Outstanding Amount of Committed Revolving Loans and L/C Obligations of such Lender, together with the Outstanding Amount of its Negotiated Rate Loans, exceeds the amount of such Lender's Revolving Commitment.

(b) Procedure for Negotiated Rate Loans. The Borrower may, from time to time, approach one or more of the Revolving Lenders to determine whether such Lender or Lenders will make one or more Negotiated Rate Loans. The Borrower and any Revolving Lender or Lenders shall, if each of them in their sole discretion elects to do so, agree to enter into one or more Negotiated Rate Loans as part of such proposed Negotiated Rate Borrowing on mutually agreed-upon terms, including the Interest Period with respect thereto, and notify the Administrative Agent by delivering a written Negotiated Rate Loan Notice from the Borrower and the Revolving Lender or Lenders proposing to make Negotiated Rate Loans (i) with respect to Negotiated Rate Loans denominated in Dollars, before 12:00 Noon on the date of the funding of such Negotiated Rate Loan, which shall be a Business Day (the "Negotiated Rate Funding Date") and (ii) with respect to Negotiated Rate Loans denominated in any Alternative Currency, before 12:00 Noon two (2) Business Days prior to the Negotiated Rate Funding Date. Such Negotiated Rate Loan Notice shall specify the amount of each Negotiated Rate Loan that such Revolving Lender or Lenders will make as part of such proposed Negotiated Rate Borrowing, the Negotiated Rate Funding Date, the currency of the Negotiated Rate Loan requested, the date or dates of maturity thereof, which date or dates may not occur after the Revolving Maturity Date, the rate or rates of interest applicable thereto and all other terms thereof. Each Negotiated Rate Loan shall be made pursuant to a Negotiated Rate Loan Notice. In lieu of delivering the written Negotiated Rate Loan Notice described above, the Borrower may give the Administrative Agent telephonic notice of any Negotiated Rate Borrowing by the time required under this clause (b); provided that such telephonic notice shall be confirmed by delivery of a written Negotiated Rate Loan Notice to the Administrative Agent by no later than 2:00 p.m., on the date of such telephonic notice.

(c) Funding of Negotiated Rate Loans in Dollars. No later than 2:00 p.m. on the applicable Negotiated Rate Funding Date, each applicable Revolving Lender will make available to the Administrative Agent in Dollars and immediately available funds at the Administrative Agent's Office the Negotiated Rate Loan, if any, to be made by such Lender as part of the Negotiated Rate Borrowing to be made on such date in the manner provided above. Upon receipt by the Administrative Agent of all such funds, the Administrative Agent shall disburse to the Borrower on such date such Negotiated Rate Loan in like funds at the Borrower's account specified in the relevant Negotiated Rate Loan Notice. The Administrative Agent may, but shall not be required to, advance on behalf of any Revolving Lender such Lender's Negotiated Rate Loan on the date a Negotiated Rate Loan is made unless such Lender shall have notified the Administrative Agent prior to such date that it does not intend to make available such Negotiated Rate Loan on such date. If the Administrative Agent makes such advance, the Administrative Agent shall be entitled to recover such amount on demand from the Revolving Lender on whose behalf such advance was made, and if such Lender does not pay the Administrative Agent the amount of such advance on demand, the Borrower shall promptly repay such amount to the Administrative Agent. Until such amount is repaid to the Administrative Agent by such Lender or the Borrower, such advance shall be deemed for all purposes to be a Negotiated Rate Loan made by the Administrative Agent. In such event, if a Revolving Lender has not in fact made its share of the applicable Negotiated Rate Loan available to the Administrative Agent, then the applicable Revolving Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) 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 Revolving Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. 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 such payment to the Administrative Agent.

(d) Funding of Negotiated Rate Loans in Alternative Currencies. No later than (i) the Applicable Time on the applicable Negotiated Rate Funding Date, each applicable Revolving Lender will, at the option of the Borrower, make available directly to the Borrower such Negotiated Rate Loans in the applicable currency either by (A) crediting the account of the Borrower on the books of such Lender with the amount of such funds or (B) wire transfer of such funds to the account of the Borrower, in each case in accordance with instructions provided to (and reasonably acceptable to) such Lender by the Borrower and (ii) promptly following receipt thereof, the Borrower shall provide the Administrative Agent written notice of receipt of the proceeds of such Negotiated Rate Loan.

**2.06 Prepayments.**

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time, voluntarily prepay any Class of Loans in whole or in part without premium or penalty pursuant to this Section 2.06(a) (other than Negotiated Rate Loans, which are subject to the provisions of clause (c) below); provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days (or such shorter period as the Administrative Agent shall agree) prior to any date of prepayment of ~~Eurocurrency Rate~~Term SOFR Loans ~~denominated in Dollars~~, (B) on the date of prepayment of Daily SOFR Loans, (C) four (4) Business Days (or five (5) Business Days, in the case of prepayment of Loans denominated in Special Notice Currencies and Alternative Currency Daily Rate Loans denominated in Sterling or Swiss Francs) (or such shorter period as the Administrative Agent shall agree) prior to any date of prepayment of ~~Eurocurrency Rate Loans denominated in~~

~~Alternative Currencies or~~ Alternative Currency ~~Daily Rate~~ Loans and (~~C~~D) on the date of prepayment of Base Rate Committed Revolving Loans ~~or LIBOR Daily Loans~~; (ii) any prepayment of ~~Eurocurrency Rate Loans denominated in Dollars or LIBOR~~Term SOFR Loans or Daily SOFR Loans shall be in a principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof, (iii) any prepayment of ~~Eurocurrency Rate Loans denominated in Alternative Currencies or~~ Alternative Currency ~~Daily Rate~~ Loans shall be in a minimum principal amount the Dollar Equivalent of which is $1,000,000 or a whole multiple of $100,000 in excess thereof; and (iv) any prepayment of Base Rate Committed Revolving Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) and Class(es) of Loans to be prepaid and, if ~~Eurocurrency~~Term SOFR Loans or Alternative Currency Term Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment (including, in the event such prepayment is of a Revolving Loan denominated in an Alternative Currency, each Alternative Currency Funding Lender's Alternative Currency Funding Applicable Percentage of such payment). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, however, that a notice of voluntary prepayment may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice of prepayment may be revoked by the Borrower if such condition is not satisfied. Any prepayment of ~~a Eurocurrency~~any Loan (other than any Base Rate Loan~~, LIBOR Daily Loan or Alternative Currency Daily Rate Loan~~) shall be accompanied by all accrued interest on the amount prepaid, together with, in the case of any Term SOFR Loans and any Alternative Currency Loans, any additional amounts required pursuant to Section 3.05. Subject to Section 2.18, each prepayment of Committed Revolving Loans made pursuant to this clause (a) shall be made ratably among the Revolving Lenders in accordance with their respective Applicable Percentages of the Committed Revolving Loans.

(b) [Reserved].

(c) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Negotiated Rate Loans in whole or in part without premium or penalty (unless the Borrower and the applicable Revolving Lender have otherwise agreed, in which case such Loan may be prepaid in accordance with such agreement); provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. on the requested date of prepayment of such Negotiated Rate Loans; (ii) the Revolving Lender or Lenders making the Negotiated Rate Loans to be prepaid have consented to such prepayment; and (iii) unless agreed to by the applicable Revolving Lender(s) and the Administrative Agent (such consent not to be unreasonably withheld), any prepayment of Negotiated Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify each applicable Revolving Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, however, that a notice of voluntary prepayment may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice of prepayment may be revoked by the Borrower if such condition is not satisfied. Any prepayment of a Negotiated Rate Loan shall be accompanied by all accrued interest

on the amount prepaid, together with any additional amounts as may be agreed to by the Borrower and the Revolving Lender or Lenders making such Negotiated Rate Loan.

(d) If the Administrative Agent notifies the Borrower at any time that (i) the Total Revolving Outstandings at such time exceed an amount equal to 105% of the Aggregate Revolving Commitments then in effect, (ii) the L/C Obligations at such time exceed the Letter of Credit Sublimit then in effect, (iii) the Negotiated Rate Loans outstanding at such time exceed the Negotiated Rate Sublimit then in effect, or (iv) the Outstanding Amount of all Loans denominated in Alternative Currencies at such time exceeds an amount equal to 105% of the Alternative Currency Sublimit then in effect, the Borrower shall prepay the applicable Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess within one (1) Business Day (or, with respect to clause (iv), within (x) four (4) Business Days, with respect to Outstanding Amounts denominated in Euro, Sterling or Canadian Dollars and (y) five (5) Business Days, with respect to Outstanding Amounts denominated in any other Alternative Currency) after the Administrative Agent notifies the Borrower that such a prepayment is required and of the amount thereof; provided, however, that, subject to the provisions of Section 2.17(a)(iv), the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.06(d) unless after the prepayment in full of the Committed Revolving Loans and the Negotiated Rate Loans, the Total Revolving Outstandings exceed the Aggregate Revolving Commitments then in effect.

**2.07 Termination or Reduction of Revolving Commitments.**

(a) Unless previously terminated, the Revolving Commitments will terminate on the Revolving Maturity Date.

(b) The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 12:00 Noon five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, (A) the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments, (B) the Outstanding Amount of Letters of Credit would exceed the Letter of Credit Sublimit, (C) the Outstanding Amount of Negotiated Rate Loans would exceed the Negotiated Rate Sublimit or (D) the Outstanding Amount of all Loans denominated in Alternative Currencies exceeds an amount equal to 105% of the Alternative Currency Sublimit. Each notice of termination shall specify such election to terminate and the effective date thereof. The Administrative Agent will promptly notify the Revolving Lenders of any such notice of termination or reduction of the Aggregate Revolving Commitments. The amount of any such Aggregate Revolving Commitment reduction shall not be applied to the Alternative Currency Sublimit or the Letter of Credit Sublimit unless otherwise specified by the Borrower. Any reduction of the Aggregate Revolving Commitments shall be applied to the Revolving Commitment of each Revolving Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination. A notice delivered by the Borrower pursuant to this Section 2.07 may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

**2.08 Repayment.**

The Borrower shall repay to the Revolving Lenders on the Revolving Maturity Date, unless accelerated sooner pursuant to Section 8.02, the entire outstanding principal balance of all Committed Revolving Loans, Negotiated Rate Loans and all L/C Obligations, together with accrued but unpaid interest, fees and all other sums with respect thereto.

**2.09 Interest.**

(a) Applicable Interest. Subject to the provisions of Section 2.09(b), (i) each ~~Eurocurrency Rate~~Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period applicable thereto at a rate per annum equal to ~~the Eurocurrency Rate~~Term SOFR for such Interest Period plus the Applicable Rate; (ii) each Daily SOFR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to Daily SOFR plus the Applicable Rate; (iii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; (~~iii~~iv) each ~~LIBOR Daily Loan under the Revolving Facility~~Alternative Currency Term Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the ~~LIBOR Daily Floating~~Alternative Currency Term Rate plus the Applicable Rate ~~for the Revolving Facility~~; (~~iv~~v) each Alternative Currency Daily Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Alternative Currency Daily Rate plus the Applicable Rate and (~~v~~vi) each Negotiated Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the amount agreed to between the Borrower and the Revolving Lender as set forth in the Negotiated Rate Loan Notice.

(b) Default Interest.

(i) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

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

(iii) Upon the request of the Required Lenders, while any Event of Default exists, (x) the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws and (y) any adjustment to the Applicable Rate pursuant to the Sustainability Metric Pricing Grid shall cease to apply.

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

(c) Interest Payment Date. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest

hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) Interest Act (Canada). For the purposes of the Interest Act (Canada), (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the "deemed year") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder and (iii) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

(e) Alternative Currency Fronting Lender. Interest on any Revolving Loan in an Alternative Currency advanced by the Alternative Currency Fronting Lender shall be for the benefit of the Alternative Currency Fronting Lender, and not any Alternative Currency Participating Lender, until the applicable Alternative Currency Participating Lender has funded its participation therein to the Alternative Currency Fronting Lender.

**2.10 Fees.**

In addition to certain fees described in Sections 2.03(g) and 2.03(h):

(a) Facility Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage of the Aggregate Revolving Commitments, a facility fee in Dollars equal to the Facility Fee Rate times the actual daily amount of the Aggregate Revolving Commitments (or, if the Aggregate Revolving Commitments have terminated, on the Outstanding Amount of all Committed Revolving Loans, Negotiated Rate Loans and L/C Obligations), regardless of usage, subject to adjustment as provided in Section 2.18. The facility fee shall accrue at all times during the Availability Period for the Revolving Facility (and thereafter so long as any Committed Revolving Loans, Negotiated Rate Loans or L/C Obligations remain outstanding), including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears (calculated on a 360-day basis) on the last Business Day of each calendar quarter, commencing with the first such date to occur after the Closing Date, and on the Revolving Maturity Date (and, if applicable, thereafter on demand). The facility fee shall be calculated quarterly in arrears, and if there is any change in the Facility Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Facility Fee Rate separately for each period during such quarter that such Facility Fee Rate was in effect.

(b) Other Fees.

(i) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times as separately agreed upon in writing between the Borrower, the applicable Arrangers and the Administrative Agent, as applicable. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, absent manifest error.

(ii) The Borrower shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, absent manifest error.

(c) Alternative Currency Fronting Fee. The Borrower shall pay directly to the Alternative Currency Fronting Lender, for its own account, in Dollars, a fronting fee with respect to the portion of each Committed Borrowing in an Alternative Currency advanced by such Alternative Currency Fronting Lender for an Alternative Currency Participating Lender (but excluding the portion of such advance constituting the Alternative Currency Fronting Lender's Applicable Percentage of such Committed Borrowing as an Alternative Currency Funding Lender), equal to 0.125% times such portion of such Committed Borrowing, computed on the Dollar Equivalent of such Committed Borrowing, such fee to be payable on the date of such Committed Borrowing.

**2.11 Computation of Interest and Fees.**

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to ~~the Eurocurrency Rate) or Eurocurrency Rate Loans denominated in Australian Dollars or Canadian Dollars~~Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All computations of interest for Alternative Currency Term Rate Loans denominated in Australian Dollars, Canadian Dollars or Sterling shall be made on the basis of a 365-day year and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Committed Revolving Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.13(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.12 Evidence of Debt.**

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

(b) In addition to the accounts and records referred to in Section 2.12(a), each Revolving Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the

accounts and records of any Revolving Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

**2.13 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to principal of and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in an amount equal to the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein, including, without limitation, the Alternative Currency Fronting Lender's Alternative Currency Funding Applicable Percentage of any payment made with respect to any Revolving Loan as to which any Alternative Currency Participating Lender has not funded its Alternative Currency Risk Participation) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, such due date shall be extended to the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Committed Borrowing of ~~Eurocurrency~~Term SOFR Loans, Daily SOFR Loans, Alternative Currency Term Rate Loans or Alternative Currency Daily Rate Loans (or, in the case of any Committed Borrowing of Base Rate ~~Loans or LIBOR Daily~~ Loans, prior to 12:00 noon on the date of such Committed Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Committed Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Committed Borrowing of Base Rate Loans ~~or LIBOR Daily Loans~~, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate plus any administrative, processing or similar

fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to the Loans constituting such Borrowing. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. In the event the Borrower pays such amount to the Administrative Agent, then such amount shall reduce the principal amount of such Borrowing (subject to the last sentence of this paragraph and any applicable provisions of Section 2.18). If such Lender pays its share of the applicable Committed Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Committed Revolving Loan included in such Committed Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by the Borrower; Presumptions by Administrative Agent. 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 the L/C Issuer 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, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the ~~amount~~Rescindable Amount so distributed to such Lender or the L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13(b) shall be conclusive, absent manifest error.

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

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Revolving Loans (including Revolving Loans denominated in Alternative Currencies in the event they are Alternative Currency Funding Lenders), to fund participations in Letters of Credit, to make payments pursuant to Section 10.04(c) and to fund Alternative Currency Risk Participations (if they are Alternative Currency Participating Lenders) are several and not joint. The failure of any Lender to make any Loan (including Revolving Loans denominated in an Alternative Currency in the event it is an Alternative Currency Funding Lender), to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to

so make its Loan (including Revolving Loans denominated in an Alternative Currency in the event it is an Alternative Currency Funding Lender), to purchase its participation or to make its payment under Section 10.04(c).

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

**2.14 Sharing of Payments by Lenders.**

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 the Committed Revolving Loans made by it, the participations in L/C Obligations or the Alternative Currency Risk Participations held by it (but not including any amounts applied by the Alternative Currency Fronting Lender to Revolving Loans in respect of Alternative Currency Risk Participations that have not yet been funded in accordance with the terms of this Agreement) resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Revolving Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, 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 Committed Revolving Loans (and purchase subparticipations in L/C Obligations and Alternative Currency Risk Participations of the other Revolving Lenders), or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the relevant Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Revolving Loans or such other amounts owing them, as applicable; provided that:

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

(ii) the provisions of this Section 2.14 shall not be construed to apply to (x) any payment made by or on behalf of 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 2.17 or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Revolving Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section 2.14 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.

**2.15 Extension of Revolving Maturity Date.**

(a) Requests for Extension. The Borrower may, by written notice to the Administrative Agent (who shall promptly notify the Revolving Lenders) not earlier than ninety (90) days and not later than thirty (30) days prior to the Revolving Maturity Date then in effect (such date, an "Initial Revolving Maturity Date"), elect that the Revolving Lenders extend the Revolving Maturity Date for an additional

six (6) months after such Initial Revolving Maturity Date; provided that the Borrower may not make more than two (2) such elections pursuant to this Section 2.15 during the term of this Agreement.

(b) Confirmation by Administrative Agent. The Administrative Agent shall confirm receipt of the Borrower's notice delivered pursuant to Section 2.15(a) no later than the date that is fifteen (15) days prior to the applicable Initial Revolving Maturity Date (or, if such date is not a Business Day, on the next preceding Business Day).

(c) Extension of Revolving Maturity Date. If (and only if) the conditions precedent set forth in Section 2.15(d) have been met, then, effective as of the applicable Initial Revolving Maturity Date, the Revolving Maturity Date shall be extended to the date falling six (6) months after such Initial Revolving Maturity Date (except that, if such date is not a Business Day, such Revolving Maturity Date as so extended shall be the next preceding Business Day). Upon satisfaction of the conditions precedent set forth in Section 2.15(d), as certified by the Borrower to the Administrative Agent in writing, the Administrative Agent shall deliver a copy of such certification to each Revolving Lender.

(d) Conditions to Effectiveness of Extensions. As a condition precedent to such extension, (i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the applicable Initial Revolving Maturity Date signed by a Responsible Officer (x) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension and (y) certifying that (1) the representations and warranties contained in Article V and in the other Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Initial Revolving Maturity Date (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01 and (2) as of such Initial Revolving Maturity Date, and immediately after giving effect to such extension, no Default exists and (ii) the Borrower shall pay to the Revolving Lenders on such Initial Revolving Maturity Date a fee (to be shared among the Revolving Lenders based upon their Applicable Percentages of the Aggregate Revolving Commitments) equal to the product of (x) 0.0625% multiplied by (y) the then Aggregate Revolving Commitments.

(e) Conflicting Provisions. This Section 2.15 shall supersede any provisions in Section 2.02(b), 2.14 or 10.01 to the contrary.

**2.16 Increase in Revolving Commitments; Incremental Term Loans.**

(a) Request for Increase. From time to time, the Borrower shall have the right to increase the Aggregate Revolving Commitments and/or enter into one or more new tranches (or increasing an existing tranche) of term loans (each, an "Incremental Term Loan"); provided that (i) no Default has occurred and is continuing, (ii) each increase or tranche of Incremental Term Loans must be in a minimum amount of $10,000,000 and in integral multiples of $5,000,000 in excess thereof (or such other amounts as are agreed to by the Borrower and the Administrative Agent), and (iii) after giving effect to all such Aggregate Revolving Commitment increases and all such Incremental Term Loans, the sum of the aggregate principal amounts of the Revolving Facility and all such Incremental Term Loans shall not

exceed $3,750,000,000. At the time of sending such notice to the Administrative Agent of the exercise of such right, the Borrower (in consultation with the Administrative Agent) shall specify the Lenders to be approached to provide all or a portion of such increase (subject in each case to any requisite consents required under Section 10.06) and the time period within which each such Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to such Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Commitment or participate in such tranche, as the case may be, and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase or tranche. Any Lender not responding within such time period shall be deemed to have declined to increase its Revolving Commitment, if any, or participate in such tranche, as the case may be. Any such increase or tranche shall be syndicated on a best efforts basis and no Lender shall be required to increase its Revolving Commitment, if any, or participate in any tranche of Incremental Term Loans to facilitate such increase or tranche.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. Subject to the approval of the Administrative Agent and, in the case of an increase to the Aggregate Revolving Commitments, the L/C Issuer (which approvals shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel (a "New Lender Joinder Agreement").

(d) Effective Date and Allocations. If the Aggregate Revolving Commitments are increased or any tranche of Incremental Term Loans is extended in accordance with this Section 2.16, the Administrative Agent and the Borrower shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase or tranche, as the case may be. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase or tranche, as the case may be, and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to any such increase or tranche, as the case may be:

(i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Increase Effective Date signed by a Responsible Officer (A) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such increase or tranche, as the case may be, and (B) certifying that (1) the representations and warranties contained in Article V and in the other Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Increase Effective Date (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.16, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01; provided that, in the case of any Incremental Term Loan the

proceeds of which are to be used to finance an acquisition (including by means of a merger, amalgamation or consolidation) or other Investment not prohibited by this Agreement (and related transaction costs) the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing or that is otherwise subject to customary "funds certain provisions," to the extent agreed by the applicable Lenders providing such Incremental Term Loans, the representations and warranties the accuracy of which in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be accurate in all respects) are a condition to the funding of such Incremental Term Loan shall be limited to (x) the Specified Representations (or such other formulation thereof as may be agreed by the applicable Lenders providing such Incremental Term Loans) and (y) those representations of the acquired company in the applicable acquisition agreement that are material to the interests of the applicable Lenders providing such Incremental Term Loans and which, if breached or inaccurate, would give the Parent Guarantor, the Borrower or any Subsidiary the right to terminate or refuse to close under the applicable acquisition agreement, and (2) as of the Increase Effective Date, and immediately after giving effect to such increase or tranche, as the case may be, no Default or Event of Default exists; provided that, in the case of any Incremental Term Loan the proceeds of which are to be used to finance an acquisition or other Investment not prohibited by this Agreement (and related transaction costs) the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing or that is otherwise subject to customary "funds certain provisions," to the extent agreed by the applicable Lenders providing such Incremental Term Loans, this condition shall be limited to (x) at the time of the execution and delivery of the applicable acquisition agreement related to such acquisition, no Default shall have occurred and be continuing or shall occur as a result thereof and (y) upon the effectiveness and making of any Incremental Term Loan on the applicable Increase Effective Date, no Specified Default shall have occurred and be continuing or shall occur as a result thereof;

(ii) (A) upon the reasonable request of any Lender made at least five (5) days prior to the applicable Increase Effective Date, the Borrower shall have provided to such Lender the documentation and other information so requested by such Lender that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and (B) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation it shall have delivered, to each Lender that so requests at least five (5) days prior to the applicable Increase Effective Date, a Beneficial Ownership Certification in relation to the Borrower;

(iii) in the case of any tranche of Incremental Term Loans, such Incremental Term Loans (A) shall rank pari passu in right of payment with the Revolving Loans and any other outstanding Incremental Term Loans, (B) shall not mature earlier than the latest Maturity Date then in effect (but may have amortization prior to such date so long as the weighted average life to maturity of any Incremental Term Loans shall be no shorter than the remaining weighted average life to maturity of any previously funded and then outstanding Incremental Term Loans (if any) at such time) and (C) shall be treated substantially the same as (and in any event no more favorably than) the Revolving Loans and any other outstanding Incremental Term Loans; provided that (1) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the latest Maturity Date then in effect may provide for material additional or different financial or other covenants or requirements applicable only during periods after such Maturity Date then in effect, (2) the Incremental Term Loans may be priced differently than the Revolving Loans and any other outstanding Incremental Term Loans and (3) other terms and conditions applicable to Incremental Term Loans may be materially different from those of the

Revolving Loans to the extent such differences are solely administrative in nature or are terms and conditions reasonably acceptable to the Administrative Agent that customarily apply to syndicated term loan facilities but not revolving credit facilities (as determined in good faith by the board of directors or other equivalent governing body of the Borrower). Incremental Term Loans may be made hereunder pursuant to an amendment or 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 2.16; and

(iv) in the case of any increase in the Aggregate Revolving Commitments, the Borrower shall prepay any Committed Revolving Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Committed Revolving Loans ratable with any revised Applicable Percentages of the Revolving Lenders arising from any non-ratable increase in the Revolving Commitments under this Section 2.16; and

(v) the Borrower shall provide a Note to any Lender increasing its Revolving Commitment or otherwise joining on the Increase Effective Date, if requested.

(f) Conflicting Provisions. This Section 2.16 shall supersede any provisions in Sections 2.14 or 10.01 to the contrary.

(g) Fees. The Borrower shall pay such fees to the Administrative Agent, for its own account and for the benefit of the Lenders providing such additional Revolving Commitments or participating in such tranche of Incremental Term Loans, as the case may be, as determined at the time of such increase or funding of such tranche of Incremental Term Loans and agreed to by the Borrower in writing.

(h) Lenders. In connection with any increase of the Aggregate Revolving Commitments or Incremental Term Loans pursuant to this Section 2.16, any new Lender party hereto shall (i) execute such documents and agreements as the Administrative Agent may reasonably request and (ii) in the case of any new 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 rules and regulations, including, without limitation, the Patriot Act.

**2.17 Cash Collateral.**

(a) Certain Credit Support Events. (i) (A) Upon the request of the Administrative Agent or the L/C Issuer (x) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (y) if, as of the Letter of Credit Expiration Date, any L/C Obligation (other than in respect of an Extended Letter of Credit) for any reason remains outstanding or (B) upon the request of the Administrative Agent pursuant to Section 8.02, the Borrower shall, in each case, promptly, and in any event, no later than three (3) Business Days after receipt of such request, Cash Collateralize the then Outstanding Amount of all L/C Obligations.

(ii) If at any time that there shall exist a Defaulting Lender under the Revolving Facility, promptly upon the request of the Administrative Agent, the L/C Issuer or the Alternative Currency Fronting Lender, the Borrower shall deliver to the Administrative Agent Cash

Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.18(a)(iv) and any Cash Collateral provided by such Defaulting Lender).

(iii) In addition, if the Administrative Agent notifies the Borrower at any time that the Outstanding Amount of all L/C Obligations at such time exceeds 105% of the Letter of Credit Sublimit then in effect, then, within five (5) Business Days after receipt of such notice, the Borrower shall Cash Collateralize the L/C Obligations in an amount equal to the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit; provided that Cash Collateral provided pursuant to this Section 2.17(a)(iii) shall be refunded to the Borrower when the Outstanding Amount of all L/C Obligations is less than 105% of the Letter of Credit Sublimit then in effect.

(iv) The Administrative Agent may, at any time and from time to time after the initial deposit of Cash Collateral, request that additional Cash Collateral be provided as required in the reasonable judgment of the Administrative Agent in order to protect against the results of exchange rate fluctuations.

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, interest bearing deposit accounts at Bank of America. Each of the Borrower, and to the extent provided by any Revolving Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Revolving Lenders (including the Alternative Currency Fronting Lender), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.17(c). If at any time the Administrative Agent reasonably determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an aggregate amount equal to the excess of (x) the aggregate amount of such applicable Fronting Exposure and obligations, over (y) the total amount of funds or other credit support, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under or applied pursuant to any of this Section 2.17 or Sections 2.02, 2.03, 2.06, 2.18 or 8.02 in respect of Letters of Credit or Alternative Currency Risk Participations shall be held and applied to the satisfaction of the specific L/C Obligations or obligations to fund Alternative Currency Risk Participations (including, as to Cash Collateral provided by a Defaulting Lender under the Revolving Facility, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly (and in any event within two (2) Business Days), together with all interest, if any, that has accrued on such amount, following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by (x) the cure or waiver of the relevant Event of Default in respect of Cash Collateral provided pursuant to Section 8.02 and (y) the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vii))), (ii) as provided in Section 2.17(a)(iii) (solely to the extent described therein) or (iii) the Administrative Agent's good faith determination that there

exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of the Borrower (including any interest thereon) shall not be released during the continuance of a Default or an Event of Default (and following application as provided in this Section 2.17 may be otherwise applied in accordance with Section 8.03 during the continuance of an Event of Default), and (y) the Person providing Cash Collateral and the L/C Issuer or Alternative Currency Fronting Lender, as applicable, may agree that Cash Collateral (including any interest thereon) shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

**2.18 Defaulting Lenders.**

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

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

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or the Alternative Currency Fronting Lender hereunder; third, if so determined by the Administrative Agent or requested by the L/C Issuer, to be held as Cash Collateral for future funding obligations of such Defaulting Lender of any participation in any Letter of Credit or any Alternative Currency Risk Participation; fourth, as the Borrower may request (so long as no 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 non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders or the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the L/C Issuer against such Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no 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 L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this

Section 2.18(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. Such Defaulting Lender (x) shall not be entitled to receive any facility fee on unfunded amounts pursuant to Section 2.10(a) for any period during which that Lender is a Defaulting Lender except only to the extent allocable to the sum of (1) the Outstanding Amount of the Committed Revolving Loans funded by it, (2) its Applicable Percentage of the stated amount of Letters of Credit for which it has provided (or is deemed to have provided) Cash Collateral pursuant to Section 2.03(a)(iii), Section 2.17 or Section 2.18(a)(ii), as applicable, and (3) its Alternative Currency Participant's Share of all Revolving Loans denominated in Alternative Currencies for which it is deemed to have provided Cash Collateral pursuant to Section 2.17 or Section 2.18(a)(ii), as applicable (and the Borrower shall (A) be required to pay to each of the L/C Issuer and the Alternative Currency Fronting Lender, as applicable, the amount of such facility fee allocable to its Fronting Exposure arising from such Defaulting Lender (solely to the extent not Cash Collateralized by the Borrower) and (B) not be required to pay the remaining amount of such facility fee that otherwise would have been required to have been paid to such Defaulting Lender during such period), and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(g).

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender under the Revolving Facility, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Alternative Currency Risk Participations pursuant to Sections 2.02 and 2.03, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that, (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Event of Default exists; and (ii) the aggregate obligation of each such non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Alternative Currency Risk Participations shall not exceed the positive difference, if any, of (1) the Revolving Commitment of such non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Committed Revolving Loans of such Lender. Subject to Section 10.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders and, if such Lender is a Revolving Lender, funded and unfunded participations in Letters of Credit and Alternative Currency Risk Participations of the other Revolving Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Alternative Currency Risk Participations to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages of the Revolving Facility (without giving effect to Section 2.18(a)(iv)), 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 such Lender was a Defaulting Lender; and provided, further, that subject to Section 10.20 and 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 such Lender's having been a Defaulting Lender.

## ARTICLE III

## TAXES, YIELD PROTECTION AND ILLEGALITY

**3.01 Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of ~~the Borrower~~any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes; provided that, if the ~~Borrower~~applicable Loan Party or the Administrative Agent shall be required by applicable Law to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to Section 3.01(e), (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the ~~Borrower~~applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the Administrative Agent, the applicable Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the ~~Borrower~~Loan Parties. Without limiting the provisions of Section 3.01(a), the ~~Borrower~~Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnification. (i) Without limiting the provisions of Section 3.01(a) or 3.01(b), each of the ~~Borrower~~Loan Parties shall, and does hereby, jointly and severally, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof, within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by the Administrative Agent, such Lender or ~~the~~ any L/C Issuer, as the case may be, or required to be withheld or deducted from a payment to the Administrative Agent, such Lender or any L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, to the extent such Indemnified Taxes or Other Taxes are payable in respect of any payments by or on account of any obligation of the ~~Borrower~~Loan Parties hereunder or under any other Loan Document or otherwise with respect to any Loan Document or activities related thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of Section 3.01(a) or 3.01(b), each Lender and the L/C Issuer shall, and do hereby, indemnify the ~~Borrower~~Loan Parties and the Administrative Agent, and shall make payment in respect thereof, within ten (10) days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and

expenses (including the fees, charges and disbursements of any counsel for the ~~Borrower~~Loan Parties and the Administrative Agent) incurred by or asserted against the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the L/C Issuer, as the case may be, to the Borrower or the Administrative Agent pursuant to Section 3.01(e). Each Lender and the L/C Issuer hereby authorize the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by ~~the Borrower~~any Loan Party to a Governmental Authority, the Borrower 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.

(e) Status of Lenders. (i) Each Lender shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made by the Borrower hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdictions. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), Section 3.01(e)(ii)(B) and Section 3.01(e)(ii)(C)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States:

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed copies of IRS Form W-9 or such other documentation or information prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine that such Lender is not subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall 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 request of Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed executed copies of IRS Form W-8ECI,

(iii) duly completed executed copies of IRS Form W-8IMY and all required supporting documentation,

(iv) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, or

(v) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States 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

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by 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 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 (C), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Law of any jurisdiction that any Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(iv) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall

update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Law, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by ~~the Borrower~~any Loan Party or with respect to which ~~the Borrower~~any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to ~~the Borrower~~such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by ~~the Borrower~~such Loan Party under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that ~~the Borrower~~each Loan Party, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to ~~the Borrower~~such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This Section 3.01(f) shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to ~~the Borrower~~any Loan Party or any other Person. Notwithstanding anything to the contrary in this Section 3.02(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.02(f) if 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.

**3.02 Illegality.**

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund ~~Eurocurrency Rate Loans (whether denominated in Dollars or an Alternative Currency), LIBOR Daily Loans or Alternative Currency Daily Rate Loans~~any Loans (other than Base Rate Loans), or to determine or charge interest rates based upon ~~the Eurocurrency Rate, the LIBOR Daily Floating Rate or the Alternative Currency Daily~~ SOFR, Daily SOFR or Term SOFR or any Loans whose interest is determined by reference to a Relevant Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the applicable interbank market (each an "Affected Loan"), then (a) such Lender shall promptly give written notice of such circumstances to the Borrower through the Administrative Agent, which notice shall (i) in the case of any such restriction or prohibition with respect to an Alternative Currency, include such Revolving Lender's notification that it will thenceforth be an Alternative Currency Participating Lender with respect to such Alternative Currency, and (ii) be withdrawn whenever such circumstances no longer exist, (b) the obligation of such Lender hereunder to make Affected Loans, continue Affected Loans as such and, in the case of ~~Eurocurrency Rate~~Term SOFR Loans ~~in Dollars~~ and ~~LIBOR~~ Daily SOFR Loans, to convert a Base Rate Loan to an Affected Loan shall forthwith be suspended and, until such time as it shall no longer be unlawful for such Lender to make or maintain such Affected Loans, such Lender shall then have a commitment only to make a Base Rate Loan when an Affected Loan denominated in Dollars is requested and to purchase Alternative Currency

Risk Participations when an Affected Loan denominated in an Alternative Currency is requested, (c) such Lender's Loans then outstanding as Affected Loans, denominated in Dollars, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law, (d) such Lender's Loans then outstanding as Affected Loans, if any, denominated in an Alternative Currency shall be immediately repaid by the Borrower on the last day of the then current Interest Period with respect thereto (or such earlier date as may be required by any such requirement of Law) together with accrued interest thereon and (e) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to ~~the Eurocurrency Rate~~Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Eurocurrency Rate~~Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. If any such conversion or prepayment of an Affected Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.05. Any Lender that is or becomes an Alternative Currency Participating Lender with respect to any Alternative Currency pursuant to this Section 3.02 or otherwise as provided in this Agreement shall promptly notify the Administrative Agent and the Borrower in the event that the impediment resulting in its being or becoming an Alternative Currency Participating Lender is alleviated in a manner such that it can become an Alternative Currency Funding Lender with respect to such Alternative Currency.

**3.03 Inability to Determine Rates.**

(a) ~~If the Required Lenders determine for any reason~~Subject to Sections 3.03(b), (c) and (d), if in connection with any request for a ~~Eurocurrency Rate Loan, a LIBOR Daily~~ Term SOFR Loan or an Alternative Currency Term Rate Loan or a conversion of Base Rate Loans to Term SOFR Loans or Daily SOFR Loans or a continuation of any of such Loans, as applicable, or at any time in connection with a Daily SOFR Loan or an Alternative Currency Daily Rate Loan ~~or a conversion thereto or continuation thereof, as applicable, that (A) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan or Alternative Currency Daily Rate Loan or the applicable term with respect to such LIBOR Daily Loan,~~ (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate for the Relevant Rate for the applicable Agreed Currency has been determined in accordance with Section 3.03(b) or Section 3.03(d) and the circumstances under clause (i) of Section 3.03(b) or of Section 3.03(d) or the Scheduled Unavailability Date, or the SOFR Scheduled Unavailability Date, has occurred with respect to Term SOFR, Daily SOFR or such Relevant Rate (as applicable) or a Canadian Benchmark Replacement has not been determined in accordance with Section 3.03(c), or (B~~) (x~~) adequate and reasonable means do not otherwise exist for determining ~~the Eurocurrency~~SOFR, Term SOFR, Daily SOFR or the Relevant Rate for ~~any~~the applicable Agreed Currency for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed ~~Eurocurrency Rate Loan (whether denominated in Dollars~~Term SOFR Loan, Daily SOFR Loan or an Alternative Currency~~)~~ Loan or in connection with an existing or proposed Base Rate Loan, or ~~for determining the LIBOR Daily Floating Rate for any applicable term with respect to a proposed LIBOR Daily Loan or for determining the Alternative Currency Daily~~ (ii) the Administrative Agent or the Required Lenders determine that for any reason that the Relevant Rate with respect to a proposed ~~Alterative Currency Daily Rate Loan and (y) the circumstances described in Section 3.03(b) or (c), as applicable, do not apply (in each case with respect to clause (A) or (B), "Impacted Loans"), or (C) the Eurocurrency Rate~~Loan denominated in an Agreed Currency for any requested Interest Period ~~with respect to a proposed Eurocurrency Rate Loan, the LIBOR Daily Floating Rate for any applicable term with respect to a proposed LIBOR Daily Loan or the Alternative Currency~~

~~Daily Rate with respect to a proposed Alternative Currency Daily Rate Loan, as the case may be,~~or determination date(s) does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender.

~~(a)~~ Thereafter, (x) the obligation of the Lenders to make or maintain ~~Eurocurrency Rate~~ Loans~~,~~ in the affected ~~currency or~~ currencies~~, Alternative Currency Daily Rate Loans in the affected currency or currencies and/or LIBOR Daily Loans~~, as applicable, or to convert Base Rate Loans to Term SOFR Loans or Daily SOFR Loans, shall be suspended in each case to the extent of the affected Term SOFR Loans, Daily SOFR Loans, Alternative Currency Loans or Interest ~~Periods~~Period or determination date(s), as applicable, and (y) in the event of a determination described in the preceding sentence with respect to the ~~Eurocurrency Rate~~Term SOFR component of the Base Rate, the utilization of the ~~Eurocurrency Rate~~Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (~~upon the~~ or, in the case of a determination by the Required Lenders described in clause (ii) of the first paragraph of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, or conversion to Daily SOFR Loans, a Borrowing of, or continuation of ~~Eurocurrency Rate Loans or~~, or conversion to Term SOFR Loans, or a Borrowing of, or continuation of Alternative Currency ~~Daily Rate~~ Loans ~~in the affected currency or currencies (~~to the extent of the affected ~~Eurocurrency Rate~~Daily SOFR Loans, Term SOFR Loans, Alternative Currency ~~Daily Rate~~ Loans or Interest ~~Periods) or any pending request for a Borrowing of or conversion to LIBOR Daily Loans (to the extent of the affected LIBOR Daily Loans or periods)~~Period or determination date(s), as applicable or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of, or conversion to, as applicable, Base Rate Loans ~~in~~denominated in Dollars in the Dollar Equivalent of the amount specified therein~~. Notwithstanding the foregoing, in the case of a pending request for a Eurocurrency Rate Loan, a LIBOR Daily Loan or~~ and (ii) (A) any outstanding affected Term SOFR Loans and Daily SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately, in the case of Daily SOFR Loans, or at the end of the applicable Interest Period, in the case of Term SOFR Loans, and (B) any outstanding affected Alternative Currency Loans, at the Borrower's election, shall either (1) be converted into a Committed Borrowing of Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount of such outstanding Alternative Currency Loan immediately, in the case of an Alternative Currency Daily Rate Loan or ~~conversion or continuation in~~at the end of the applicable Interest Period, in the case of an Alternative Currency ~~as to which the Required Lenders have made the determination described in clause (A) or (B) of the first sentence of this paragraph, unless revoked by the Borrower pursuant to the preceding sentence, the Borrower, the Administrative Agent and the Required Lenders may establish a mutually acceptable alternative interest rate that reflects the all-in cost of funds to such Lenders for funding Loans in the applicable currency and amount, and with the same Interest Period or term, as applicable, as the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (x) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (A) or (B) of the first sentence of this paragraph, (y) the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (z) any affected Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.~~Term Rate Loan or (2) be prepaid in full immediately, in the case of an Alternative Currency Daily Rate Loan, or at the end of the applicable Interest Period, in the case of an Alternative Currency Term Rate Loan; provided that if no election is made by the Borrower

(x) in the case of an Alternative Currency Daily Rate Loan, by the date that is three Business Days after receipt by the Borrower of such notice or (y) in the case of an Alternative Currency Term Rate Loan, by the last day of the current Interest Period for the applicable Alternative Currency Term Rate Loan, the Borrower shall be deemed to have elected clause (1) above.

(b) Replacement of SOFR, Term SOFR or SOFR Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining SOFR or one month, three month and six month interest periods of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of SOFR or Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR, the Term SOFR Screen Rate or SOFR shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease; provided that, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Administrative Agent, that will continue to provide such interest periods of Term SOFR or SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR, SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the "SOFR Scheduled Unavailability Date");

then, on a date and time determined by the Administrative Agent (any such date, the "SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the SOFR Scheduled Unavailability Date, Term SOFR and/or Daily SOFR, as applicable, will be replaced hereunder and under any Loan Document with Daily Simple SOFR *plus* the SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "SOFR Successor Rate").

If the SOFR Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the SOFR Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing Term SOFR, SOFR or any then current SOFR Successor Rate in accordance with this Section 3.03(b) at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, and, in each case, including any mathematical or other adjustments to such benchmark giving

due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a "SOFR Successor Rate". Any such amendment executed by the Administrative Agent and the Borrower shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

This Section 3.03(b) shall supersede any provisions in Section 10.01 to the contrary.

~~(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if the then current Benchmark is LIBOR with respect to Dollars ("USD LIBOR"), solely with respect to such Benchmark:~~

(c) Canadian Benchmark Replacement Setting. Notwithstanding anything to the contrary in this Agreement or in any other Loan Documents:

(i) ~~(i) On March 5, 2021, the Financial Conduct Authority ("FCA"), the regulatory supervisor of USD LIBOR's~~Replacing CDOR. On May 16, 2022 Refinitiv Benchmark Services (UK) Limited ("RBSL"), the administrator ~~("IBA")~~of CDOR, announced in a public statement that the ~~future cessation or loss of representativeness of overnight/Spot Next, 1 week, 1 month, 2 month, 3 month, 6 month and 12 month USD LIBOR tenor settings. On the earliest~~calculation and publication of all tenors of CDOR will permanently cease immediately following a final publication on Friday, June 28, 2024. On the earlier of (A) the date that all Available Tenors of ~~USD LIBOR~~CDOR have either permanently or indefinitely ceased to be provided by ~~IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt in Effective Date in respect of a SOFR Early Opt in, the~~RBSL and (B) June 28, 2024 (the "CDOR Cessation Date"), if the then-current Canadian Benchmark is CDOR, the Canadian Benchmark Replacement will replace such Canadian Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Canadian Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Canadian Benchmark Replacement is Daily ~~Simple SOFR~~Compounded CORRA, all interest payments will be payable on a monthly basis.

(ii) ~~(ii) (x) Upon a determination by the Administrative Agent that neither of the alternatives under clause (1) of the definition of "Benchmark Replacement" are available, the~~Replacing Future Canadian Benchmarks. Upon the occurrence of a Canadian Benchmark Transition Event, the Canadian Benchmark Replacement will replace ~~USD LIBOR~~the then-current Canadian Benchmark for all purposes hereunder and under any Loan Document in respect of any Canadian Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Canadian Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Canadian Benchmark Replacement from Lenders comprising the Required Lenders ~~(and any such objection shall be conclusive and binding absent manifest error); provided that the Benchmark Replacement for USD LIBOR shall be determined in accordance with clause (1) of the definition of "Benchmark Replacement" unless the Administrative Agent determines that neither of such alternative rates is available.~~

~~(y) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt in, the Benchmark Replacement will replace USD LIBOR for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment~~

~~to, or further action or consent of any other party to this Agreement or any other Loan Document.~~

~~(iii)~~ At any time that the administrator of ~~USD-LIBOR~~the then-current Canadian Benchmark has permanently or indefinitely ceased to provide such Canadian Benchmark or such Canadian Benchmark has been announced by the administrator or the regulatory supervisor for the administrator of such Canadian Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Canadian Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a ~~borrowing~~Borrowing of, conversion to or continuation of Loans denominated in Canadian Dollars to be made, converted or continued that would bear interest by reference to such Canadian Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Canadian Benchmark Replacement has replaced such Canadian Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to ~~Base~~Canadian Prime Rate Loans. During the period referenced in the foregoing sentence, the component of ~~Base~~Canadian Prime Rate based upon the Benchmark will not be used in any determination of ~~Base~~Canadian Prime Rate.

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

(iv) ~~(v)~~ Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (~~A~~i) the implementation of any Canadian Benchmark Replacement ~~and (B)~~, (ii) any occurrence of a Term CORRA Transition Event, and (iii) the effectiveness of any Conforming Changes ~~pursuant to this Section 3.03(b)~~. Any determination, decision or election that may be made by the Administrative Agent ~~or, if applicable, any Lender (or group of Lenders)~~ pursuant to this Section ~~3.03(b)~~, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its ~~or their sole~~ discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(~~b~~c).

(v) ~~(vi)~~ Unavailability of Tenor of Canadian Benchmark. At any time (including in connection with the implementation of a Canadian Benchmark Replacement), ~~(A~~if the then-current Canadian Benchmark is a term rate (including Term CORRA or CDOR), then (i) the Administrative Agent may remove any tenor of ~~USD-LIBOR~~such Canadian Benchmark that is unavailable or non-representative for ~~such~~Canadian Benchmark (including Canadian Benchmark Replacement) settings and (~~B~~ii) the Administrative Agent may reinstate any such previously removed tenor for ~~USD-LIBOR~~Canadian Benchmark (including Canadian Benchmark Replacement) settings.

(vi) Secondary Term CORRA Conversion. Notwithstanding anything to the contrary in this Agreement or in any Loan Documents and subject to the proviso below in this clause, if a Term CORRA Transition Event and its related Term CORRA Transition Date have occurred, then on and after such Term CORRA Transition Date (i) the Canadian Benchmark Replacement described in clause (a)(i) of such definition will replace the then-current Canadian Benchmark

for all purposes hereunder or under any Loan Document in respect of any setting of such Canadian Benchmark on such day and all subsequent settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; and (ii) each Loan outstanding on the Term CORRA Transition Date bearing interest based on the then-current Canadian Benchmark shall convert, at the last day of the then current interest payment period, into a Loan bearing interest at the Canadian Benchmark Replacement described in clause (a)(i) of such definition for the respective Available Tenor as selected by the Borrower as is available for the then-current Canadian Benchmark; provided that, this clause (vi) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term CORRA Notice, and so long as the Administrative Agent has not received, by 5:00 p.m. (Toronto time) on the fifth (5th) Business Day after the date of the Term CORRA Notice, written notice of objection to such conversion to Term CORRA from Lenders comprising the Required Lenders or the Borrower.

~~(vii) Solely for purposes of this Section 3.03(b), the following defined terms shall apply:~~

~~"Available Tenor" means, as of any date of determination, (x) if the then current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.~~

~~"Benchmark" means, initially, USD LIBOR. Any reference to "Benchmark" shall include, as applicable, the published component used in the calculation thereof.~~

~~"Benchmark Replacement" means:~~

~~(1) For purposes of Section 3.03(b)(i), the first alternative set forth below that can be determined by the Administrative Agent:~~

~~(a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one month's duration, 0.26161% (26.161 basis points) for an Available Tenor of three months' duration, 0.42826% (42.826 basis points) for an Available Tenor of six months' duration, and 0.71513% (71.513 basis points) for an Available Tenor of twelve months' duration, or~~

~~(b) the sum of: (i) Daily Simple SOFR and (ii) 0.11448% (11.448 basis points);~~

~~provided that, if initially USD LIBOR is replaced with the rate contained in clause (b) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Administrative Agent determines that Term SOFR has become available and is administratively feasible for the Administrative Agent in its sole discretion, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a) above; and~~

~~(2) For purposes of Section 3.03(b)(ii), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement Benchmark giving due consideration to any evolving or then prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;~~

~~provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than 0.00%, the Benchmark Replacement will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents.~~

~~Any Benchmark Replacement shall be applied in a manner consistent with market practice; provided that, to the extent such market practice is not administratively feasible for the Administrative Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.~~

~~"Daily Simple SOFR" with respect to any applicable determination date means the Secured Overnight Financing Rate published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source).~~

~~"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.~~

~~"Early Opt-in Election" means the occurrence of:~~

~~(1) a determination by the Administrative Agent, or a notification by the Borrower to the Administrative Agent that the Borrower has made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in Section 3.03(b), are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace USD LIBOR, and~~

~~(2) the joint election by the Administrative Agent and the Borrower to replace USD LIBOR with a Benchmark Replacement and the provision by the Administrative Agent of written notice of such election to the Lenders.~~

~~"Other Rate Early Opt-in" means the Administrative Agent and the Borrower have elected to replace USD LIBOR with a Benchmark Replacement other than a SOFR based rate pursuant to (1) an Early Opt-in Election and (2) Section 3.03(b)(ii) and clause (2) of the definition of "Benchmark Replacement."~~

~~"SOFR Early Opt-in" means the Administrative Agent and the Borrower have elected to replace USD LIBOR pursuant to (1) an Early Opt-in Election and (2) Section 3.03(b)(i) and clause (1) of the definition of "Benchmark Replacement."~~

~~"Term SOFR" means, for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.~~

This Section 3.03(~~b~~c) shall supersede any provisions in Section 10.01 to the contrary.

(d) ~~(c)~~ Replacement of Relevant Rate or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, but subject to the provisions of Section 3.03(b) and (c) with respect to the replacement of ~~USD LIBOR~~Term SOFR, SOFR and CDOR, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining the Relevant Rate (other than Term SOFR, SOFR and CDOR) for an Agreed Currency (other than Dollars and Canadian Dollars) because none of the tenors of such Relevant Rate (~~including any forward-looking term rate thereof~~)other than Term SOFR, SOFR and CDOR) under this

Agreement is available or published on a current basis, and such circumstances are unlikely to be temporary; or

(ii) the Applicable Authority has made a public statement identifying a specific date after which all tenors of the Relevant Rate (other than Term SOFR, SOFR and CDOR) for an Agreed Currency (~~including any forward looking term rate thereof~~)other than Dollars and Canadian Dollars) under this Agreement shall or will no longer be representative or made available, or permitted to be used for determining the interest rate of syndicated loans denominated in such Agreed Currency (other than Dollars and Canadian Dollars), or shall or will otherwise cease~~;~~, *provided* that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such representative tenor(s) of the Relevant Rate (other than Term SOFR, SOFR and CDOR) for such Agreed Currency (other than Dollars and Canadian Dollars) (the latest date on which all tenors of the Relevant Rate for such Agreed Currency (~~including any forward looking term rate thereof~~)other than Dollars and Canadian Dollars) under this Agreement are no longer representative or available permanently or indefinitely, the "Scheduled Unavailability Date");~~or~~

~~(iii) syndicated loans currently being executed and agented in the U.S., are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the Relevant Rate for an Agreed Currency;~~

or if the events or circumstances of the type described in Section 3.03(c)(i)~~,~~ or (ii~~) or (iii~~) have occurred with respect to the Successor Rate (as defined below) then in effect, then, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing the Relevant Rate for an Agreed Currency or any then current Successor Rate for an Agreed Currency in accordance with this Section 3.03(~~e~~d) with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the ~~U.S.~~United States and denominated in such Agreed Currency for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the ~~U.S.~~United States and denominated in such Agreed Currency for such benchmarks~~, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated~~ (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a "Non-SOFR Successor Rate"~~; it being understood that any initial~~, and collectively with the SOFR Successor Rate~~ with respect to USD LIBOR shall be determined pursuant to Section 3.03(b)), and any~~, each a "Successor Rate"). Any such amendment executed by the Administrative Agent and the Borrower shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

This Section 3.03(d) shall supersede any provisions in Section 10.01 to the contrary.

(e) Successor Rate. The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such

Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than 0.00%, the Successor Rate will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

This Section 3.03(~~e~~e) shall supersede any provisions in Section 10.01 to the contrary.

(f) For purposes of this Section 3.03, those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans in the relevant Alternative Currency shall be excluded from any determination of Required Lenders with respect to the replacement of the Relevant Rate for such Alternative Currency.

**3.04 Increased Costs~~; Reserves on Eurocurrency Rate Loans~~.**

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Administrative Agent, any Lender ~~(except any reserve requirement contemplated by Section 3.04(e))~~ or the L/C Issuer;

(ii) subject the Administrative Agent, any Lender or the L/C Issuer to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any ~~Eurocurrency Rate~~Term SOFR Loan, Daily SOFR Loan, or Alternative Currency ~~Daily Rate Loan or LIBOR Daily~~ Loan made by it, or change the basis of taxation of payments to the Administrative Agent, such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Administrative Agent, such Lender or the L/C Issuer); or

(iii) impose on the Administrative Agent, any Lender or the L/C Issuer or ~~the London~~any applicable interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement, ~~Eurocurrency Rate~~Term SOFR Loans, ~~LIBOR~~ Daily SOFR Loans, or Alternative Currency ~~Daily Rate~~ Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to the Administrative Agent or such Lender of making, maintaining, converting to or continuing any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to the Administrative Agent, such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of

maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by the Administrative Agent, such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of the Administrative Agent, such Lender or the L/C Issuer, the Borrower will pay to the Administrative Agent, such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate the Administrative Agent, such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered. The Borrower shall not be required to pay such additional amounts unless such amounts are the result of requirements imposed generally on lenders similar to such Lender or such L/C Issuer and not the result of some specific reserve or similar requirement imposed on such Lender or such L/C Issuer as a result of such Lender's or such L/C Issuer's special circumstances.

(c) Certificates for Reimbursement. A certificate of the Administrative Agent, a Lender or the L/C Issuer setting forth in reasonable detail the basis for and calculation of the amount or amounts necessary to compensate the Administrative Agent, such Lender or the L/C Issuer or its holding company, as the case may be, as specified in Section 3.04(a) or 3.04(b) and delivered to the Borrower, in detail sufficient to enable the Borrower to verify the computation thereof, shall be conclusive absent manifest error. The Borrower shall pay the Administrative Agent, such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof. Any amounts requested to be payable pursuant to this Section 3.04 shall be requested in good faith (and not on an arbitrary and capricious basis) and consistent with similarly situated customers of the Administrative Agent, the applicable Lender or L/C Issuer after consideration of factors as the Administrative Agent, such Lender or L/C Issuer, as the case may be, then reasonably determines to be relevant.

(d) Delay in Requests. Failure or delay on the part of the Administrative Agent, any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of the Administrative Agent, such Lender's or the L/C Issuer's right to demand such compensation; provided that the Borrower shall not be required to compensate the Administrative Agent, a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that the Administrative Agent, such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Administrative Agent's, such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

~~(c) Additional Reserve Requirements. The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan and LIBOR Daily Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Revolving Commitments or the funding of the Eurocurrency Rate Loans or the LIBOR Daily Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Revolving Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which in each case shall be due and payable on each date on which interest is payable on such Loan; provided the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable ten (10) Business Days from receipt of such notice.~~

(e) [Reserved].

(f) The provisions set forth in Sections 3.04(a)~~,~~ and (b)~~ and (c)~~ above shall not apply to the extent any increased cost is already compensated for by payment made by or on behalf of the Borrower pursuant to Section 3.01.

**3.05 Compensation for Losses**.

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 (other than loss of anticipated profits) incurred by it as a result of:

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

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any ~~Eurocurrency~~ Loan other than a Base Rate Loan, a Daily SOFR Loan or an Alternative Currency Daily Rate Loan on the date or in the amount notified by the Borrower;

(c) any failure by the Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency;

(d) any assignment of a ~~Eurocurrency~~Term SOFR Loan or an Alternative Currency Term Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13; or

(e) any change in the applicable Spot Rate between the date of funding of an Alternative Currency Risk Participation pursuant to Section 2.02(f)(iii) and the date of repayment by the Borrower pursuant to Section 2.02(f)(vi).

The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing, including, without limitation, any loss or expense arising from the termination of any foreign exchange contract.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each ~~Eurocurrency Rate Loan made by it at the Eurocurrency Rate~~ Term SOFR Loan or Alternative Currency Term Rate Loan, as applicable, made by it at Term SOFR or the applicable Alternative Currency Term Rate, as applicable, for such Loan by a matching deposit or other borrowing in the applicable interbank market for the relevant currency for a comparable amount and for a comparable period, whether or not such ~~Eurocurrency~~Term SOFR Loan or Alternative Currency Term Rate Loan, as applicable, was in fact so funded.

**3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, the L/C Issuer or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.**

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Revolving Commitments, repayment of all other Obligations hereunder and resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender.

## ARTICLE IV

## CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**4.01 Conditions of Initial Credit Extension.**

The effectiveness of this Agreement and the obligation of the L/C Issuer and of each Lender to make its initial Credit Extension hereunder on the Closing Date, if any, are subject to satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or facsimile or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement, executed and delivered by the Administrative Agent, the Borrower and each Lender listed on Schedule 2.01;

(ii) a Revolving Note executed by the Borrower in favor of each Revolving Lender requesting a Revolving Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower is duly organized or formed, and that the Borrower is validly existing, in good standing and qualified to engage in business in its state of organization and in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) favorable opinions of Skadden, Arps, Slate Meagher & Flom LLP and Ballard Spahr LLP, counsels to the Borrower, addressed to the Administrative Agent and each Lender; and

(vi) a certificate signed by a Responsible Officer certifying (A) that the conditions specified in Section 4.02 have been satisfied; (B) the current Debt Ratings; and (C) that, as of the date of the last financial statements delivered pursuant to the Existing Credit Agreement, the Borrower was in pro forma compliance with the financial covenants contained in Section 7.10.

(b) Any fees required to be paid by the Borrower on or prior to the Closing Date pursuant to the Loan Documents and all expenses required to be reimbursed by the Borrower on or prior to the Closing Date pursuant to the Loan Documents shall have been paid; provided that invoices for such expenses have been presented to the Borrower a reasonable period of time (and in any event not less than one (1) Business Day) prior to the Closing Date (including, unless waived by the Administrative Agent, all reasonable, documented, out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent)).

(c) (i) Upon the reasonable request of any Lender made in writing at least ten (10) Business Days prior to the Closing Date, the Borrower shall have provided to such Lender the documentation and other information so requested by such Lender that satisfies all requirements

of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five (5) Business Days prior to the Closing Date and (ii) at least five (5) Business Days prior to the Closing Date, if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation it shall have delivered, to each Lender that so requests at least ten (10) Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower.

(d) The Administrative Agent's receipt of an executed copy of a certificate signed by a Responsible Officer certifying the Borrower's Sustainability Metric Components for the calendar year ended December 31, 2020 (solely for purposes of this Section 4.01(d), reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ended December 31, 2020).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, (i) this Agreement and each other document to which it is a party or which it has reviewed or (ii) any other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions to All Credit Extensions.**

The obligation of each Lender to honor any Request for Credit Extension (other than (x) the initial extensions of credit on the Closing Date and (y) a Committed Loan Notice requesting only a conversion of Loans to another Type, or a continuation of ~~Eurocurrency~~ Term SOFR Loans or Alternative Currency Term Rate Loans ~~or LIBOR Daily Loans~~) is subject to the following conditions precedent:

(a) The representations and warranties of the ~~Borrower~~Loan Parties contained in Article V or any other Loan Document, or which are contained in any document required to be furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Credit Extension (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist on the date of such Credit Extension, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which, in the reasonable opinion of the Administrative Agent, the Required Lenders (in the case of any Loans (other than Negotiated Rate Loans) to be denominated in an Alternative Currency), the applicable Lenders (in the case of any Negotiated Rate Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency), would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to another Type or a continuation of ~~Eurocurrency Rate~~Term SOFR Loans or ~~LIBOR Daily~~Alternative Currency Term Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V

## REPRESENTATIONS AND WARRANTIES

~~The Borrower~~Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

### 5.01 Existence, Qualification and Power.

Each ~~of the Borrower~~Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and (c) is duly qualified to do business and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a) (other than with respect to any Loan Party or any Material Subsidiary), clause (b)(i) or clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

### 5.02 Authorization; No Contravention.

The execution, delivery and performance by ~~the Borrower~~each Loan Party of each Loan Document to which it is party has been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of ~~the Borrower's~~such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which ~~the Borrower~~such Loan Party is party or affecting ~~the Borrower~~such Loan Party or the properties of ~~the Borrower~~such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which ~~the Borrower~~such Loan Party or its property is subject; or (c) violate any Law; except in each case referred to in clause (b) or (c), to the extent such

conflict, breach, contravention or violation, or creation of any such Lien or required payment, could not reasonably be expected to have a Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents.**

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, ~~the Borrower~~any Loan Party of this Agreement or any other Loan Document, except for such approvals, consents, exemptions, authorizations or other actions or notices or filings which have already been completed or obtained.

**5.04 Binding Effect.**

This Agreement has been, and each other Loan Document to which each Loan Party is a party, when delivered hereunder, will have been, duly executed and delivered by ~~the Borrower~~such Loan Party. This Agreement constitutes, and each other Loan Document to which each Loan Party is a party when so delivered will constitute, a legal, valid and binding obligation of ~~the Borrower~~such Loan Party, enforceable against ~~the Borrower~~such Loan Party in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws, now or hereafter in effect, relating to or affecting the enforcement of creditors' rights generally and except that the remedy of specific performance and other equitable remedies are subject to judicial discretion.

**5.05 Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and material Indebtedness, in each case, to the extent required by GAAP.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal quarter ended June 30, 2021, and the related unaudited consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on such date, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein or as otherwise permitted pursuant to Section 1.03, (ii) fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and material Indebtedness, in each case, to the extent required by GAAP.

(c) Since the date of the Audited Financial Statements, there has been no event or condition, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

**5.06 Litigation.**

There are no actions, suits, proceedings, claims, investigations or disputes pending or, to the knowledge of ~~the Borrower~~any Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against ~~the Borrower~~any Loan Party or any of ~~its~~their respective Subsidiaries or against any of their properties or revenues that (a) affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.**

No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property and Valid Leasehold Interests; Liens.**

(a) Each of the ~~Borrower~~Loan Parties and each ~~Subsidiary~~of their respective Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title or valid leasehold interests as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of ~~the Borrower~~each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

**5.09 Environmental Compliance.**

There are no existing violations of Environmental Laws by any Loan Party or any Subsidiary or claims against any Loan Party or any Subsidiary alleging potential liability under, or responsibility for the violation of, any Environmental Law that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10 Insurance.**

~~The Borrower~~Each Loan Party and each of its Subsidiaries maintain or require the tenants or managers of their owned properties to maintain insurance that complies with the requirements set forth in Section 6.07.

**5.11 Taxes.**

~~The Borrower~~Each Loan Party and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which 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, or (b) where the failure to take any of the foregoing actions could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect. To the knowledge of ~~the Borrower~~any Loan Party, there is no proposed tax assessment against ~~the Borrower~~such Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. As of the Closing Date, neither the Borrower nor any Subsidiary thereof is party to any tax sharing agreement.

**5.12 ERISA Compliance.**

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws, except for any such failures to comply as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of ~~the Borrower~~any Loan Party, nothing has occurred that could reasonably be expected to prevent, or cause the loss of, such qualification. ~~The Borrower~~Each Loan Party and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of ~~the Borrower~~any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) ~~neither the Borrower~~no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) ~~neither the Borrower~~no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) ~~neither the Borrower~~no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA; except in each case referred to in clauses (i) through (v), to the extent that any such event, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) As of the Closing Date, the Borrower is not and will not be (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to Section 4975 of the Code, (iii) 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, the Letters of Credit or the Revolving Commitments or (iv) a "governmental plan" within the meaning of ERISA.

**5.13 Margin Regulations; Investment Company Act; REIT Status.**

(a) ~~The Borrower is not~~No Loan Party is engaged and no Loan Party will ~~not~~ engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) ~~The Borrower~~No Loan Party is ~~not~~, and no Loan Party is ~~not~~ required to be, registered as an "investment company" under the Investment Company Act of 1940.

(c) The ~~Borrower~~Parent Guarantor meets all requirements to qualify as a REIT.

**5.14 Disclosure.**

(a) No report, financial statement, certificate or other information furnished in writing by or on behalf of ~~the Borrower~~any Loan Party or any of its Subsidiaries to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as and when furnished and as modified or supplemented by other information so furnished), together with all such information previously provided and when taken as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made (together with all such information previously provided and when taken as a whole), not materially misleading; provided, however, that it is understood that ~~the Borrower~~no Loan Party makes ~~no~~any representation or warranty with respect to any general economic or specific industry information, any projections, pro forma financial information, financial estimates, forecasts and forward-looking information, except that, with respect to projected financial information concerning the ~~Borrower and its~~Loan Parties and their respective Subsidiaries furnished in writing by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, ~~the Borrower~~each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information was prepared. It is further understood that (i) any projected financial information furnished to the Administrative Agent or any Lender is not to be viewed as facts, is not a guarantee of future performance and is subject to significant uncertainties and contingencies, many of which are beyond ~~the Borrower's~~a Loan Party's control, (ii) no assurance is given by ~~the Borrower~~such Loan Party that such projections will be realized and (iii) the actual results may differ from such projections and such differences may be material.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification delivered to the Administrative Agent and/or any Lender pursuant to Section 4.01(c), if applicable, is true and correct in all respects.

**5.15 Compliance with Laws.**

Each of the ~~Borrower~~Loan Parties and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**5.16 Intellectual Property; Licenses, Etc.**

~~The Borrower~~Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing is not a representation or warranty with respect to infringement or other violation of the IP Rights of any other Person (which is addressed in the following sentence of this Section 5.16). To the knowledge of ~~the Borrower~~any Loan Party, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by ~~the Borrower~~such Loan Party or any Subsidiary infringes upon any rights held by any other Person to an extent that such infringement could reasonably be expected to result in a Material Adverse Effect. No

claim or litigation regarding any of the foregoing is pending against ~~the Borrower~~any Loan Party or any of its Subsidiaries or, to the knowledge of ~~the Borrower~~any Loan Party, threatened against ~~the Borrower~~such Loan Party or any of its Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.17 Use of Proceeds.**

The proceeds of the Loans hereunder will be used solely for the purposes specified in Section 6.11. No proceeds of the Loans hereunder will be used for the acquisition of another Person unless the board of directors (or other comparable governing body) or stockholders (or other equity owners), as appropriate, of such other Person has approved such acquisition.

**5.18 Taxpayer Identification Number.**

~~The Borrower's~~Each Loan Party's true and correct U.S. taxpayer identification number is set forth on Schedule 10.02.

**5.19 Sanctions.**

None of the ~~Borrower~~Loan Parties, any Subsidiary of the ~~Borrower~~Loan Parties or, to the knowledge of the chief executive officer, chief financial officer or general counsel of ~~the Borrower~~any Loan Party, any director, officer or employee thereof is an individual or entity that is currently (i) the subject of any Sanctions or in violation of any Sanctions or (ii) located, organized or resident in a Designated Jurisdiction.

**5.20 Affected Financial Institution.**

~~The Borrower~~No Loan Party is ~~not~~ an Affected Financial Institution.

**5.21 Anti-Corruption Laws.**

~~The Borrower~~Each Loan Party and each of its Subsidiaries (a) have conducted their businesses for the past two years (or if any Loan Party or Subsidiary was formed within the past two years, for the duration of such Loan Party's or Subsidiary's existence) and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of ~~the Borrower~~such Loan Party, their respective directors, officers, agents and employees are, in each case, in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar applicable anti-money-laundering and anti-corruption legislation in other applicable jurisdictions, in any such case of the foregoing, to the extent applicable to, and binding on, the ~~Borrower and its~~Loan Parties and their Subsidiaries (collectively, "Anti-Corruption Laws"), and (b) have instituted and maintain policies and procedures reasonably designed to promote and achieve compliance by ~~the Borrower~~each Loan Party, its Subsidiaries and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of ~~the Borrower~~such Loan Party, their respective directors, officers, agents and employees with applicable Anti-Corruption Laws and applicable Sanctions.

**5.22 Solvency.**

As of the Closing Date, immediately after giving effect to the initial Credit Extensions made on the Closing Date, (a) the fair value of the assets of the Borrower and its Subsidiaries, taken as a whole, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable

value of the property of the Borrower and its Subsidiaries, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and mature; and (c) the Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

## ARTICLE VI

## AFFIRMATIVE COVENANTS

So long as any Lender shall have any Revolving Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent Obligations that are not then due and payable), or any Letter of Credit shall remain outstanding, ~~the Borrower~~each Loan Party shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.12) cause each ~~Subsidiary~~of its Subsidiaries to:

**6.01 Financial Statements.**

Deliver to the Administrative Agent (for distribution to each Lender):

(a) as soon as available, but in any event within five (5) Business Days following the date the ~~Borrower~~Parent Guarantor is required to file its Form 10-K with the SEC (without giving effect to any extension of such due date, whether obtained by filing the notification permitted by Rule 12b-25 or any successor provision thereto or otherwise) (commencing with the fiscal year ending December 31, 2021), a consolidated balance sheet of the ~~Borrower and its Subsidiaries~~Group as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable securities laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (provided that to the extent the components of such consolidated financial statements relating to a prior fiscal period are separately audited by different independent public accounting firms, the audit report of any such accounting firm may contain a qualification or exception as to scope of such consolidated financial statements as they relate to such components); and

(b) as soon as available, but in any event within five (5) Business Days following the date the ~~Borrower~~Parent Guarantor is required to file its Form 10-Q with the SEC (without giving effect to any extension of such due date, whether obtained by filing the notification permitted by Rule 12b-25 or any successor provision thereto or otherwise) (commencing with the fiscal quarter ending September 30, 2021), an unaudited consolidated balance sheet of the ~~Borrower and its Subsidiaries~~Group as at the end of such fiscal quarter, and the related unaudited consolidated statements of income or operations for such fiscal quarter and for the portion of the ~~Borrower's~~Parent Guarantor's fiscal year then ended, and an unaudited statement of cash flow for the portion of the ~~Borrower's~~Parent Guarantor's fiscal year then ended setting forth in each case in comparative form the figures for the corresponding date of the previous fiscal year or the corresponding portion of the previous fiscal year, as applicable, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer as fairly presenting the

consolidated financial condition of the ~~Borrower and its Subsidiaries~~Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

**6.02 Certificates; Other Information.**

Deliver to the Administrative Agent (for distribution to each Lender):

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ending September 30, 2021), a duly completed Compliance Certificate signed by a Responsible Officer;

(b) promptly after any request by the Administrative Agent, copies of any management letters submitted to the board of directors (or the audit committee of the board of directors) of ~~the Borrower~~any Loan Party by independent accountants in connection with an audit of the accounts of the ~~Borrower~~Loan Parties and their respective Subsidiaries;

(c) [reserved];

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of ~~the Borrower~~any Loan Party, and copies of all annual, regular, periodic and special reports and registration statements which ~~the Borrower~~such Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) promptly, and in any event within five (5) Business Days after receipt thereof by ~~the Borrower~~any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation by such agency regarding financial or other operational results of ~~the Borrower~~such Loan Party or any Subsidiary thereof, other than ordinary course or routine notices, correspondence, inquiries, examinations or audits;

(f) promptly following any written request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation (to the extent ~~the Borrower~~any Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and has provided a Beneficial Ownership Certification to any Lender or the Administrative Agent in connection with this Agreement as required by the Beneficial Ownership Regulation); and

(g) promptly, such additional information regarding the business, financial or corporate affairs of ~~the Borrower~~any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower or the Parent Guarantor posts such documents, or provides a link thereto on the Borrower's or the Parent Guarantor's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's or the Parent Guarantor's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail), which shall notify each Lender, of the posting of any such documents and, upon request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower or the Parent Guarantor with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

~~The Borrower~~Each Loan Party hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of ~~the Borrower~~any Loan Party hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel that do not wish to receive material non-public information with respect to ~~the Borrower~~any Loan Party or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. ~~The Borrower~~Each Loan Party hereby agrees that so long as ~~the Borrower~~such Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (x) by marking Borrower Materials "PUBLIC," ~~the Borrower~~each Loan Party shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to ~~the Borrower~~such Loan Party or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07) (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Arrangers shall treat any Borrower Materials that are not marked "PUBLIC" or that are marked "PRIVATE" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, ~~the Borrower~~no Loan Party shall be under ~~no~~any obligation to mark any Borrower Materials "PUBLIC."

**6.03 Notices.**

Promptly following knowledge thereof by a Responsible Officer, notify the Administrative Agent (which shall notify each Lender) of:

(a) the occurrence of any Default or Event of Default;

(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) the information set forth in Section 6.13 at the times required therein;

(d) any material change in accounting policies or financial reporting practices by ~~the Borrower~~any Loan Party or any Subsidiary; and

(e) any announcement by Moody's, S&P or Fitch of any change or possible adverse change in a Debt Rating.

Each notice pursuant to this Section 6.03 (other than Section 6.03(e)) shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the ~~Borrower~~applicable Loan Party has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Taxes.**

Pay and discharge as the same shall become due and payable, all of its tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person, in each case in this Section 6.04, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.05 Preservation of Existence, Etc.**

(a) Preserve, renew and maintain in full force and effect its legal existence and, where applicable, good standing under the Laws of the jurisdiction of its organization except in a transaction not prohibited by Section 7.04 or 7.05, or to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.**

(a) Maintain, preserve and protect, or make contractual or other provisions to cause to maintain, preserve or protect, all of its properties and equipment necessary in the operation of its business in good working order and condition, 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; and (b) make, or make contractual or other provisions to cause to be made, all necessary repairs thereto and renewals and

replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.**

Maintain, or use reasonable efforts to cause the tenants under all leases to which it is a party as landlord or the manager of its facilities to maintain, insurance with respect to its owned properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and owning similar properties in localities where the ~~Borrower~~applicable Loan Party or the applicable Subsidiary operates, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons (including with respect to any captive insurance subsidiary or self-insurance, a system or systems of self-insurance and reinsurance which accords with the practices of similar businesses).

**6.08 Compliance with Laws.**

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.**

Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of ~~the Borrower or such~~any Loan Party or its Subsidiary, as the case may be.

**6.10 Inspection Rights.**

Subject to (x) rights of tenants, (y) applicable health and safety laws, and (z) except to the extent disclosure could reasonably be expected to contravene attorney client privilege or similar protection or violate any confidentiality or privacy obligation or otherwise contravene applicable law, permit representatives and independent contractors of the Administrative Agent and each Lender (in each case of a Lender, coordinated through the Administrative Agent) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (provided that the ~~Borrower~~Loan Parties shall have the right to participate in any such discussions), all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the ~~Borrower~~Loan Parties; provided, however, that, excluding any such visits and inspections during the continuation of an Event of Default, only one (1) such visit and inspection by the Administrative Agent during any calendar year shall be at the reasonable expense of the Borrower; provided, further, however, that when an Event of Default exists and is continuing the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

**6.11 Use of Proceeds.**

Use proceeds from the Committed Revolving Loans for working capital and general corporate purposes, including Investments not prohibited by Section 7.02, dividends and distributions, and acquisitions and developments and, in each case, not in contravention of any applicable Law in any material respect or of any Loan Document.

**6.12 REIT Status.**

~~Maintain the Borrower's~~The Parent Guarantor shall maintain its qualification as a real estate investment trust under Sections 856 through 860 of the Code.

**6.13 Employee Benefits.**

(a) Comply with the applicable provisions of ERISA and the Code with respect to each Plan, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect and (b) furnish to the Administrative Agent (x) within five (5) Business Days after any Responsible Officer or any ERISA Affiliate knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of ~~the Borrower~~any Loan Party or any of its ERISA Affiliates in an aggregate amount exceeding the Threshold Amount or the imposition of a Lien, a statement setting forth details as to such ERISA Event and the action, if any, that ~~the Borrower~~such Loan Party or ERISA Affiliate proposes to take with respect thereto, and (y) upon request by the Administrative Agent, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by ~~the Borrower~~any Loan Party or any ERISA Affiliate with the Internal Revenue Service with respect to each Pension Plan; (ii) the most recent actuarial valuation report for each Pension Plan; (iii) all notices received by ~~the Borrower~~any Loan Party or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan as the Administrative Agent shall reasonably request.

**6.14 Anti-Corruption Laws.**

Conduct its businesses in compliance in all material respects with applicable Anti-Corruption Laws and maintain policies and procedures reasonably designed to promote and achieve compliance by ~~the Borrower~~each Loan Party, its Subsidiaries and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of ~~the Borrower~~such Loan Party, their respective directors, officers, agents and employees with applicable Anti-Corruption Laws.

## ARTICLE VII

## NEGATIVE COVENANTS

So long as any Lender shall have any Revolving Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent Obligations that are not then due and payable), or any Letter of Credit shall remain outstanding, ~~the Borrower~~no Loan Party shall ~~not~~, nor shall it permit any Subsidiary (except Section 7.09 shall apply only to Wholly-Owned Subsidiaries) to, directly or indirectly:

**7.01 Liens.**

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens securing Indebtedness of the Parent Guarantor and its Subsidiaries permitted under Section 7.03;

(c) Liens for Taxes not yet due 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;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days 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;

(e) pledges or deposits or other Liens arising in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, or to secure statutory obligations, other than any Lien imposed by ERISA;

(f) Liens and rights of setoff of banks and securities intermediaries in respect of deposit accounts and securities accounts maintained in the ordinary course of business;

(g) the interests of lessees and lessors under leases or subleases of, and the interest of managers or operators with respect to, real or personal property made in the ordinary course of business;

(h) Liens on property where the ~~Borrower or any Subsidiary~~Parent Guarantor or its Subsidiaries is insured against such Liens by title insurance;

(i) Liens on property acquired by the ~~Borrower~~Parent Guarantor or any ~~Subsidiary~~of its Subsidiaries after the date hereof and which are in place at the time such properties are so acquired and not created in contemplation of such acquisition;

(j) Liens securing assessments or charges payable to a property owner association or similar entity, which assessments are not yet due and payable or that 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;

(k) Liens securing assessment bonds, so long as the ~~Borrower~~Parent Guarantor or its Subsidiaries is not in default under the terms thereof;

(l) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(m) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(n) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h) or securing appeal or other surety bonds related to such judgments;

(o) Liens solely on any cash earnest money deposits made by the ~~Borrower~~Parent Guarantor or any of its Subsidiaries in connection with any letter of intent or purchase agreement;

(p) assignments to a reverse Section 1031 exchange trust;

(q) licenses of intellectual property granted in the ordinary course of business;

(r) Liens on assets of the Borrower or any ~~Subsidiary~~of its Subsidiaries securing obligations under Swap Contracts; and

(s) precautionary UCC filings in respect of operating leases~~.~~

; provided that, notwithstanding the forgoing, in no event shall any Loan Party create, incur, assume or suffer to exist any Lien on the Equity Interests of Borrower or any other Subsidiary of Parent Guarantor that directly or indirectly owns any Equity Interests of Borrower, in each case, that is owned by a Loan Party.

**7.02 Investments.**

(a) Make or allow Investments in Development Property to exceed, in the aggregate at any one time outstanding, 35% of Enterprise Gross Asset Value.

(b) Make or allow Investments in Joint Ventures to exceed, in the aggregate at any one time outstanding, 25% of Enterprise Gross Asset Value. For purposes of this Section 7.02(b), the ~~Borrower's~~Loan Parties' aggregate Investment in Joint Ventures will be valued at book value as shown on the consolidated balance sheet of the ~~Borrower~~Parent Guarantor, as determined in accordance with GAAP.

**7.03 Indebtedness.**

Create, incur, assume or suffer to exist any Indebtedness of ~~the Borrower~~any Loan Party or any of its Subsidiaries, except:

(a) ~~(a)~~ Indebtedness under the Loan Documents; and

(b) other Indebtedness; provided that (i) at the time of the incurrence of such Indebtedness and immediately after giving effect thereto (including any Liens associated therewith) no Event of Default has occurred and is continuing or would result therefrom and (ii) with respect to obligations of ~~the Borrower~~a Loan Party in respect of Swap Contracts, such Swap Contracts shall be (x) entered into in order to manage existing or anticipated risk and not for speculative purposes~~.~~ or (y) (i) for the sale of Equity Interests issued by Guarantor at a future

date that could be discharged solely by (1) delivery of the Parent Guarantor's Equity Interests, or, (2) solely at Parent Guarantor's option made at any time, payment of the net cash value of such Equity Interests at the time, irrespective of the form or duration of such agreement, commitment or arrangement and (ii) not for speculative purposes.

**7.04 Fundamental Changes.**

Merge, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom, (i) any Person may merge with or into, consolidate with or amalgamate with the Borrower in a transaction in which the Borrower shall be the continuing or surviving Person, (ii) any Person (other than Parent Guarantor) may merge with or into, consolidate with or amalgamate with any Subsidiary (other than the Borrower) in a transaction in which the continuing or surviving Person shall be a Subsidiary of the Borrower, (iii) any Subsidiary of the Borrower may merge with or into, consolidate with or amalgamate with any Person in order to consummate an Investment permitted by Section 7.02 or a Disposition permitted by Section 7.05; (iv) any Subsidiary of the Borrower may merge into, the Parent Guarantor, the Borrower or any other Subsidiary of the Borrower; and (v) any Subsidiary of the Borrower may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders.

**7.05 Dispositions.**

Make any Disposition (other than any Disposition to ~~the Borrower~~any Loan Party or any Subsidiary) of all or substantially all of the assets (whether now owned or hereafter acquired, including pursuant to a Delaware LLC Division) of ~~the Borrower~~any Loan Party and its Subsidiaries, taken as a whole.

**7.06 Restricted Payments.**

Declare or make, directly or indirectly, any Restricted Payment; provided that, (i) ~~the Borrower~~(a) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment required to qualify and maintain ~~the Borrower's~~such Loan Party's qualification as a real estate investment trust under Sections 856 through 860 of the Code, and (~~ii~~b) ~~the Borrower~~each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment required to avoid the payment of federal or state income or excise tax; which permitted Restricted Payments under clauses (i)(a) and (i)(b), for the avoidance of doubt, include Restricted Payments from the Borrower to its equity holders in order for the Parent Guarantor to comply with the foregoing, (~~iii~~ii) so long as no Default shall have occurred and be continuing or would result therefrom, ~~the Borrower~~each Loan Party and each Subsidiary may purchase, redeem, retire, acquire, cancel or terminate Equity Interests issued by ~~the Borrower~~such Loan Party or such Subsidiary so long as immediately after giving effect thereto the ~~Borrower~~Parent Guarantor is in compliance on a Pro Forma Basis with the requirements of Section 7.10(e), (~~iv~~iii) so long as no Default shall have occurred and be continuing or would result therefrom, ~~the Borrower~~each Loan Party and each Subsidiary may make any payment on account of any return of capital to the ~~Borrower's~~Parent Guarantor's stockholders, partners or members (or the equivalent Person thereof), (~~v~~iv) ~~the Borrower~~each Loan Party and each Subsidiary may declare and make dividend payments, other distributions or other Restricted Payments payable solely in the ~~common stock or other common~~ Equity Interests in such Person, (~~vi~~v) any Subsidiary may at any time make Restricted Payments to the Parent Guarantor, the Borrower~~,~~ or any other Subsidiary and, solely to the extent such Restricted Payments to other holders of its Equity Interests are required by its Organization Documents, to such other holders of Equity Interests, and (~~vii) the Borrower~~vi) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment within sixty (60) days

after the date of declaration thereof, if on the date of declaration of such payment, such payment would have been permitted pursuant to another clause of this Section 7.06 and, on the date of such payment, no Default under Section 8.01(a), (f) or (g) shall have occurred and be continuing.

**7.07 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by ~~the Borrower~~each Loan Party and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.**

Enter into any transaction of any kind with any Affiliate of ~~the Borrower~~any Loan Party (other than transactions between or among ~~the Borrower~~a Loan Party and a Subsidiary (including any entity that becomes a Subsidiary as a result of such transaction) (or any combination thereof)), whether or not in the ordinary course of business, except (i) transactions on fair and reasonable terms substantially as favorable to ~~the Borrower~~such Loan Party or such Subsidiary as would be obtainable by ~~the Borrower~~such Loan Party or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (ii) payments of compensation, perquisites and fringe benefits arising out of any employment or consulting relationship in the ordinary course of business, (iii) making Restricted Payments permitted by this Agreement, (iv) payments (whether in cash, securities or other property) by any non-Wholly-Owned Subsidiary of the Borrower, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests of such Subsidiary, or on account of any return of capital to such Subsidiary's stockholders, partners or members (or the equivalent Person thereof), in any such case, made to holders of Equity Interests in such Subsidiary (x) to the extent required pursuant to such Subsidiary's Organization Documents or (y) to the extent such payment would have been permitted by Section 7.06 had it constituted a Restricted Payment, (v) other transactions expressly permitted by this Agreement, (vi) transactions with Affiliates that are Disclosed Matters (together with any amendments, restatements, extensions, replacements or other modifications thereto that are not adverse to the interests of the Lenders in their capacities as such) ~~and~~, (vii) transactions in the ordinary course of business that comply with the requirements of the North American Securities Administrators Association's Statement of Policy of Real Estate Investment Trusts and (viii) transactions between a Loan Party or Subsidiary and any "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of any Loan Party or Subsidiary.

**7.09 Burdensome Agreements.**

Enter into, assume or otherwise be bound, or permit any Wholly-Owned Subsidiary to enter into, assume or otherwise be bound, by any Negative Pledge other than (i) any Negative Pledge contained in an agreement entered into in connection with any Indebtedness that is permitted pursuant to Section 7.03, which Indebtedness is of a type that customarily includes a Negative Pledge or with respect to which such Negative Pledge is no more restrictive on ~~the Borrower~~a Loan Party or such Wholly-Owned Subsidiary in any material respect, when taken as a whole, than this Section 7.09 (as determined in good faith by the Borrower); (ii) any Negative Pledge required or imposed by, or arising under or as a result of, any Law; (iii) Negative Pledges contained in (x) the agreements set forth on Schedule 7.09 or that are Disclosed Matters; (y) any agreement relating to the Disposition of any Subsidiary or any assets pending such Disposition; provided that, in any such case, the Negative Pledge applies only to the Subsidiary or the assets that are the subject of such Disposition; or (z) any agreement in effect at the time any Person becomes a Wholly-Owned Subsidiary so long as such agreement was not entered into in contemplation of such Person becoming a Wholly-Owned Subsidiary and such restriction only applies to such Person

and/or its assets, (iv) customary restrictions in leases, licenses and other contracts restricting the assignment thereof, (v) other customary restrictions set forth in agreements relating to assets specified in such agreements and entered into in the ordinary course of business to the extent such restrictions shall solely apply to such specified assets; and (vi) restrictions that apply only to the Equity Interests in, or assets of, any Person other than ~~the Borrower~~a Loan Party or a Wholly-Owned Subsidiary, in each case as such agreements, leases or other contracts may be amended from time to time and including any renewal, extension, refinancing or replacement thereof; provided that, with respect to any agreement described in clause (iii), such amendment, renewal, extension, refinancing or replacement does not contain restrictions of the type prohibited by this Section 7.09 that are, in the aggregate, more onerous in any material respect on ~~the Borrower~~a Loan Party or any Wholly-Owned Subsidiary than the restrictions, in the aggregate, in the original agreement.

**7.10 Financial Covenants.**

(a) Leverage Ratio. Permit the Leverage Ratio to be greater than 0.60 to 1.00 as of the end of any fiscal quarter. Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the ~~Borrower~~Parent Guarantor shall be permitted to increase the maximum Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

(b) Secured Debt Ratio. Permit the Secured Debt Ratio to be greater than 0.40 to 1.00 as of the end of any fiscal quarter.

(c) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio to be less than 1.50 to 1.00 as of the end of any fiscal quarter.

(d) Unsecured Leverage Ratio. Permit the Unsecured Leverage Ratio to be greater than 0.60 to 1.00 as of the end of any fiscal quarter. Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the ~~Borrower~~Parent Guarantor shall be permitted to increase the maximum Unsecured Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Unsecured Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

(e) Consolidated Tangible Net Worth. Permit the Consolidated Tangible Net Worth to be less than $7,700,000,000 as of the end of any fiscal quarter.

**7.11 Sanctions.**

Directly or, to its knowledge, indirectly, use any part of the proceeds of any Credit Extension or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person~~,~~ (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions (except to the extent permitted for a Person required to comply with such Sanctions)~~,~~ or (ii) in any other manner that will result in a violation by any Person of Sanctions.

**7.12 Anti-Corruption Laws.**

Directly or, to its knowledge, indirectly use the proceeds of any Credit Extension for any purpose which would violate in any material respect any applicable Anti-Corruption Laws.

## ARTICLE VIII

## EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.**

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan or any L/C Obligation, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower, any other Loan Party or any of ~~its~~their respective Subsidiaries fails to perform or observe any term, covenant or agreement contained in any of (i) Section 6.03(b), 6.05 (solely with respect to the legal existence of the ~~Borrower~~Loan Parties) or 6.11 or Article VII and such failure continues for five (5) consecutive Business Days, or (ii) Section 6.03(a) or Section 6.03(d) and such failure continues for fifteen (15) consecutive Business Days; or

(c) Other Defaults. The Borrower, any Loan Party or any of ~~its~~their respective Subsidiaries fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or 8.01(b)) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) consecutive days after the receipt by the Borrower of written notice of such failure from the Administrative Agent; provided that, if such failure is of such a nature that can be cured but cannot with reasonable effort be completely cured within thirty (30) days, then such thirty (30) day period shall be extended for such additional period of time (not exceeding ninety (90) additional days) as may be reasonably necessary to cure such failure so long as ~~the Borrower~~such Loan Party or its Subsidiaries, as applicable, commence such cure within such thirty (30) day period and diligently prosecute same until completion; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of ~~the Borrower~~any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith

shall be incorrect in any material respect when made or deemed made (or, in the case of the representations and warranties in Section 5.14(b) or any representation and warranty that is qualified by materiality, shall be incorrect in any respect when made or deemed made) and, with respect to any representation, warranty, certification or statement (other than the representations and warranties in Section 5.14(b)) not known by ~~the Borrower~~such Loan Party at the time made or deemed made to be incorrect, the defect causing such representation or warranty to be incorrect when made or deemed made is not removed within thirty (30) days after the first to occur of (i) the date upon which a Responsible Officer of ~~the Borrower~~any Loan Party obtains knowledge thereof or (ii) receipt by the Borrower of written notice thereof from the Administrative Agent; or

(e) Cross-Default. (i) The Borrower, the Parent Guarantor or any of ~~its~~their respective Subsidiaries (x) fails (after giving effect to any notice or grace periods applicable thereto) to make any required payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Recourse Indebtedness or (y) fails to observe or perform any other agreement or condition relating to any such Material Recourse Indebtedness contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, with the giving of notice if required, such Material Recourse Indebtedness pursuant to the terms thereof to be demanded or to become due or to require the Borrower, the Parent Guarantor or such Subsidiary to repurchase, prepay, defease or redeem (automatically or otherwise) or make an offer to repurchase, prepay, defease or redeem such Material Recourse Indebtedness pursuant to the terms thereof, prior to its stated maturity; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which ~~the Borrower~~any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which ~~the Borrower~~any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by ~~the Borrower~~such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; provided that this clause (e) shall not apply to (1) secured Indebtedness that becomes due and payable (or as to which an offer to repurchase, prepay, defease or redeem is required to be made) as a result of the voluntary Disposition of the property or assets securing such Indebtedness, if such Disposition is permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness that has become so due and payable (including as a result of such offer to repurchase, prepay, defease or redeem such Indebtedness) is assumed or repaid in full when and to the extent required under the document providing for such Indebtedness (after giving effect to any notice or grace periods applicable thereto), (2) any redemption, repurchase, conversion or settlement with respect to any convertible debt security which is consummated in accordance with the terms of such convertible debt security, unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (3) any early payment requirement or unwinding or termination with respect to any Swap Contract (A) not arising out of a default by ~~the Borrower~~any Loan Party or any Subsidiary and (B) to the extent that such Swap Termination Value owed has been paid in full by ~~the Borrower~~any Loan Party or any of its Subsidiaries when due; or

(f) Insolvency Proceedings, Etc. ~~The Borrower~~Any Loan Party or any of its Material Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian,

conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged, undismissed or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undischarged, undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) ~~The Borrower~~Any Loan Party or any of its Material Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There is entered against ~~the Borrower~~any Loan Party or any of its Material Subsidiaries (i) a final non-appealable judgment or order that has not been discharged, satisfied, dismissed or vacated for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent (x) not paid, fully bonded or covered by independent third-party insurance as to which the insurer has not denied coverage or (y) for which ~~the Borrower~~such Loan Party or applicable Material Subsidiary has not been indemnified), or (ii) any one or more non-monetary final non-appealable judgments that have not been discharged, dismissed or vacated and that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case of clause (i) or (ii), (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of ~~the Borrower~~any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations arising under the Loan Documents, ceases to be in full force and effect; or ~~the Borrower~~any Loan Party or any of its Subsidiaries contests in writing in any manner the validity or enforceability of any material provision of any Loan Document; or ~~the Borrower~~any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports in writing to revoke, terminate or rescind any material provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control.

For purposes of clauses (f), (g), and (h) above, no Event of Default shall be deemed to have occurred with respect to a Material Group unless the type of event specified therein has occurred with respect to each Subsidiary that is a member of such Material Group.

**8.02 Remedies Upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Revolving Commitments of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Revolving Commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the ~~Borrower~~Loan Parties;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an Event of Default with respect to ~~the Borrower~~any Loan Party pursuant to Section 8.01(f) or (g) or the occurrence of an actual or deemed entry of an order for relief with respect to ~~the Borrower~~any Loan Party under the Bankruptcy Code, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

**8.03 Application of Funds.**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.17 and 2.18, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans and L/C Borrowings and fees, premiums and scheduled periodic payments, and any interest accrued thereon, due under any Swap Contract between ~~the Borrower~~any Loan Party and any Lender, or any Affiliate of a Lender, ratably among the Lenders (and, in the case of such Swap Contracts, Affiliates of Lenders) and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, payment of breakage, termination or other payments, and any interest accrued thereon, due under any Swap Contract between ~~the Borrower~~any Loan Party and any Lender, or any Affiliate of a Lender and amounts owing under Treasury Management Agreements, ratably among the Lenders (and, in the case of such Swap Contracts, Affiliates of Lenders), the Treasury Management Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03, 2.06(d) and/or 2.17; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.17, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

## ARTICLE IX

## ADMINISTRATIVE AGENT

### 9.01 Appointment and Authority.

Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as otherwise expressly set forth herein and except with respect to Section 9.06, the provisions of this Article IX are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and ~~the Borrower~~no Loan Party shall ~~not~~ have any rights as a third-party beneficiary of any of such provisions.

### 9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with ~~the Borrower~~any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders. The foregoing provisions of this Section 9.02 shall likewise apply to the Person serving as the Alternative Currency Fronting Lender.

**9.03 Exculpatory Provisions.**

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to ~~the Borrower~~any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In

determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the ~~Borrower~~Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**9.06 Resignation of Administrative Agent.**

The Administrative Agent may at any time resign as Administrative Agent upon thirty (30) days' notice to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the approval (not to be unreasonably withheld or delayed) of the Borrower (unless an Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States; provided that if any such potential successor is not classified as a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, then the Borrower shall have the right to prohibit such potential successor from becoming the Administrative Agent in its reasonable discretion. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer (and subject to the approval (not to be unreasonably withheld or delayed) of the Borrower (unless an Event of Default has occurred and is continuing)), appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if any such potential successor is not classified as a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, then the Borrower shall have the right to prohibit such potential successor from becoming the Administrative Agent in its reasonable discretion; provided, further, that, if the retiring Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security on behalf of the Lenders or the L/C Issuer until such time as a successor Administrative Agent is appointed hereunder) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor

shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as L/C Issuer and Alternative Currency Fronting Lender, unless otherwise agreed to between the Borrower and Bank of America. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Alternative Currency Fronting Lender, (b) the retiring L/C Issuer and Alternative Currency Fronting Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents as an L/C Issuer and Alternative Currency Fronting Lender, (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, issued by the retiring L/C Issuer and outstanding at the time of such succession or make other arrangement satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit and (d) the successor Alternative Currency Fronting Lender shall make arrangements with the resigning Alternative Currency Fronting Lender for the funding of all outstanding Alternative Currency Risk Participations.

**9.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Syndication Agents, Co-Documentation Agents or Senior Managing Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding under any Debtor Relief Law relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and

irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(g) and (h), 2.10 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.10 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.10 Recovery of Erroneous Payments.**

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender, whether or not in respect of an Obligation due and owing by Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender in Same Day Funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by 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. Each Lender irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender promptly upon determining that any payment made to such Lender comprised, in whole or in part, a Rescindable Amount.

## ARTICLE X

## MISCELLANEOUS

**10.01 Amendments, Etc.**

Except as set forth in Section 1.06 in respect of the addition of other currency options and the applicable interest rate with respect thereto, Section 2.02(g) in respect of Conforming Changes made pursuant to such section, Section 2.15 in respect of an extension of a Maturity Date, Section 2.16 in respect of an Incremental Term Loan Amendment or Section 3.03 in respect of the replacement of ~~USD LIBOR~~Term SOFR, SOFR or the Relevant Rate and/or Conforming Changes or other amendments or modifications made pursuant to such section, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) and the Borrower~~,~~ or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend the expiration date or increase the amount of any Revolving Commitment of any Lender (or reinstate any Revolving Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or Event of Default is not considered an extension or increase in the Revolving Commitments of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment (other than mandatory prepayments (if any) with respect to any Incremental Term Loans) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder (including pursuant to Section 2.06) or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided, however, that (i) only the consent of the Required Class Lenders shall be necessary to amend the definition of "Default Rate" with respect to such Class or to waive any obligation of the Borrower to pay interest at the Default Rate with respect to such Class, and (ii) only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay Letter of Credit Fees at the Default Rate;

(d) change Section 2.14 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(e) change any provision of this Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(f) release all or substantially all of the value of the Guaranteed Obligations of the Guarantor under the Guaranty (except as provided herein) without the written consent of each Lender;

(~~f~~g) amend, modify, or waive any provision of this Agreement or any other Loan Document affecting the rights or duties of the Alternative Currency Fronting Lender under this Agreement or any other Loan Document without the written consent of such Alternative Currency Fronting Lender;

(~~g~~h) directly and materially adversely affect the rights of Lenders holding Revolving Commitments or Loans of one Class differently from the rights of Lenders holding Revolving Commitments or Loans of any other Class without the written consent of the applicable Required Class Lenders;

(~~h~~i) the written consent of each Revolving Lender shall be required to the extent such amendment, waiver or consent shall change any provision of Section 1.06 or the definition of "Alternative Currency"; or

(~~i~~j) the written consent of the Required Lenders, and, to the extent required pursuant to clause (i) of the proviso below, the L/C Issuer, shall be required to the extent such amendment, waiver or consent shall (x) amend, waive or otherwise modify any of the conditions precedent set forth in Section 4.02 with respect to any Credit Extension under the Revolving Facility or (y) impose any greater restriction on the ability of any Revolving Lender to assign any of its rights or obligations hereunder;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) [reserved]; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) any fee letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto (and, for the avoidance of doubt, no other parties shall have any right to approve or disapprove any such amendment, waiver or consent). 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 (or all Lenders of a Class or each affected Lender of a Class) may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the 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 consent of such Defaulting Lender.

Notwithstanding anything to the contrary herein, (A) the Administrative Agent and the Borrower may, with the consent of the other (but without the consent of any other Person), amend, modify or supplement any Loan Document to correct, amend or cure any ambiguity, inconsistency, omission, mistake or defect or correct any obvious error or any error or omission of an administrative or technical nature so long as such amendment, modification or supplement does not impose additional obligations on any Lender; provided that the Administrative Agent shall promptly give the Lenders notice of, and provide to the Lenders a copy of, any such amendment, modification or supplement, and (B) this

Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Revolving Commitments of such Lender shall have terminated, and such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

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

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

In addition, notwithstanding the foregoing, the Borrower may, by written notice to the Administrative Agent from time to time, make one or more offers (each, a "Loan Modification Offer") to all the Lenders to make one or more amendments or modifications to (A) allow the maturity of the Revolving Commitments or Loans of the Accepting Lenders (as defined below) to be extended, (B) modify the Applicable Rate and/or fees payable with respect to the Loans and Revolving Commitments of the Accepting Lenders, (C) modify any covenants or other provisions or add new covenants or provisions that are agreed between the Borrower, the Administrative Agent and the Accepting Lenders; provided that such modified or new covenants and provisions are applicable only during periods after the applicable Maturity Date that is in effect on the effective date of such Permitted Amendment, and (D) any other amendment to a Loan Document required to give effect to the Permitted Amendments described in clauses (A), (B) and (C) of this paragraph ("Permitted Amendments," and any amendment to this Agreement to implement Permitted Amendments, a "Loan Modification Agreement") pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower. Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendments and (ii) the date on which such Permitted Amendments are requested to become effective. Permitted Amendments shall become effective only with respect to the Revolving Commitments and/or Loans of the Lenders that accept the applicable Loan Modification Offer (such Lenders, the "Accepting Lenders") and, in the case of any Accepting Lender, only with respect to such Lender's Revolving Commitments and/or Loans as to which such Lender's acceptance has been made. The Borrower and each Accepting Lender shall execute and deliver to the Administrative Agent a Loan Modification Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof, and the Borrower shall also deliver such resolutions, opinions and other documents as reasonably requested by the Administrative Agent. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each of the parties hereto hereby agrees that (1) upon the effectiveness of any

Loan Modification Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Permitted Amendments evidenced thereby and only with respect to the Revolving Commitments and Loans of the Accepting Lenders as to which such Lenders' acceptance has been made, (2) any applicable Lender who is not an Accepting Lender may be replaced by the Borrower in accordance with Section 10.13, and (3) the Administrative Agent and the Borrower shall be permitted to make any amendments or modifications to any Loan Documents necessary to allow any borrowings, prepayments, participations in Letters of Credit and commitment reductions to be ratable across each Class of commitments to make Loans the mechanics for which may be implemented through the applicable Loan Modification Agreement and may include technical changes related to the borrowing and repayment procedures of the Lenders; provided that with the consent of the Accepting Lenders such prepayments and commitment reductions and reductions in participations in Letters of Credit may be applied on a non-ratable basis to the class of non-Accepting Lenders.

Notwithstanding anything herein to the contrary, this Agreement may be amended in connection with Incremental Term Loans, as set forth in Section 2.16(e)(iii).

**10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.02(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party, the Administrative Agent, the L/C Issuer or Alternative Currency Fronting Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the ~~Borrower~~Loan Parties).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in Section 10.02(b) below, shall be effective as provided in such Section 10.02(b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer provided pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent, the L/C Issuer or the Borrower may each, in its discretion, agree to accept notices and other

communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice, e-mail or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to ~~the Borrower~~any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of ~~the Borrower's~~any Loan Party's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to ~~the Borrower~~any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower and any other Loan Party, the Administrative Agent, the L/C Issuer and the Alternative Currency Fronting Lender may change its address, facsimile number, telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number, telephone number or e-mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, and, in the case of Revolving Lenders, the L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to ~~the Borrower~~any Loan Party or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in accordance with Section 10.02. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.**

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against ~~the Borrower~~any Loan Party and its Subsidiaries or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Alternative Currency Fronting Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Alternative Currency Fronting Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from enforcing payments of amounts payable to such Lender pursuant to Sections 3.01, 3.04, 3.05 and 10.04 or from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.14), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to ~~the Borrower~~any Loan Party or any Subsidiary under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.14, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. ~~The Borrower~~Each Loan Party shall, jointly and severally, pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Arrangers (limited, in the case of legal fees, to the reasonable and documented fees, charges and disbursements of one primary counsel, and, if applicable, one local counsel in each material jurisdiction, for the Administrative Agent), in connection with the syndication of the credit facilities provided for

herein, due diligence, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder (subject to the limitations set forth in clause (i) above with respect to legal fees) and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent, any Lender, the L/C Issuer or the Alternative Currency Fronting Lender (limited, in the case of legal fees, to the reasonable and documented fees, charges and disbursements of (x) one primary counsel for the Administrative Agent (and, if reasonably required, one counsel for the Administrative Agent per specialty area and one local counsel for the Administrative Agent per applicable jurisdiction) and (y) one additional counsel for all the Lenders (and, if reasonably required, one additional counsel per specialty area and one local counsel per applicable jurisdiction), plus additional counsel for the Lenders as necessary in the event of an actual or potential conflict of interest among the Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable and documented out-of-pocket expenses (subject to the limitations set forth above with respect to legal fees) incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the ~~Borrower. The Borrower shall~~Loan Parties. Each Loan Party shall, jointly and severally, indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, the Agents and their Affiliates and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related reasonable and documented out-of-pocket expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of one primary counsel for the Indemnitees; provided that reimbursement for reasonable and documented out-of-pocket fees, charges and disbursements of additional counsel of the Indemnitees will be limited to such specialist counsel as may reasonably be required by the Indemnitees, a single firm of local counsel for the Indemnitees in each material jurisdiction and, in the event of an actual or potential conflict of interest (as reasonably determined by the applicable Indemnitee), one additional firm of counsel to each group of similarly affected Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by ~~the Borrower~~any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby (including, without limitation, each Lender's agreement to make Loans or the use or intended use of the proceeds thereof) or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by ~~the Borrower~~any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to ~~the Borrower~~any Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by ~~the Borrower~~any Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses (A)(x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence

or willful misconduct of such Indemnitee or any of its Related Indemnified Parties or (y) result from a claim brought by ~~the Borrower~~any Loan Party against an Indemnitee for breach in bad faith or a material breach of the obligations of such Indemnitee or any of its Related Indemnified Parties hereunder or under any other Loan Document, if ~~the Borrower~~any Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (B) arise out of a dispute solely among Indemnitees and not resulting from any act or omission by ~~the Borrower~~any Loan Party or any of its Affiliates (other than any such losses, claims, damages, penalties, liabilities or related reasonable and documented out-of-pocket expenses against an Indemnitee in its capacity or in fulfilling its role as an Agent). Notwithstanding the foregoing, Section 3.01 shall be the sole remedy for any indemnification claim in respect of Taxes. ~~The Borrower~~No Loan Party shall ~~not~~, except as a result of its indemnification obligations hereunder, and nor shall any of its Related Parties have any liability for any indirect or consequential damages (as opposed to direct or actual damages) in connection with its activities related to the Revolving Facility.

(c) Reimbursement by Lenders. To the extent that ~~the Borrower~~any Loan Party for any reason fails to indefeasibly pay any amount required under Section 10.04(a) or 10.04(b) to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing and without relieving ~~the Borrower~~such Loan Party of its obligations with respect thereto, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this Section 10.04(c) are subject to the provisions of Section 2.13(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, ~~the Borrower~~each Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee or Related Indemnified Party referred to in Section 10.04(b) 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 to the extent of such Indemnitee's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment.

(e) Payments. All amounts due under this Section 10.04 shall be payable not later than ten (10) Business Days after demand therefor (accompanied by backup documentation to the extent available).

(f) Survival. The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent, the L/C Issuer, the Alternative Currency Fronting Lender, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.**

To the extent that any payment by or on behalf of ~~the Borrower~~any Loan Party is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may ~~not~~ assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent, the L/C Issuer and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment or grant of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment(s) and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Alternative Currency Risk Participations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment(s) and/or the 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 subsection (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Commitment is not then in effect, the

principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 in the case of any assignment unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Revolving Commitments assigned;

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Person that is a Revolving Lender, an Affiliate of any Revolving Lender or an Approved Fund with respect to any Revolving Lender; 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 ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless such assignment is to a Person that is a Revolving Lender, an Affiliate of any Revolving Lender or an Approved Fund with respect to any Revolving Lender;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment of a Revolving Commitment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding);

(D) [reserved]; and

(E) the consent of the Lead Alternative Currency Fronting Lender (such consent not to be unreasonably withheld or delayed) shall be required if upon effectiveness of the applicable assignment the proposed assignee would be an Alternative Currency Participating Lender with respect to any Alternative Currency.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to the ~~Borrower~~Loan Parties. No such assignment shall be made to ~~the Borrower~~any Loan Party or any of the ~~Borrower's~~Loan Parties' Affiliates or Subsidiaries.

(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) No Assignment to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (vii).

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

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver Note(s) to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant

to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive 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, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower, the L/C Issuer and any Lender (with respect to its own interest only), 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 or the Administrative Agent, sell participations to any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person), a Defaulting Lender (or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or any of its Subsidiaries) or ~~the Borrower~~any Loan Party or any of the ~~Borrower's~~Loan Parties' 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 Commitments and/or the Loans (including such Lender's participations in L/C Obligations and its Alternative Currency Risk Participations under the Revolving Facility) 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 Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b); provided that such Participant agrees to be subject to the provisions of Sections 3.01, 3.04, 3.05, 3.06 and 10.13 and any requirements or limitations contained therein as if it were an assignee under subsection (b) of this Section. 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 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.14 as though it were a Lender.

Each Lender that sells a participation 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) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

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

(g) [Reserved].

(h) Resignation as L/C Issuer or Alternative Currency Fronting Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty (30) days' notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrower, resign as Alternative Currency Fronting Lender. In the event of any such resignation or any other Person's resignation as L/C Issuer or Alternative Currency Fronting Lender, the Borrower shall be entitled to appoint from among the Revolving Lenders (with the applicable Revolving Lender's consent) a successor L/C Issuer or Alternative Currency Fronting Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Alternative Currency Fronting Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Revolving Lenders to make Base Rate Committed Revolving Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(b)). If the Alternative Currency Fronting Lender resigns as Alternative Currency Fronting Lender, it shall retain all the rights and obligations of the Alternative Currency Fronting Lender hereunder with respect to all Alternative Currency Risk Participations outstanding as of the effective date of its resignation as the Alternative Currency Fronting Lender and all obligations of the Borrower or any other Revolving Lender with respect thereto (including the right to require Alternative Currency Participating Lenders to fund any Alternative Currency Risk Participations therein in the manner provided in Section 2.02(f)). Upon the appointment of a successor L/C Issuer and/or Alternative Currency Fronting Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Alternative Currency Fronting Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, issued by the resigning L/C Issuer and outstanding at the time of such succession or make other arrangements reasonably satisfactory to Bank of America to effectively assume the obligations of the resigning L/C Issuer with respect to such Letters of Credit.

**10.07 Treatment of Certain Information; Confidentiality.**

Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need-to-know basis to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors, consultants, service providers and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any governmental agency or regulatory authority purporting to have jurisdiction over it or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section 10.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 10.07 or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower that the Administrative Agent, any such Lender or the L/C Issuer reasonably believes is not bound by a duty of confidentiality to the Borrower, (i) to any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder (provided such rating agencies are advised of the confidential nature of such information and agree to keep such information confidential) or (j) to any Person that would qualify as an Eligible Assignee hereunder (without giving effect to the consent required under Section 10.06(b)(iii)) providing financing to the disclosing Lender, to the extent reasonably required by such Person (provided such other Persons are advised of the confidential nature of such information and agree to keep such information confidential). In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and customary information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Revolving Commitments.

For purposes of this Section 10.07, "Information" means all information received from or on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary; provided that, in the case of information received from the Borrower or any Subsidiary 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 10.07 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 or its other similarly situated customers' confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning ~~the Borrower~~any Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08 Right of Setoff.**

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the ~~Borrower~~applicable Loan Party against any and all of the Obligations of ~~the Borrower~~such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of ~~the Borrower~~such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.18 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 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. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page

of this Agreement by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**10.12 Severability.**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent or the L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.**

If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if any Lender does not consent to any amendment or waiver of any provision hereof or of any other Loan Document for which its consent is required under Section 10.01 after Required Lenders or applicable Required Class Lenders have consented thereto, 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 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the assignment fee specified in Section 10.06(b) shall have been paid to or waived by the Administrative Agent;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, funded Alternative Currency Risk Participations and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

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 party hereto agrees that (i) an assignment required pursuant to this Section 10.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender; provided, further, that any such documents shall be without recourse to or warranty by the parties thereto.

**10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF

VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.14(b). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial.**

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.15.**

**10.16 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrower and each other Loan Party, on the one hand, and the Administrative Agent, the Lenders and the Arrangers, on the other hand, (B) the Borrower and each other Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) 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 and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any other Loan Party or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Lender nor any Arranger has any obligation to the Borrower or any other Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lenders and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and each other Loan Party and its Affiliates, and neither the Administrative Agent, any Lender nor any Arranger has any obligation to disclose any of such interests to the Borrower or any other Loan Party or its Affiliates. To the fullest extent permitted by law, the Borrower and each other Loan

Party hereby waives and releases any claims that it may have against the Administrative Agent, the Lenders and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 USA Patriot Act and Beneficial Ownership Regulation Notice.**

Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and each other Loan Party that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act") and the Beneficial Ownership Regulation, as applicable, it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act and the Beneficial Ownership Regulation, as applicable.

**10.18 Delivery of Signature Page.**

Each Lender to become a party to this Agreement on the date hereof shall do so by delivering to the Administrative Agent a counterpart of this Agreement duly executed by such Lender.

**10.19 Judgment Currency.**

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or such other Loan Party (or to any other Person who may be entitled thereto under applicable law). All of the Borrower's and each other Loan Party's obligations under this Section 10.19 shall survive termination of the Aggregate Revolving Commitments and repayment of all other Obligations hereunder.

**10.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.**

Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that

any liability of any Lender or L/C Issuer that is an Affected 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 the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an Affected 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 Affected 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 the applicable Resolution Authority.

**10.21 Electronic Execution of Assignments and Certain Other Documents**.

The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, and waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

**10.22 No Novation**.

(a) As of the Closing Date, the Revolving Commitments under (and as defined) in the Existing Credit Agreement of the Departing Lenders shall be terminated by the Borrower. The remaining Lenders under (and as defined in) the Existing Credit Agreement shall be Lenders under this Agreement with Revolving Commitments as set forth on Schedule 2.01 hereto. By its execution and delivery of this Agreement, each Lender that was a Lender under (and as defined in) the Existing Credit Agreement hereby consents to the execution and delivery of this Agreement and to the non-pro rata reduction of Revolving Commitments under (and as defined in) the Existing Credit Agreement occurring on the Closing Date as a result of the termination of the Revolving Commitments of the Departing Lenders, and the concurrent repayment in full of all loans and other obligations owing (whether or not due) to the Departing Lenders. On the Closing Date, effective immediately following such termination and repayment, the Existing Credit Agreement shall be amended, restated and superseded in its entirety by

this Agreement. This Agreement amends, restates and supersedes the Existing Credit Agreement in its entirety and is not intended to be or operate as a novation or an accord and satisfaction of the Existing Credit Agreement or the obligations evidenced thereby or provided for thereunder. Without limiting the generality of the foregoing, (i) all Existing Letters of Credit shall on the Closing Date become Letters of Credit hereunder, (ii) the "Loans" under (and as defined in) the Existing Credit Agreement of each applicable Departing Lender shall be repaid in full (provided that any accrued and unpaid interest and fees thereon shall be paid to such Departing Lender concurrently with payment of such interest and fees to the other applicable Lenders and such "Loans" under (and as defined in) the Existing Credit Agreement shall be assigned and reallocated among the remaining Lenders as set forth below), each applicable Departing Lender's "Revolving Commitment" under the Existing Credit Agreement shall be terminated and each applicable Departing Lender shall not be a Lender hereunder, (iii) the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Lender's credit and loan exposure under the Existing Credit Agreement as are necessary in order that each such Lender's outstanding Loans and Revolving Commitments hereunder reflect such Lender's pro rata share of the outstanding aggregate Loans and Revolving Commitments on the Closing Date, and (iv) all other Obligations outstanding under the Existing Credit Agreement shall on the Closing Date be Obligations under this Agreement (to the extent not repaid on the Closing Date). To the extent the Existing Credit Agreement provides that certain terms survive the termination of the Existing Credit Agreement or survive the payment in full of principal, interest and all other amounts payable thereunder, then such terms shall survive the amendment and restatement of the Existing Credit Agreement.

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

(c) On the Closing Date, the Existing Revolving Note, if any, held by each Departing Lender shall be deemed to be cancelled. On the Closing Date, the Existing Revolving Note, if any, held by each Revolving Lender shall be deemed to be cancelled and, if such Revolving Lender has requested a Revolving Note hereunder, amended and restated by the Revolving Note delivered to such Lender hereunder on or about the Closing Date (regardless of whether any Revolving Lender shall have delivered to the Borrower for cancellation the Existing Revolving Note held by it). Each Revolving Lender, whether or not requesting a Revolving Note hereunder, shall use its commercially reasonable efforts to deliver the Existing Revolving Note held by it to the Borrower for cancellation and/or amendment and restatement. All amounts owing under, and evidenced by, the Existing Revolving Notes as of the Closing Date shall continue to be outstanding hereunder (subject to such reallocations, sales, assignments or other relevant actions in respect of each Lender's credit and loan exposure under the Existing Credit Agreement as referred to in Section 10.22(a)(iii)), and shall from and after the Closing Date, if requested by the Revolving Lender holding such Existing Revolving Note, be evidenced by the Revolving Notes, and shall in any event be evidenced by, and governed by the terms of, this Agreement. Each Revolving Lender hereby agrees to indemnify and hold harmless the Borrower from and against any and all liabilities, losses, damages, actions or claims that may be imposed on, incurred by or asserted against the Borrower arising out of such Revolving Lender's failure to deliver the Existing Revolving Note held by it to the Borrower for cancellation, subject to the condition that the Borrower shall not make any payment to any Person claiming to be the holder of such Existing Revolving Note unless such Revolving Lender is first notified of such claim and is given the opportunity, at such Revolving Lender's sole cost and expense, to assert any defenses to such payment.

(d) Notwithstanding anything to the contrary herein or in the Existing Credit Agreement, each lender party to the Existing Credit Agreement hereby waives any compensation pursuant to Section 3.05 of the Existing Credit Agreement in connection with any reallocations, sales, assignments or other

relevant actions in respect of any credit and loan exposure under the Existing Credit Agreement as referred to in Section 10.22(a)(iii) or any other payment or prepayment of Obligations on the Closing Date.

**10.23 Lender Representations**.

(a) Each Lender (x) represents and warrants, as of the Closing Date or such later date such Person became a Lender party hereto, to, and (y) covenants, from the Closing Date or such later 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 and the Arrangers and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of ~~the Borrower~~any 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 Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments or this Agreement,

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

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Revolving Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving 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 either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the Closing Date or such later date such Person became a Lender party hereto, to, and (y) covenants, from the Closing Date or such later 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 and the Arrangers and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of ~~the Borrower~~any Loan Party, that none of the Administrative Agent or the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender

involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent or the Arrangers under this Agreement, any Loan Document or any documents related hereto or thereto).

**10.24 Acknowledgement Regarding Any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support," and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.24, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

## ARTICLE XI

## CONTINUING GUARANTY

### 11.01 Guaranty.

The Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Obligations (for the Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that (a) the Guaranteed Obligations of the Guarantor shall exclude any Excluded Swap Obligations with respect to the Guarantor and (b) the liability of the Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable Law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon the Guarantor, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of the Guarantor, or any of them, under this Guaranty, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than a defense as to the payment in full of the Guaranteed Obligations).

### 11.02 Rights of Lenders.

The Guarantor consents and agrees that the Administrative Agent, the L/C Issuer and each the other Lenders may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer or any of the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, the Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of the Guarantor.

### 11.03 Certain Waivers.

The Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower, or the cessation from any cause whatsoever (including any act or omission of the Administrative Agent, the L/C Issuer or any other Lender) of the liability of the Borrower (other than as to the payment in full of the Guaranteed Obligations); (b) any defense based on any claim that the

Guarantor's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting the Guarantor's liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of the Administrative Agent, the L/C Issuer or any other Lender whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by the Administrative Agent, the L/C Issuer or any other Lender; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties (other than as to the payment in full of the Guaranteed Obligations). The Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

**11.04 Obligations Independent.**

The obligations of the Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against the Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

**11.05 Subrogation.**

The Guarantor shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations have been paid in full in cash (other than contingent Obligations that are not then due and payable) and the Revolving Commitments are terminated. If any amounts are paid to the Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Administrative Agent, the L/C Issuer and the other Lenders and shall forthwith be paid to the Administrative Agent, the L/C Issuer and the other Lenders to reduce the amount of the Obligations, whether matured or unmatured.

**11.06 Termination; Reinstatement.**

This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the earlier of (i) the Maturity Date and (ii) the release of the Guarantor pursuant to Section 10.01(f). Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or the Guarantor is made, or any of the Administrative Agent, the L/C Issuer or the other Lenders exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Administrative Agent, the L/C Issuer or the other Lenders in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Administrative Agent, the L/C Issuer or the other Lenders are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Guarantor under this Section 11.06 shall survive termination of this Guaranty.

**11.07 Stay of Acceleration.**

If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against the Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by the Guarantor immediately upon demand by the Administrative Agent or the Lenders.

**11.08 Condition of Borrower.**

The Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower such information concerning the financial condition, business and operations of the Borrower as the Guarantor requires, and that none of the Administrative Agent, the L/C Issuer or any other Lender has any duty, and the Guarantor is not relying on the Administrative Agent, the L/C Issuer or any other Lender at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower (the Guarantor waiving any duty on the part of the Administrative Agent, the L/C Issuer or any other Lender to disclose such information and any defense relating to the failure to provide the same).

**11.09 Appointment of Borrower.**

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Loan Party.

**11.10 [Reserved].**

**11.11 Keepwell.**

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Loan Party with respect to such Swap Obligation as may be needed by such Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article XI voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 11.11 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 11.11 to constitute, and this Section 11.11 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

**[Remainder of Page Intentionally Left Blank]**

**SCHEDULE 10.02**

**ADMINISTRATIVE AGENT'S OFFICE;**
**CERTAIN ADDRESSES FOR NOTICES**

**BORROWER:**

Healthpeak OP, LLC
c/o Healthpeak Properties, Inc.
~~5050~~4600 South Syracuse Street, Suite ~~800~~500
Denver, CO 80237
Attention: Legal Department
Telephone No.: (720) 428-5050
Electronic Mail: legaldept@healthpeak.com
Website Address: www.healthpeak.com
U.S. Taxpayer Identification Number: 33-0091377

*With a copy to*:
Healthpeak OP, LLC
c/o Healthpeak Properties, Inc.
~~5050~~4600 South Syracuse Street, Suite ~~800~~500
Denver, CO 80237
Attention: Treasurer
Telephone No.: (720) 428-5050
Electronic Mail: treasury@healthpeak.com

**PARENT GUARANTOR:**

Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Legal Department
Telephone No.: (720) 428-5050
Electronic Mail: legaldept@healthpeak.com
Website Address: www.healthpeak.com
U.S. Taxpayer Identification Number: N/A

*With a copy to:*
Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Treasurer
Telephone No.: (720) 428-5050
Electronic Mail: treasury@healthpeak.com

**ADMINISTRATIVE AGENT:**

*Administrative Agent's Office*
*(for payments and Requests for Credit Extensions):*
Bank of America, N.A.
900 W. Trade Street, Gateway Village, 900 Building
Mail Code: NC1-026-06-04
Charlotte, NC 28255
Attention: Melanie Brichant
Telephone No.: 980-386-4828
Facsimile No.: 704-409-0550
Electronic Mail: melanie.brichant@~~baml~~bofa.com

Bank of America, N.A.
New York, NY
Account No. (for Dollars): 1366072250600
ABA# 026009593
Attn: Credit Services
Ref: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

Bank of America Canada
Account No. (for Canadian Dollars): 711465090227
Swift Address: BOFACATT
Attn: Bank of America, N.A.
Ref: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

Bank of America Australia
Account No. (for Australian Dollars): 520195687018
Swift Address: BOFAAUSX
Attn: Bank of America, N.A.
Ref: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

Bank of America, N.A.
Account No. (for Swiss Francs): CH6308726000095687013
Swift Address: BOFACH2X
Attn: Bank of America, N.A.
Ref: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

Bank of America London
Account No. (for Euro): GB89BOFA16505095687029
Swift Address: BOFA GB22
Attn: Bank of America, N.A.
Ref: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

Bank of America London
Account No. (for Sterling): GB90BOFA16505095687011
Swift Address: BOFA GB22
Attn: Bank of America, N.A.
Ref: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

Bank of America Tokyo
Account No. (for Yen): 606495687013
Swift Address: BOFAJPJX
Attn: Bank of America, N.A.
Ref: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

*Other Notices as Administrative Agent:*
Bank of America, N.A.
555 California Street
Mail Code: ~~CA5-705-04-09~~CA5-705-06-35
San Francisco, CA 94104
Attention: Liliana Claar
Telephone No.: 415-436-2770
Facsimile No.: 415-503-5003
Electronic Mail: liliana.claar@~~baml~~bofa.com

*With a copy to:*

Bank of America, N.A.
620 South Tryon Street
Mail Code: ~~NC1-030-25-02~~NC1-030-24-02
Charlotte, NC 28255
Attention: Darren Merten
Telephone No.: 980-683-6722
Electronic Mail: darren.merten@bofa.com

**L/C ISSUER:**

Bank of America, N.A.
Trade Operations
1 Fleet Way
PA6-580-02-30
Scranton, PA 18507
Telephone No.: 570-496-9621
Facsimile No.: 800-755-8743
Electronic Mail: Scranton_standby_lc@bankofamerica.com

JPMorgan Chase Bank, N.A.
10420 Highland Manor Dr. 4th Floor
Tampa, FL 33610
Attention: Standby LC Unit
Telephone No.: 800-364-1969
Facsimile No.: 856-294-5267
Electronic Mail: gts.ib.standby@jpmchase.com; NA.CPG@jpmorgan.com;
josemon.varghese@jpmorgan.com

*With a copy to:*

JPMorgan Chase Bank N.A.
Chiara Carter

383 Madison Avenue, Floor 24
New York, NY, 10179
Electronic Mail: chiara.w.carter@jpmorgan.com

Wells Fargo Bank, N.A.
US Trade Services - Standby Letters of Credit
401 N. Research Pkwy
Floor 01
MAC D4004-017
Winston-Salem, NC 27101-4157
Attention: Sharon Peace
Telephone No.: 336-735-3245
Electronic mail: sharon.peace@wellsfargo.com

**ALTERNATIVE CURRENCY FRONTING LENDER:**

Bank of America, N.A.
900 W. Trade Street, Gateway Village, 900 Building
Mail Code: NC1-026-06-04
Charlotte, NC 28255
Attention: Melanie Brichant
Telephone No.: 980-386-4828
Facsimile No.: 704-409-0550
Electronic Mail: melanie.brichant@~~baml~~bofa.com

**EXHIBIT A**

**FORM OF COMMITTED LOAN NOTICE**

Date:_____, ___

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ~~(the "Borrower")~~, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The undersigned hereby requests (select one):

- A Borrowing of Committed Revolving Loans
- A conversion or continuation of Committed Revolving Loans

1. On _____ (a Business Day).

2. In a principal amount the Dollar Equivalent of which is $_____.

3. Comprised of the following Type of Loans: [Base Rate Loans][1][~~Eurocurrency~~Daily SOFR Loan][Term SOFR Loans][Alternative Currency Term Rate Loans] [~~LIBOR Daily Loans~~][Alternative Currency Daily Rate Loans][2].

4. For Term SOFR Loans: with an Interest Period of [one] [three] [six] month(s).

~~4~~5. For ~~Eurocurrency Rate Loans~~Alternative Currency Term Rates Loan (other than Loans denominated in Canadian Dollars): with an Interest Period of [~~[~~one] [three] [six] ~~[twelve][_____][3]months]~~month(s).

~~5~~6. For ~~Eurocurrency~~Alternative Currency Term Rate Loans denominated in Canadian Dollars: with an Interest Period of [~~[~~one] [two] [three] ~~months]~~month(s).

~~6~~7. In the following currency: _____.

[1] Base Rate Loans are only available for Committed Revolving Loans in Dollars.

~~[2] LIBOR Daily Loans are only available for Committed Revolving Loans in Dollars.~~

~~[3] An Interest Period of twelve months or less (other than a one, three or six-month period) must be agreed to by all Revolving Lenders providing such Eurocurrency Rate Loan.~~

The Committed Borrowing, if any, requested herein complies with the provisos to the third sentence of Section 2.01 of the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Committed Loan Notice as of the date first written above.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By:_____
Name:
Title:

**EXHIBIT B**

**[RESERVED]**

**EXHIBIT C**

**FORM OF NEGOTIATED RATE LOAN NOTICE**

Date:_____, ___

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ~~(the "Borrower")~~, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The undersigned hereby provides notice of a Negotiated Rate Loan:

1. On _____ (a Business Day).

2. In the amount the Dollar Equivalent of which is $_____.

3. In the following currency: _____.

4. From _____ (Lender(s)).[1]

5. Maturing on _____.[2]

6. Interest Rate: _____.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By:_____
Name:
Title:

[1] Specify the principal amount of Negotiated Rate Loans for each Lender.

[2] Such maturity date may not occur after the Revolving Maturity Date.

**[LENDER(S)]**

By:_____
Name:
Title:

**EXHIBIT D**

**FORM OF REVOLVING NOTE**

Date:_____, ___

FOR VALUE RECEIVED, the undersigned, HEALTHPEAK ~~PROPERTIES~~OP, ~~INC.~~LLC, a Maryland ~~corporation~~limited liability company (the "Borrower"), hereby promises to pay to [____] or its registered assigns (the "Lender"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Revolving Loan from time to time made by the Lender to the Borrower under that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among the Borrower, HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The Borrower promises to pay interest on the unpaid principal amount of each Revolving Loan owed to the Lender from the date of such Revolving Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All such payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in the currency in which such Committed Revolving Loan was denominated and in Same Day Funds at the Administrative Agent's Office for such currency. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand in accordance with the terms of the Credit Agreement, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Revolving Note is one of the Revolving Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Revolving Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement. Revolving Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Revolving Note and endorse thereon the date, amount, currency and maturity of its Revolving Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Revolving Note.

[Signature Page Follows]

THIS REVOLVING NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By:_____
Name:
Title:

**REVOLVING LOANS AND PAYMENTS WITH RESPECT THERETO**

| Date | Type of Revolving Loan Made | Currency and Amount of Revolving Loan Made | End of Interest Period | Amount of Principal or Interest Paid This Date | Outstanding Principal Balance This Date | Notation Made By |
|---|---|---|---|---|---|---|
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**EXHIBIT E**

**FORM OF COMPLIANCE CERTIFICATE**

For the Fiscal Quarter/Fiscal Year ended:_____ (the "Statement Date")

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation (~~the~~ "~~Borrower~~Parent Guarantor"), the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The Borrower hereby certifies as of the date hereof that the Responsible Officer executing this Compliance Certificate is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to the Administrative Agent on ~~the~~ behalf of the Borrower, and not in an individual capacity, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. The Borrower has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of the ~~Borrower~~Parent Guarantor ended as of the above referenced Statement Date, together with the report and opinion of an independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. The Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of the ~~Borrower~~Parent Guarantor ended as of the above referenced Statement Date. Such financial statements fairly present the consolidated financial condition of the ~~Borrower and its Subsidiaries~~Group as at such Statement Date and their results of operations for such period in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

2. A review of the activities of the ~~Borrower~~Loan Parties during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period covered by such financial statements the ~~Borrower~~Loan Parties performed and observed all ~~its~~their respective Obligations under the Loan Documents, and

***[select one:]***

[to the best knowledge of the undersigned during such fiscal period, no Default has occurred and is continuing as of the date hereof.]

***-or-***

[the following is a list of each such Default and its nature and status:]

3. The financial covenant analyses and information set forth on Schedule 1 and Annex 1 attached hereto are true and accurate on and as of the Statement Date referred to thereon.

[4. As of December 31 of the calendar year of the ~~Borrower~~Parent Guarantor most recently ended prior to the delivery of this Compliance Certificate to the Administrative Agent (such year, the "Specified Test Year"), the Sustainability Metric for the Specified Test Year [satisfied the Level [1][2] Sustainability Metric Election Threshold][did not satisfy either level of the Sustainability Metric Election Threshold].

5. The analyses and information set forth on Schedule 2 attached hereto are true and accurate as of December 31 of the Specified Test Year (using the Rolling Base Year Methodology).

6. The Borrower hereby elects that the Applicable Rate be based on the Sustainability Metric Pricing Grid, to be effective commencing on the date that is five (5) Business Days following the date this Compliance Certificate has been delivered to the Administrative Agent.

7. [Attached hereto is a copy of the Sustainability Metric Report for the Specified Test Year.][The Sustainability Metric Report for the Specified Test Year has been published at the following Internet or intranet website to which each Revolving Lender and the Administrative Agent has or has been granted access free of charge: _____.]][3]

[Signature Page Follows]

[3] Certifications with respect to the Sustainability Metric to be included at the Borrower's election.

*IN WITNESS WHEREOF,* the undersigned has executed this Compliance Certificate as of _____, 202__.

_____
Name:
Title:

**SCHEDULE 1**
to the Compliance Certificate
($ in 000's)

For the Fiscal Quarter/Fiscal Year ended_____ ("Statement Date")

**I. Section 7.10(a) — Leverage Ratio.**

A. Enterprise Total Indebtedness on the Statement Date:

1. Indebtedness of ~~Borrower and its Subsidiaries~~the Group on a consolidated basis outstanding on ~~such date~~the Statement Date: $_____

2. Borrower's Pro Rata Share of Indebtedness of each Material Joint Venture outstanding on ~~such date~~the Statement Date: $_____

3. Enterprise Total Indebtedness (Line I.A.1 plus Line I.A.2 (without duplication))[4]: $_____

B. Enterprise Gross Asset Value on the Statement Date:

1. Gross Asset Value of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis: $_____

2. Borrower's Pro Rata Share of Gross Asset Value of each Material Joint Venture: $_____

3. Enterprise Gross Asset Value on the Statement Date (Line I.B.1 + Line I.B.2 (without duplication)):[5] $_____

C. Leverage Ratio (Line I.A.3 ÷ Line I.B.3): ____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.60 to 1.00

[4] For purposes of calculating the Leverage Ratio, (x) Line I.A.1. shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of the ~~Borrower and its Subsidiaries~~Group and (ii) escrow and other deposits to the extent available on ~~such date~~the Statement Date for the repayment of any of the Indebtedness included in the calculation of Line I.A.1. up to an amount in the aggregate for this clause (x) not to exceed the aggregate amount of Indebtedness reflected in Line I.A.1. maturing in the immediately succeeding 24 months and (y) Line 1.A.2. shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of each such applicable Material Joint Venture and (ii) escrow and other deposits to the extent available on ~~such date~~the Statement Date for the repayment of any of the Indebtedness included in the calculation of Line 1.A.2. up to an amount in the aggregate for this clause (y) not to exceed the aggregate amount of Indebtedness reflected in Line 1.A.2. maturing in the immediately succeeding 24 months. Enterprise Total Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

[5] Enterprise Gross Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents deducted in the calculation of Enterprise Total Indebtedness pursuant to the immediately preceding footnote.

Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the ~~Borrower~~Parent Guarantor shall be permitted to increase the maximum Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

**II. Section 7.10(b) — Secured Debt Ratio.**

A. Enterprise Secured Debt outstanding on the Statement Date:[6] $_____

B. Enterprise Gross Asset Value on the Statement Date (Line I.B.3): $_____

C. Secured Debt Ratio (Line II.A ÷ Line II.B): [7] ____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.40 to 1.00

**III. Section 7.10(c) — Fixed Charge Coverage Ratio.**

A. Enterprise EBITDA for the ~~twelve month~~twelve-month period ~~ending~~ended on the Statement Date (See Annex 1):

1. EBITDA of the ~~Borrower and its Subsidiaries on a~~ Group on a consolidated basis (From Annex 1): $_____

2. Borrower's Pro Rata Share of EBITDA of each Material Joint Venture (From Annex 1): $_____

3. Enterprise EBITDA (Line III.A.1 + Line III.A.2 (without ~~3.~~ duplication)): $_____

B. Enterprise Fixed Charges for the ~~twelve month~~twelve-month period ~~ending~~ended on the Statement Date:

1. Enterprise Interest Expense paid in cash during such period:

[6] Enterprise Secured Debt shall not include the Obligations under the Agreement and under the other Loan Documents solely as a result of any security interest granted to the Administrative Agent or any L/C Issuer, solely in any Cash Collateral or any account or other property, including proceeds thereof, established for the purpose of securing obligations in respect of Letters of Credit, exchange rate fluctuations or otherwise to the extent required pursuant to any of the cash collateralization provisions thereof.

[7] For purposes of calculating the Secured Debt Ratio, the aggregate amount of all unrestricted cash and cash equivalents on ~~such date~~the Statement Date deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Unsecured Leverage Ratio as of the Statement Date.

a. Interest Expense of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis: $_____

b. Borrower's Pro Rata Share of Interest Expense of each Material Joint Venture: $_____

c. Enterprise Interest Expense (Line III.B.1.a + Line III.B.1.b (without duplication)): $_____

2. Scheduled Principal Payments during such period: $_____

a. Regularly scheduled principal payments by the Parent ~~a. Borrower~~ Guarantor and its Subsidiaries with respect to Indebtedness of ~~the Borrower and its Subsidiaries (other than~~ the Parent Guarantor and its Subsidiaries (other than payments due at final maturity of any tranche of Indebtedness): $_____

b. Borrower's Pro Rata Share of all regularly scheduled principal payments with respect to the Indebtedness (other than payments due at final maturity of any tranche of Indebtedness) of each Material Joint Venture: $_____

c. Scheduled Principal Payments (Line III.B.2.a + Line III.B.2.b (without duplication)):[8] $_____

3. Cash dividends and distributions during such period in respect of preferred stock of the ~~Borrower and its Subsidiaries~~Group (excluding (i) redemption payments or ~~3.~~ charges in connection with the redemption of preferred stock and ~~(ii) amounts paid to the Borrower or any of its Subsidiaries):~~(ii) amounts paid to the Parent Guarantor, the Borrower o $_____

4. Enterprise Fixed Charges (Line III.B.1.c + Line III.B.2.c + Line III.B.3 (without duplication))[9]: $_____

C. Fixed Charge Coverage Ratio (Line III.A.3 ÷ Line III.B.4): ____ to 1.00

*Minimum requirement as of the end of any fiscal quarter:* 1.50 to 1.00

[8] For purposes of determining Scheduled Principal Payments, Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

[9] Enterprise Fixed Charges shall not include (i) any amounts with respect to any Intercompany Indebtedness, (ii) gains and losses from unwinding or break-funding of Swap Contracts, (iii) write-offs of unamortized deferred financing fees, (iv) prepayment fees, premiums and penalties, and (v) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

**IV. Section 7.10(d) — Unsecured Leverage Ratio.**

A. Enterprise Unsecured Debt outstanding on the Statement Date: $_____

B. Enterprise Unencumbered Asset Value on the Statement Date:

1. Unencumbered Asset Value of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis: ~~1.~~ $_____

2. The Borrower's Pro Rata Share of Unencumbered Asset Value of each Material Joint Venture: $_____

3. Enterprise Unencumbered Asset Value (Line IV.B.1 + Line IV.B.2 (without duplication)): $_____

C. Unsecured Leverage Ratio (Line IV.A ÷ Line IV.B.3): [10] ____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.60 to 1.00

Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the ~~Borrower~~Parent Guarantor shall be permitted to increase the maximum Unsecured Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Unsecured Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

**V. Section 7.10(e) — Consolidated Tangible Net Worth.**

A. Consolidated Tangible Net Worth on the Statement Date

1. Consolidated Shareholders' Equity: $_____

2. Accumulated depreciation and amortization, determined ~~2. Accumulated depreciation and amortization of the Borrower and its Subsidiaries, determined~~ on a consolidated basis in accordance with GAAP: $_____

3. Consolidated Intangible Assets: $_____

[10] For purposes of calculating the Unsecured Leverage Ratio, the aggregate amount of all unrestricted cash and cash equivalents on ~~such date~~the Statement Date deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Secured Debt Ratio as of the Statement Date.

4. Consolidated Tangible Net Worth (Line V.A.1 plus Line V.A.2 minus Line V.A.3): $_____

*Minimum required as of the end of any fiscal quarter:* $7,700,000,000

**ANNEX 1**
to the Compliance Certificate

For the Fiscal Quarter/Fiscal Year ended_____, _____

**EBITDA of ~~Borrower and its Subsidiaries~~the Group on a consolidated basis**

| **EBITDA of ~~Borrower and its Subsidiaries~~the Group** | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended | Year Ended |
|---|---|---|---|---|---|
| Net Income (without duplication) | | | | | |
| + Interest Expense of the ~~Borrower and its Subsidiaries~~Group | | | | | |
| + provision for taxes on or measured by income (whether or not payable during such period) | | | | | |
| + depreciation and amortization expense | | | | | |
| + non-cash expenses | | | | | |
| - items increasing Net Income which do not represent a cash receipt | | | | | |
| - any addition to EBITDA under "provision for taxes on or measured by income" above taken or payable during such period to the extent added to EBITDA in any prior or future period | | | | | |
| = EBITDA of ~~Borrower and Subsidiaries~~the Group on a consolidated basis | | | | | |

**Borrower's Pro Rata Share of EBITDA of Material Joint Ventures**

| **Borrower's Pro Rata Share of EBITDA of Material Joint Ventures** | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended | Year Ended |
|---|---|---|---|---|---|
| Net Income (without duplication) | | | | | |
| + Borrower's Pro Rata Share of Interest Expense of | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Material Joint Ventures | | | | | |
| + provision for taxes on or measured by income (whether or not payable during such period) | | | | | |
| + depreciation and amortization expense | | | | | |
| + non-cash expenses | | | | | |
| - items increasing Net Income which do not represent a cash receipt | | | | | |
| - any addition to EBITDA under "provision for taxes on or measured by income" above taken or payable during such period to the extent added to EBITDA in any prior or future period | | | | | |
| = Borrower's Pro Rata Share of EBITDA of Material Joint Ventures | | | | | |

**Schedule 2**
to the Compliance Certificate

For the calendar year ended: December 31, _____[11] (such year, the "Specified Test Year")

**I. Rolling Base Year Percentage* for (x) the Specified Test Year and (y) in the case of a Specified Test Year ended after December 31, 2021, each preceding calendar year ended on or after December 31, 2021.[12]**

**A. Rolling Base Year Percentage for calendar year ended December 31, 2021 (percentage change** of Line I.A.1. relative to Line I.A.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2020: _____ $tCO_2e$

**B. Rolling Base Year Percentage for calendar year ended December 31, 2022 (percentage change** of Line I.B.1. relative to Line I.B.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

**C. Rolling Base Year Percentage for calendar year ended December 31, 2023 (percentage change** of Line I.C.1. relative to Line I.C.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

**D. Rolling Base Year Percentage for calendar year ended December 31, 2024 (percentage change** of Line I.D.1. relative to Line I.D.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

[11] To be the calendar year most recently ended.

[12] Delete the rows for any calendar year ending after the Specified Test Year or leave such rows blank.

**E. Rolling Base Year Percentage for calendar year ended December 31, 2025 (percentage change** of Line I.E.1. relative to Line I.E.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

**F. Rolling Base Year Percentage for calendar year ended December 31, 2026 (percentage change** of Line I.F.1. relative to Line I.F.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

*The Rolling Base Year Percentage for a particular calendar year has been determined and calculated using the Rolling Base Year Methodology, which means that the Sustainability Metric Components for that particular calendar year have been compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of that particular calendar year.

**For the avoidance of doubt, such percentage change for a particular calendar year is expressed as a negative percentage in the event the Sustainability Metric Components for such calendar year are less than the Sustainability Metric Components for the immediately preceding calendar year.

## II. Sustainability Metric & Sustainability Metric Election Threshold for the Specified Test Year.

**A.** Sustainability Metric for the Specified Test Year (which shall equal either: (i) in the case of the Specified Test Year ended December 31, 2021, the Rolling Base Year Percentage for such Specified Test Year (Line I.A.) or (ii) in the case of a Specified Test Year ending after December 31, 2021, the sum of (x) the Rolling Base Year Percentage for such Specified Test Year (see Part I above) and (y) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021 (see Part I above)): _____%

**B.** Level 2 Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement):

_____%[13]

**C.** Level 1 Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement):

_____%[14]

**D.** Does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Level 2 Sustainability Metric Election Threshold (Line II.B.)? _____ (*Yes/No*)

**E.** If Line II.D. is "No", does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Level 1 Sustainability Metric Election Threshold (Line II.C.)? _____ (*Yes/No*)

[13] For the Specified Test Year ended: (a) December 31, 2021, insert -2.50%; (b) December 31, 2022, insert -5.00%; (c) December 31, 2023, insert -7.50%; (d) December 31, 2024, insert -10.00%; and (e) December 31, 2025 or thereafter, insert -12.50%.

[14] For the Specified Test Year ended: (a) December 31, 2021, insert -1.00%; (b) December 31, 2022, insert -2.00%; (c) December 31, 2023, insert -3.00%; (d) December 31, 2024, insert -4.00%; and (e) December 31, 2025 or thereafter, insert -5.00%.

**EXHIBIT F**

## FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each][1] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each][2] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors] [and] [the Assignees][3] hereunder are several and not joint.][4] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including, without limitation, the Letters of Credit and the Negotiated Rate Loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

---

[1] For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

[2] For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

[3] Select as appropriate.

[4] Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: _____

_____

2. Assignee[s]: _____

_____
[for each Assignee, indicate [Affiliate] [Approved Fund] of *[identify Lender]]*, which is a Lender

3. Borrower: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021~~, among~~ (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ~~(the "Borrower")~~, the Lenders party thereto from time to time, the L/C Issuers party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

6. Assigned Interest:

| Assignor[s] | Assignee[s] | Class/facility Assigned[5] | Aggregate Amount of Revolving Commitment / Loans for all Lenders under relevant Class/facility[6] | Amount of Revolving Commitment / Loans Assigned under relevant Class/facility | Percentage Assigned of Revolving Commitment/ Loans under relevant Class/facility[7] | CUSIP Number |
|---|---|---|---|---|---|---|
| | | | $ | $ | % | |
| | | | $ | $ | % | |
| | | | $ | $ | % | |

[5] Fill in the appropriate terminology for the types of facilities (or, if applicable, Class of ~~loans~~Loans) under the Credit Agreement that are being assigned under this Assignment and Assumption (i.e., "Revolving Facility" or a specific tranche of Incremental Term Loans).

[6] Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[7] Set forth, to at least 9 decimals, as a percentage of the Revolving Commitment/Loans of all Lenders under relevant Class or facility.

7. Alternative Currency: Assignee **[can fund the following Alternative Currencies [Euro, Sterling, Yen, Canadian Dollars, Swiss Francs and Australian Dollars]] [cannot fund any Alternative Currency].**

8. Trade Date: _____][8]

Effective Date:_____, 20__[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[8] To be completed if the relevant Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By:__
Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By:__
Name:
Title:

[Consented to and][9] Accepted:

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

By:_____
Name:
Title:

[Consented to:][10]

[HEALTHPEAK ~~PROPERTIES~~OP, ~~INC.~~LLC, as the Borrower~~]~~

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member]

By:_____
Name:
Title:

[9] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

[10] To be added only if the consent of the Borrower and/or other parties (e.g., L/C Issuer or Alternative Currency Fronting Lender) is required by the terms of the Credit Agreement.

[BANK OF AMERICA, N.A., as an L/C Issuer

By:_____
Name:
Title:

JPMORGAN CHASE BANK, N.A., as an L/C Issuer

By:_____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as an L/C Issuer]

By:_____
Name:
Title:

[BANK OF AMERICA, N.A., as the Lead Alternative Currency Fronting Lender]

By:_____
Name:
Title:

**ANNEX 1 TO ASSIGNMENT AND ASSUMPTION**

**STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1. Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Sections 10.06(b)(iii), (v), (vi), (vii) and (viii) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 5.05 thereof or delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of

interest, fees or other amounts paid or payable in kind with respect to [the][the relevant] Assigned Interest from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption.

THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**EXHIBIT G**

**FORM OF SUSTAINABILITY METRIC ANNUAL CERTIFICATE**

For the calendar year ended: December 31, _____[11] (such year, the "Specified Test Year")

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ~~(the "Borrower")~~, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The Borrower hereby certifies as of the date hereof that the Responsible Officer executing this Sustainability Metric Annual Certificate is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Sustainability Metric Annual Certificate to the Administrative Agent on ~~the~~ behalf of the Borrower, and not in an individual capacity, and that:

1. As of December 31 of the Specified Test Year, the Sustainability Metric for the Specified Test Year [satisfied the Level [1][2] Sustainability Metric Election Threshold][did not satisfy either level of the Sustainability Metric Election Threshold].

2. The analyses and information set forth on Schedule 1 attached hereto are true and accurate as of December 31 of the Specified Test Year (using the Rolling Base Year Methodology).

3. The Borrower hereby elects that the Applicable Rate be based on the Sustainability Metric Pricing Grid, to be effective commencing on the date that is five (5) Business Days following the date this Sustainability Metric Annual Certificate has been delivered to the Administrative Agent.

4. [Attached hereto is a copy of the Sustainability Metric Report for the Specified Test Year.][The Sustainability Metric Report for the Specified Test Year has been published at the following Internet or intranet website to which each Revolving Lender and the Administrative Agent has or has been granted access free of charge: _____.]

[Signature Page Follows]

[11] To be the calendar year most recently ended.

*IN WITNESS WHEREOF,* the undersigned has executed this Sustainability Metric Annual Certificate as of _____, 202__.

_____
Name:
Title:

**SCHEDULE 1**
to the Sustainability Metric Annual Certificate

For the calendar year ended: December 31, _____[12] (such year, the "Specified Test Year")

**I. Rolling Base Year Percentage* for (x) the Specified Test Year and (y) in the case of a Specified Test Year ended after December 31, 2021, each preceding calendar year ended on or after December 31, 2021.[13]**

**A. Rolling Base Year Percentage for calendar year ended December 31, 2021 (percentage change** of Line I.A.1. relative to Line I.A.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2020: _____ $tCO_2e$

**B. Rolling Base Year Percentage for calendar year ended December 31, 2022 (percentage change** of Line I.B.1. relative to Line I.B.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

**C. Rolling Base Year Percentage for calendar year ended December 31, 2023 (percentage change** of Line I.C.1. relative to Line I.C.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

**D. Rolling Base Year Percentage for calendar year ended December 31, 2024 (percentage change** of Line I.D.1. relative to Line I.D.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

[12] To be the calendar year most recently ended.

[13] Delete the rows for any calendar year ending after the Specified Test Year or leave such rows blank.

**E. Rolling Base Year Percentage for calendar year ended December 31, 2025 (percentage change** of Line I.E.1. relative to Line I.E.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

**F. Rolling Base Year Percentage for calendar year ended December 31, 2026 (percentage change** of Line I.F.1. relative to Line I.F.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

*The Rolling Base Year Percentage for a particular calendar year has been determined and calculated using the Rolling Base Year Methodology, which means that the Sustainability Metric Components for that particular calendar year have been compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of that particular calendar year.

**For the avoidance of doubt, such percentage change for a particular calendar year is expressed as a negative percentage in the event the Sustainability Metric Components for such calendar year are less than the Sustainability Metric Components for the immediately preceding calendar year.

## II. Sustainability Metric & Sustainability Metric Election Threshold for the Specified Test Year.

**A.** Sustainability Metric for the Specified Test Year (which shall equal either: (i) in the case of the Specified Test Year ended December 31, 2021, the Rolling Base Year Percentage for such Specified Test Year (Line I.A.) or (ii) in the case of a Specified Test Year ending after December 31, 2021, the sum of (x) the Rolling Base Year Percentage for such Specified Test Year (see Part I above) and (y) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021 (see Part I above)): _____%

**B.** Level 2 Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement):

_____%[14]

**C.** Level 1 Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement):

_____%[15]

**D.** Does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Level 2 Sustainability Metric Election Threshold (Line II.B.)? _____ (*Yes/No*)

**E.** If Line II.D. is "No", does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Level 1 Sustainability Metric Election Threshold (Line II.C.)? _____ (*Yes/No*)

[14] For the Specified Test Year ended: (a) December 31, 2021, insert -2.50%; (b) December 31, 2022, insert -5.00%; (c) December 31, 2023, insert -7.50%; (d) December 31, 2024, insert -10.00%; and (e) December 31, 2025 or thereafter, insert -12.50%.

[15] For the Specified Test Year ended: (a) December 31, 2021, insert -1.00%; (b) December 31, 2022, insert -2.00%; (c) December 31, 2023, insert -3.00%; (d) December 31, 2024, insert -4.00%; and (e) December 31, 2025 or thereafter, insert -5.00%.

EXHIBIT A-2

Clean Amended Credit Agreement

See attached.

**Exhibit A to Consent and Amendment No. 1 to**
**Second Amended and Restated Credit Agreement**

**FINAL VERSION**

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**$3,000,000,000**

**SECOND AMENDED AND RESTATED CREDIT AGREEMENT**
(as amended, restated, supplemented and otherwise modified through and including that certain Consent and Amendment No. 1 dated as of February 10, 2023)

Dated as of September 20, 2021

among

**HEALTHPEAK OP, LLC**,
as Borrower,

**HEALTHPEAK PROPERTIES, INC.,**
as Parent Guarantor,

**THE LENDERS PARTY HERETO FROM TIME TO TIME**,

**BANK OF AMERICA, N.A.,**
as Administrative Agent, L/C Issuer and
Alternative Currency Fronting Lender,

**JPMORGAN CHASE BANK, N.A.**, and
**WELLS FARGO BANK, NATIONAL ASSOCIATION**,
as Co-Syndication Agents,

**THE BANK OF NOVA SCOTIA, BARCLAYS BANK PLC,**
**CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,**
**CREDIT SUISSE AG, NEW YORK BRANCH,**
**GOLDMAN SACHS BANK USA, MIZUHO BANK, LTD.,**
**MORGAN STANLEY SENIOR FUNDING, INC.,**
**PNC BANK, NATIONAL ASSOCIATION,**
**ROYAL BANK OF CANADA,** and
**TRUIST BANK,**
as Co-Documentation Agents,

and

**CAPITAL ONE NATIONAL BANK, THE HUNTINGTON NATIONAL BANK,**
**REGIONS BANK, SUMITOMO MITSUI BANKING CORPORATION,**
**TD BANK, N.A.,** and
**U.S. BANK NATIONAL ASSOCIATION**,
as Senior Managing Agents

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**BOFA SECURITIES, INC.**, and
**JPMORGAN CHASE BANK, N.A.**,
as Joint Bookrunners, and

**BOFA SECURITIES, INC.**, **JPMORGAN CHASE BANK, N.A.**, and
**WELLS FARGO SECURITIES, LLC**,
as Joint Lead Arrangers

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603

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**EXHIBITS**

***Form of***


A Committed Loan Notice
B [Reserved]
C Negotiated Rate Loan Notice
D Revolving Note
E Compliance Certificate
F Assignment and Assumption
G Sustainability Metric Annual Certificate

**SECOND AMENDED AND RESTATED CREDIT AGREEMENT**

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT, dated as of September 20, 2021 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), among HEALTHPEAK OP, LLC, a Maryland limited liability company, HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party hereto from time to time (each, a "Lender" and collectively, the "Lenders"), BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and Alternative Currency Fronting Lender, JPMORGAN CHASE BANK, N.A. and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Co-Syndication Agents, THE BANK OF NOVA SCOTIA, BARCLAYS BANK PLC, CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK, CREDIT SUISSE AG, NEW YORK BRANCH, GOLDMAN SACHS BANK USA, MIZUHO BANK, LTD., MORGAN STANLEY SENIOR FUNDING, INC., PNC BANK, NATIONAL ASSOCIATION, ROYAL BANK OF CANADA, and TRUIST BANK, as Co-Documentation Agents, and CAPITAL ONE NATIONAL BANK, THE HUNTINGTON NATIONAL BANK, REGIONS BANK, SUMITOMO MITSUI BANKING CORPORATION, TD BANK, N.A., and U.S. BANK NATIONAL ASSOCIATION, as Senior Managing Agents.

WHEREAS, a revolving credit facility and a delayed-draw term loan facility was established pursuant to the terms of the Existing Credit Agreement (hereafter defined);

WHEREAS, the Borrower has requested that the Lenders provide a revolving credit facility pursuant to the terms of this Agreement in amendment and restatement of the Existing Credit Agreement, and the Lenders are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I

## DEFINITIONS AND ACCOUNTING TERMS

### 1.01 Defined Terms.

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

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

"Administrative Agent's Office" means, with respect to any currency, the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

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

"Affected Financial Institution" means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

"Affected Loan" has the meaning specified in Section 3.02.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent Parties" has the meaning specified in Section 10.02(c).

"Agents" means the Administrative Agent, the Arrangers, the Co-Syndication Agents, the Co-Documentation Agents, the Senior Managing Agents, the L/C Issuer and the Alternative Currency Fronting Lender.

"Aggregate Revolving Commitments" means the Revolving Commitments of all Revolving Lenders, which as of the Closing Date are $3,000,000,000, which may be increased pursuant to Section 2.16 or decreased pursuant to Section 2.07.

"Agreed Currency" means Dollars or any Alternative Currency, as applicable.

"Agreement" has the meaning specified in the introductory paragraph hereto.

"Agreement Currency" has the meaning specified in Section 10.19.

"Alternative Currency" means each of the following currencies: Australian Dollars, Canadian Dollars, Euro, Sterling, Swiss Francs, Yen and each other currency (other than Dollars) that is approved in accordance with Section 1.06.

"Alternative Currency Daily Rate" means, for any day, with respect to an Alternative Currency Daily Rate Loan:

(a) denominated in Sterling, the rate per annum equal to SONIA determined pursuant to the definition of "SONIA" plus the SONIA Adjustment;

(b) denominated in Swiss Francs, the rate per annum equal to SARON determined pursuant to the definition of "SARON" plus the SARON Adjustment; and

(c) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a daily rate), the daily rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a);

provided that, if any Alternative Currency Daily Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. Any change in an Alternative Currency Daily Rate shall be effective from and including the date of such change without further notice.

"Alternative Currency Daily Rate Loan" means a Committed Revolving Loan that bears interest at a rate based on the definition of "Alternative Currency Daily Rate." All Alternative Currency Daily Rate Loans must be denominated in an Alternative Currency.

"Alternative Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate

(determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

"Alternative Currency Fronting Lender" means Bank of America, or any other Revolving Lender designated by the Borrower and the Administrative Agent (such designation shall be consented to by such Revolving Lender), in its capacity as an Alternative Currency Funding Lender for Revolving Loans denominated in an Alternative Currency in which any Alternative Currency Participating Lender purchases Alternative Currency Risk Participations and in which Bank of America (or such other appointed Revolving Lender) advances to the Borrower the amount of all such Alternative Currency Participating Lenders' respective Applicable Percentages of such Revolving Loans in accordance with Sections 2.02(b) and 2.02(f).

"Alternative Currency Funding Applicable Percentage" means, with respect to any Revolving Loan denominated in an Alternative Currency, (a) for each Alternative Currency Funding Lender other than the Alternative Currency Fronting Lender, its Applicable Percentage, and (b) for the Alternative Currency Fronting Lender, the sum of (i) the Applicable Percentage of the Alternative Currency Fronting Lender and (ii) the sum of the respective Applicable Percentages of the Alternative Currency Participating Lenders.

"Alternative Currency Funding Lender" means, with respect to each Revolving Loan denominated in an Alternative Currency, each Revolving Lender other than an Alternative Currency Participating Lender with respect to such Alternative Currency.

"Alternative Currency Loan" means an Alternative Currency Daily Rate Loan or an Alternative Currency Term Rate Loan, as applicable.

"Alternative Currency Loan Credit Exposure" means, with respect to any Revolving Loan denominated in an Alternative Currency, (a) for each Alternative Currency Funding Lender other than the Alternative Currency Fronting Lender, the aggregate outstanding principal amount of its Alternative Currency Funding Applicable Percentage thereof advanced by such Alternative Currency Funding Lender, (b) for the Alternative Currency Fronting Lender, the aggregate outstanding principal amount of its Alternative Currency Funding Applicable Percentage thereof advanced thereby, net of all Alternative Currency Risk Participations purchased or funded, as applicable, therein, and (c) for each Alternative Currency Participating Lender, the aggregate outstanding principal amount of all Alternative Currency Risk Participations purchased or funded, as applicable, by such Alternative Currency Participating Lender in such Revolving Loan.

"Alternative Currency Participant's Share" means, for any Alternative Currency Participating Lender in respect of a Revolving Loan denominated in an Alternative Currency, a fraction (expressed as a percentage), the numerator of which is such Alternative Currency Participating Lender's Applicable Percentage in respect of such Revolving Loan and the denominator of which is the sum of (i) the Applicable Percentage of the Alternative Currency Fronting Lender in respect of such Revolving Loan and (ii) the sum of the respective Applicable Percentages of all of the Alternative Currency Participating Lenders in respect of such Revolving Loan.

"Alternative Currency Participating Lender" means, with respect to each Revolving Loan denominated in an Alternative Currency, any Revolving Lender that has given notice to the Administrative Agent and the Borrower that it is unable to fund in the applicable Alternative Currency, unless and until such Revolving Lender delivers to the Administrative Agent and the Borrower a written notice pursuant to Section 2.02(f)(ix) requesting that such Revolving Lender's designation be changed to an Alternative Currency Funding Lender with respect to such Alternative Currency.

"Alternative Currency Participation Payment Date" has the meaning specified in Section 2.02(f)(iii).

"Alternative Currency Risk Participation" means, with respect to each Revolving Loan denominated in an Alternative Currency advanced by the Alternative Currency Fronting Lender, the risk participation purchased by each of the Alternative Currency Participating Lenders in such Revolving Loan in an amount determined in accordance with such Alternative Currency Participating Lender's Applicable Percentage of such Revolving Loan, as provided in Section 2.02(f).

"Alternative Currency Sublimit" means, at any time, an amount equal to the lesser of (a) the Aggregate Revolving Commitments at such time and (b) $1,000,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Alternative Currency Term Rate" means, for any Interest Period, with respect to any Alterative Currency Term Rate Loan:

(i) denominated in Euro, the rate per annum equal to the Euro Interbank Offered Rate ("EURIBOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the day that is two TARGET Days preceding the first day of such Interest Period with a term equivalent to such Interest Period;

(ii) denominated in Canadian Dollars, the rate per annum equal to the Canadian Dollar Offered Rate ("CDOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the "CDOR Rate") on the Rate Determination Date with a term equivalent to such Interest Period;

(iii) denominated in Yen, the rate per annum equal to the Tokyo Interbank Offer Rate ("TIBOR"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period;

(iv) denominated in Australian Dollars, the rate per annum equal to the Bank Bill Swap Reference Bid Rate ("BBSY"), as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) on the Rate Determination Date with a term equivalent to such Interest Period; and

(v) denominated in any other Alternative Currency (to the extent such Loans denominated in such currency will bear interest at a term rate), the term rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a) plus the adjustment (if any) determined by the Administrative Agent and the relevant Lenders pursuant to Section 1.06(a);

provided if any Alternative Currency Term Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

"Alternative Currency Term Rate Loan" means a Committed Revolving Loan that bears interest at a rate based on the definition of "Alternative Currency Term Rate." Committed Revolving Loans that are Alternative Currency Term Rate Loans must be denominated in an Alternative Currency.

"Anti-Corruption Laws" has the meaning specified in Section 5.21.

"Applicable Authority" means (a) with respect to SOFR, the Federal Reserve Bank of New York (or a successor administrator of such rate) or any relevant Governmental Authority having jurisdiction over the Administrative Agent or the Federal Reserve Bank of New York (or a successor administrator of such rate) with respect to its publication of SOFR, in each case acting in such capacity and (b) with respect to any Alternative Currency, the applicable administrator for the Relevant Rate for such Alternative Currency or any relevant Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of the applicable Relevant Rate, in each case acting in such capacity.

"Applicable Percentage" means (a) with respect to Revolving Loans (other than Negotiated Rate Loans) and L/C Obligations, for each Revolving Lender at any time, subject to adjustment as provided in Section 2.18, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of such Revolving Lender's Revolving Commitment and the denominator of which is the amount of the Aggregate Revolving Commitments at such time; provided that, if the Revolving Commitment of each Revolving Lender has been terminated in full or if the Aggregate Revolving Commitments have expired, then the Applicable Percentage of each Revolving Lender shall be determined based on the Applicable Percentage of such Revolving Lender in effect immediately prior to such termination or expiration, giving effect to any subsequent assignments; and (b) with respect to Negotiated Rate Loans, for each Revolving Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the Outstanding Amount of such Negotiated Rate Loan held by such Revolving Lender at such time and the denominator of which is the aggregate Outstanding Amount of such Negotiated Rate Loan at such time. The Applicable Percentages of each Lender as of the Closing Date are set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, for Revolving Loans, from time to time, the number of basis points per annum set forth in the relevant columns of the following table based upon the Debt Rating as set forth immediately below:

| | | Revolving Loans and Letter of Credit Fees | |
|---|---|---|---|
| **Pricing Level** | **Debt Ratings (S&P/Moody's/Fitch)** | **Applicable Rate for Alternative Currency Daily Rate Loans, Alternative Currency Term Rate Loans, Term SOFR Loans, Daily SOFR Loans and Letter of Credit Fees** | **Applicable Rate for Base Rate Loans** |
| 1 | • A / • A2 / • A | 70.0 bps | 0 bps |
| 2 | A- / A3 / A- | 72.5 bps | 0 bps |
| 3 | BBB+ / Baa1 / BBB+ | 77.5 bps | 0 bps |
| 4 | BBB / Baa2 / BBB | 85.0 bps | 0 bps |
| 5 | BBB- / Baa3 / BBB- | 105.0 bps | 5.0 bps |
| 6 | <BBB- / <Baa3 / <BBB- or non-rated | 140.0 bps | 40.0 bps |

For purposes hereof, the term "Debt Rating" means, as of any date of determination, the rating by S&P, Moody's or Fitch of the Borrower's non-credit enhanced, senior unsecured long-term debt; provided that, if at any time when the Borrower has only two (2) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used, and (B) if the difference between such Debt Ratings is two or more ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the median of the applicable Debt Ratings were used. If at any time when the Borrower has three (3) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the highest of the Debt Ratings were used, and (B) if the difference between such Debt Ratings is two or more ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the average of the two (2) highest Debt Ratings were used; provided that, if such average is not a recognized rating category, then the Applicable Rate shall be the rate per annum that would be applicable if the second highest Debt Rating of the three were used.

Initially, the Applicable Rate shall be determined based upon the Debt Rating specified in the certificate delivered pursuant to Section 4.01(a)(vi). Thereafter, each change in the Applicable Rate shall occur on the first Business Day following the effective change in the Debt Rating.

Notwithstanding the foregoing, with respect to any calendar year ending on or after December 31, 2021, if the Borrower delivers a Sustainability Metric Annual Certificate to the Administrative Agent, certifying that the Sustainability Metric as of December 31 of the most recently ended calendar year (the "Specified Test Year") satisfies either the Level 1 Sustainability Metric Election Threshold or the Level 2 Sustainability Metric Election Threshold for such Specified Test Year, and electing that the Applicable Rate instead be based on the table set forth below (the "Sustainability Metric Pricing Grid"), then the Applicable Rate with respect to the Revolving Facility shall be determined based on the relevant columns of the Sustainability Metric Pricing Grid (corresponding to the applicable level of the Sustainability Metric Election Threshold so certified in such Sustainability Metric Annual Certificate) for the period commencing on the fifth (5th) Business Day following the date such Sustainability Metric Annual Certificate is delivered to the Administrative Agent by the Borrower until the earlier to occur of (i) the date that is one (1) year after the date the Sustainability Metric Pricing Grid became effective for such period in connection with the delivery of such Sustainability Metric Annual Certificate and (ii) the date that is the fifth (5th) Business Day following the date of delivery by the Borrower of the Sustainability Metric Annual Certificate for the calendar year ending immediately after such Specified Test Year, which subsequent Sustainability Metric Annual Certificate indicates that (A) the Sustainability Metric for the calendar year ending immediately after such Specified Test Year did not satisfy either level of the Sustainability Metric Election Threshold (or satisfied a different level as compared to the level of the Sustainability Metric Election Threshold satisfied for such Specified Test Year) or (B) the Borrower does not elect to apply the Sustainability Metric Pricing Grid for the calendar year ending immediately after such Specified Test Year; provided that it is understood and agreed that (x) if the Sustainability Metric for any calendar year does not satisfy the Level 1 Sustainability Metric Election Threshold and/or the Level 2 Sustainability Metric Election Threshold, the Borrower shall not be restricted from making any subsequent election to apply the Sustainability Metric Pricing Grid (or from changing the applicable level of the Sustainability Metric Election Threshold to apply thereunder, as the case may be) pursuant to this paragraph if the Sustainability Metric for the calendar year most recently ended prior to such election satisfies either the Level 1 Sustainability Metric Election Threshold or the Level 2 Sustainability Metric Election Threshold, and (y) a Sustainability Metric Annual Certificate electing to apply the Sustainability Metric Pricing Grid pursuant to this paragraph may be delivered at any time by the Borrower so long as the Sustainability Metric for the calendar year most recently ended prior to such election satisfies either the Level 1 Sustainability Metric Election Threshold or the Level 2 Sustainability Metric Election Threshold.

If, as a result of (A) the agreement by the Borrower, the Administrative Agent and the Revolving Lenders that the Sustainability Metric for any calendar year as reported on any Sustainability Metric Annual Certificate was inaccurate or (B) the Borrower, the Administrative Agent or the Revolving Lenders becoming aware of any material inaccuracy in the Sustainability Metric for any calendar year as reported on any Sustainability Metric Annual Certificate (and, in the case of the Administrative Agent or the Revolving Lenders becoming aware thereof, written notice thereof has been delivered to the Borrower setting forth in reasonable detail the basis for such determination) (any such event referred to in clause (A) or (B) above, a "Sustainability Metric Annual Certificate Inaccuracy") and, in each case, the Borrower made an election to apply the Sustainability Metric Pricing Grid pursuant to such Sustainability Metric Annual Certificate and a proper calculation of the Sustainability Metric for such calendar year would not have resulted in any adjustment, or would have resulted in a smaller adjustment, to the Applicable Rate pursuant to the Sustainability Metric Pricing Grid for the relevant period covered by such election, then the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Revolving Lenders or L/C Issuers, as the case

may be, promptly (and in any event, within five (5) Business Days) following written demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, immediately, automatically and without further action by the Administrative Agent, any Revolving Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and Letter of Credit Fees that should have been paid for such period (or relevant portion thereof then elapsed in respect of which payments of interest and/or Letter of Credit Fees were previously made) over the amount of interest and Letter of Credit Fees actually paid for such period (or relevant portion thereof). Notwithstanding anything to the contrary herein, unless such amounts shall be due upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, (i) any additional amounts required to be paid pursuant to the immediately preceding sentence shall not be due and payable until a written demand is made for such payment by the Administrative Agent, (ii) any nonpayment of such additional amounts prior to or upon such demand for payment by Administrative Agent shall not constitute a Default or Event of Default or otherwise result in the failure of any condition precedent to any Credit Extension (whether retroactively or otherwise), and (iii) none of such additional amounts shall be deemed overdue prior to such a demand or shall accrue interest at the Default Rate prior to such a demand. It is understood and agreed that no Sustainability Metric Annual Certificate Inaccuracy shall constitute a Default or Event of Default or otherwise result in the failure of any condition precedent to any Credit Extension (whether retroactively or otherwise); provided that the Borrower complies with the terms of this paragraph with respect to such Sustainability Metric Annual Certificate Inaccuracy.

***Sustainability Metric Pricing Grid***

| | | **Revolving Loans and Letter of Credit Fees** | | | |
|---|---|---|---|---|---|
| | | **Level 1 Sustainability Metric Election Threshold** | | **Level 2 Sustainability Metric Election Threshold** | |
| **Pricing Level** | **Debt Ratings (S&P/Moody's/ Fitch)** | **Applicable Rate for Alternative Currency Daily Rate Loans, Alternative Currency Term Rate Loans, Term SOFR Loans, Daily SOFR Loans and Letter of Credit Fees** | **Applicable Rate for Base Rate Loans** | **Applicable Rate for Alternative Currency Daily Rate Loans, Alternative Currency Term Rate Loans, Term SOFR Loans, Daily SOFR Loans and Letter of Credit Fees** | **Applicable Rate for Base Rate Loans** |
| 1 | • A / • A2 / • A | 69.0 bps | 0 bps | 67.5 bps | 0 bps |
| 2 | A- / A3 / A- | 71.5 bps | 0 bps | 70.0 bps | 0 bps |
| 3 | BBB+ / Baa1 / BBB+ | 76.5 bps | 0 bps | 75.0 bps | 0 bps |
| 4 | BBB / Baa2 / BBB | 84.0 bps | 0 bps | 82.5 bps | 0 bps |
| 5 | BBB- / Baa3 / BBB- | 104.0 bps | 4.0 bps | 102.5 bps | 2.5 bps |
| 6 | <BBB- / <Baa3 / <BBB- or non-rated | 139.0 bps | 39.0 bps | 137.5 bps | 37.5 bps |

"Applicable Time" means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

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

"Arrangers" means BofA Securities, Inc., JPMorgan and Wells Fargo Securities, LLC, each in its capacity as a joint lead arranger.

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

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

"Attributable Indebtedness" means, on any date, (a) in respect of any Financing Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Financing Lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Australian Dollar" means the lawful currency of the Commonwealth of Australia.

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.03(b)(iii).

"Availability Period" means the period from and including the Closing Date to the earliest of (i) the Business Day preceding the Revolving Maturity Date, (ii) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.07, and (iii) the date of termination of the commitment of each Revolving Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Available Tenor" means, as of any date of determination and with respect to the then-current Canadian Benchmark, as applicable, (a) if the then-current Canadian Benchmark is a term rate, any tenor for such Canadian Benchmark that is or may be used for determining the length of an Interest Period or (b) otherwise, any payment period for interest calculated with reference to such Canadian Benchmark, as applicable, pursuant to this Agreement as of such date.

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

"Bail-In Legislation" means, (a) 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, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, as codified at 11 U.S.C. § 101 et seq., and the rules and regulations promulgated thereunder, or any successor provision thereto.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus ½ of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate" and (c) Term SOFR plus 1%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If at any time of determination the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate at such time shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. If the Base Rate determined in accordance with the above is below 1.0%, such rate shall be deemed to be 1.0% for purposes of this Agreement.

"Base Rate Committed Revolving Loan" means a Committed Revolving Loan that is a Base Rate Loan.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

"BBSY" has the meaning specified in the definition of "Alternative Currency Term Rate."

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the 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 Code) the assets of any such "employee benefit plan" or "plan."

"Borrower" means (i) prior to the consummation of the First Amendment Merger and First Amendment Conversion, Healthpeak Properties, Inc., a Maryland corporation, (ii) following the First Amendment Merger, Healthpeak Properties Interim, Inc., a Maryland corporation, and (iii) following the First Amendment Conversion, Healthpeak OP, LLC, a Maryland limited liability company.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means a Committed Borrowing or a Negotiated Rate Borrowing, as the context may require.

"Boundary Property" means any building that is part of the Borrower's portfolio of assets under management and that the Borrower identifies internally as under the Borrower's operational control. For purposes of this definition, such operational control shall mean that the Borrower or any of its Controlled Subsidiaries maintains, provides service to, and/or has the authority to implement operating policies with respect to energy usage, water usage and/or waste disposal, in any such case, for all or any portion of such building. Any reference herein to the square footage of a Boundary Property shall be a reference to the proportional percentage of total square footage of such Boundary Property that is under the Borrower's operational control with respect to such Boundary Property.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of California or the State of New York or the state where the Administrative Agent's Office with respect to Obligations denominated in Dollars is located, and:

(a) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Alternative Currency Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Alternative Currency Loan, means a Business Day that is also a TARGET Day;

(b) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in (i) Sterling, means a day other than a day banks are closed for general business in London because such day is a Saturday, Sunday or a legal holiday under the laws of the United Kingdom; (ii) Swiss Francs, means a day other than when banks are closed for settlement and payments of foreign exchange transactions in Zurich because such day is a Saturday, Sunday or a legal holiday under the laws of Switzerland; and (iii) Yen, means a day other than when banks are closed for general business in Japan;

(c) if such day relates to any interest rate settings as to an Alternative Currency Loan denominated in a currency other than, Euro, Sterling, Swiss Francs or Yen, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Euro in respect of an Alternative Currency Loan denominated in a currency other than Euro, or any other dealings in any currency other than Euro to be carried out pursuant to this Agreement in respect of any such Alternative Currency Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

"Canadian Benchmark" means, initially, CDOR Rate; provided that if a replacement of the Canadian Benchmark has occurred pursuant to Section 3.03(c), then "Canadian Benchmark" means the applicable Canadian Benchmark Replacement to the extent that such Canadian Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Canadian Benchmark" shall include, as applicable, the published component used in the calculation thereof.

"Canadian Benchmark Replacement" means, for any Available Tenor:

(a) For purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Administrative Agent:

(i) the sum of: (i) Term CORRA and (ii) 0.29547% (29.547 basis points) for an Available Tenor of one-month's duration, and 0.32138% (32.138 basis points) for an Available Tenor of three-months' duration, or

(ii) the sum of: (i) Daily Compounded CORRA and (ii) 0.29547% (29.547 basis points) for an Available Tenor of one-month's duration, and 0.32138% (32.138 basis points) for an Available Tenor of three-months' duration; and

(b) For purposes of Section 3.03(c)(ii), the sum of (i) the alternate benchmark rate and (ii) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the Administrative Agent and the Borrower as the replacement for such Available Tenor of such Canadian Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for Canadian dollar-denominated syndicated credit facilities at such time;

provided that, if the Canadian Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Canadian Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

Any Canadian Benchmark Replacement shall be applied in a manner consistent with market practice; provided, that, to the extent such market practice is not administratively feasible for the Administrative Agent, such Canadian Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

"Canadian Benchmark Transition Event" means, with respect to any then-current Canadian Benchmark other than CDOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Canadian Benchmark, the regulatory supervisor for the administrator of such Canadian Benchmark, any Governmental Authority with jurisdiction over such administrator for such Canadian Benchmark, or the Bank of Canada, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Canadian Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Canadian Benchmark or (b) all Available Tenors of such Canadian Benchmark are or will no longer be representative of the underlying market and economic reality that such Canadian Benchmark is intended to measure and that representativeness will not be restored.

"Canadian Dollar" and "CAD" mean the lawful currency of Canada.

"Canadian Prime Rate" means, for any day a fluctuating rate of interest per annum equal to the greater of (a) the per annum rate of interest quoted or established as the "prime rate" of the Administrative Agent which it quotes or establishes for such day as its reference rate of interest in order to determine interest rates for commercial loans in Canadian Dollars in Canada to its Canadian borrowers; and (b) the average CDOR for a 30-day term plus ½ of one percent (1.00%) per annum, adjusted automatically with each quoted or established change in such rate, all without the necessity of any notice to the Borrower or any other Person; provided that if the Canadian Prime Rate shall be less

than zero, such rate shall be deemed zero for purposes of this Agreement. Such prime rate is based on various factors including cost and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the prime rate shall take effect at the opening of business on the day specified in the public announcement of such change.

"Canadian Prime Rate Loan" means a Loan that bears interest at a rate based on the Canadian Prime Rate.

"Cash Collateral" has the meaning specified in the definition of "Cash Collateralize."

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer or the Alternative Currency Fronting Lender (as applicable) and the Revolving Lenders, as collateral for L/C Obligations, Obligations in respect of Revolving Loans denominated in Alternative Currencies, or obligations of Revolving Lenders to fund participations in respect thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or the Alternative Currency Fronting Lender (as applicable) benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Alternative Currency Fronting Lender (as applicable). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"CDOR" has the meaning specified in the definition of "Alternative Currency Term Rate."

"CDOR Rate" has the meaning specified in the definition of "Alternative Currency Term Rate."

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

"Change of Control" means an event or series of events by which, after the date of the First Amendment Merger:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such

right, an "option right")), directly or indirectly, of 35% or more of the equity securities of the Parent Guarantor having ordinary voting powers to elect a majority of the members of the board of directors or equivalent governing body of the Parent Guarantor (irrespective of whether at such time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency) on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) and the Borrower shall not have repaid all of the outstanding Obligations in full in cash (other than contingent Obligations that are not then due and payable), Cash Collateralized all outstanding Letters of Credit in an amount equal to one hundred percent (100%) of the then current L/C Obligations and terminated the Aggregate Revolving Commitments within forty-five (45) days after such "person" or "group" shall have become the "beneficial owner" of such percentage of such stock;

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent Guarantor cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved or recommended by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved or recommended by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(c) the Parent Guarantor shall, at any time, cease to Control the Borrower.

"Class" when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Committed Revolving Loans, Negotiated Rate Loans or a specific tranche of Incremental Term Loans.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"CME" means CME Group Benchmark Administration Limited.

"Co-Documentation Agent" means each of The Bank of Nova Scotia, Barclays Bank plc, Credit Agricole Corporate and Investment Bank, Credit Suisse AG, New York Branch, Goldman Sachs Bank USA, Mizuho Bank, Ltd., Morgan Stanley Senior Funding, Inc., PNC Bank, National Association, Royal Bank of Canada, and Truist Bank, in their capacity as Co-Documentation Agents.

"Co-Syndication Agent" means each of JPMorgan and Wells Fargo, in their capacities as Co-Syndication Agents.

"Code" means the Internal Revenue Code of 1986, as amended.

"Committed Borrowing" means a borrowing consisting of simultaneous Committed Revolving Loans of the same Type, in the same currency and, in the case of Term SOFR Loans or Alternative Currency Term Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

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

"Committed Revolving Loan" has the meaning specified in Section 2.01 and includes Committed Revolving Loans pursuant to Section 2.03.

"Compliance Certificate" means a certificate substantially in the form of Exhibit E.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with SOFR, SONIA, SARON, EURIBOR, CDOR, TIBOR, BBSY, any Canadian Benchmark Replacement or any proposed Successor Rate for an Agreed Currency or Term SOFR, as applicable, any conforming changes to the definitions of "Base Rate," "Daily SOFR", "Daily Simple SOFR," "SOFR," "SONIA," "SARON," "EURIBOR," "CDOR," "TIBOR," "BBSY," "Term SOFR," "Term SOFR Screen Rate," "Interest Period," "Relevant Rate," timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day," timing of borrowing requests or prepayment, conversion or continuation notices, and the applicability and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent (after consultation in good faith with the Borrower), to reflect the adoption and implementation of such applicable rate(s) and to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice for such Agreed Currency (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate for such Agreed Currency exists, in such other manner of administration as the Administrative Agent (after consultation in good faith with the Borrower) determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

"Consolidated Intangible Assets" means, as of any date of determination, an amount equal to the Intangible Assets of the Group on a consolidated basis.

"Consolidated Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Group, as determined in accordance with GAAP.

"Consolidated Tangible Net Worth" means, as of any date of determination, for the Group on a consolidated basis, an amount equal to (a) Consolidated Shareholders' Equity on such date plus (b) accumulated depreciation and amortization, determined on a consolidated basis in accordance with GAAP, on such date, minus (c) Consolidated Intangible Assets on such date.

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

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

"CORRA" means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator).

"Covered Party" has the meaning specified in Section 10.24.

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

"Daily Compounded CORRA" means, for any day, CORRA with interest accruing on a compounded daily basis, with the methodology and conventions for this rate being established by the Administrative Agent.

"Daily Simple SOFR" means, with respect to any applicable determination date, a rate per annum equal to the Secured Overnight Financing Rate published on such date on the Federal Reserve Bank of New York's website (or any successor source).

"Daily SOFR" means the rate per annum equal to SOFR determined for any day pursuant to the definition thereof plus the SOFR Adjustment. Any change in Daily SOFR shall be effective from and including the date of such change without further notice. If the rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

"Daily SOFR Loan" means a Loan that bears interest at a rate based on Daily SOFR.

"Debt Rating" has the meaning specified in the definition of "Applicable Rate."

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

"deemed year" has the meaning specified in Section 2.09(d).

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

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Daily SOFR Loan, a Term SOFR Loan or an Alternative Currency Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

"Defaulting Lender" means, subject to Section 2.18(b), any Lender that, as reasonably determined by the Administrative Agent, (a) has failed to (i) perform any of its funding obligations hereunder, including in respect of (x) its Loans or (y) participations in respect of L/C Obligations or Alternative Currency Risk Participations, in each case within two (2) Business Days of the date required to be funded by it hereunder, unless, in the case of clause (x) above, such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that a condition 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, the L/C Issuer, the Alternative Currency Fronting Lender or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or the L/C Issuer that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such notice or public statement states that such position is based on such Lender's good faith determination that a condition precedent (each of which conditions precedent, together with any applicable default, shall be specifically identified in such notice or public statement) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent or the Borrower, to confirm in writing in a manner satisfactory to the Administrative Agent and the Borrower that it will comply with its funding obligations hereunder, 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 a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) 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 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 one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.18(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer,the Alternative Currency Fronting Lender and each other Lender promptly following such determination.

"Delaware Divided LLC" means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

"Delaware LLC Division" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"Departing Lender" means each lender under the Existing Credit Agreement that is not a Lender hereunder on the Closing Date.

"Designated Jurisdiction" means any country, region or territory to the extent that such country, region or territory itself is the subject of comprehensive Sanctions (as of the date of the First Amendment, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic).

"Development Property" means any real property in which the development and construction with respect thereto are not complete.

"Disclosed Matters" means any event, circumstance, condition or other matter expressly disclosed in the reports and other documents furnished to or filed with the SEC by the Borrower and that are publicly available prior to the Closing Date.

"Disposition" or "Dispose" means the sale, transfer or assignment (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division, in any case other than sales or other dispositions of assets in the ordinary course of business.

"Dollar" and "$" mean lawful money of the United States.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"EBITDA" means, for any period, for a Person and its Subsidiaries on a consolidated basis, an amount equal to, without duplication, the Net Income of such Person and its Subsidiaries for such period plus (a) the following to the extent deducted in calculating such Net Income: (i) Interest Expense of such Person and its Subsidiaries for such period, (ii) the provision for Federal, state, local and foreign taxes on or measured by income of such Person and its Subsidiaries for such period (whether or not payable during that period), (iii) depreciation and amortization expense for such period and (iv) expenses of such Person and its Subsidiaries reducing such Net Income during such period which do not represent a cash expenditure in such period or any prior or future period and minus (b) (i) all items of such Person and its Subsidiaries increasing Net Income for such period which do not represent a cash receipt in such period or any prior or future period and (ii) any addition to EBITDA pursuant to clause (a)(ii) above taken or payable during such period to the extent added to EBITDA in any prior or future period.

"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 clause (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.

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

"EMU Legislation" means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

"Enterprise EBITDA" means, for any period, the sum of (a) EBITDA of the Group on a consolidated basis for such period plus (b) without duplication, the Borrower's Pro Rata Share of EBITDA of each Material Joint Venture for such period.

"Enterprise Fixed Charges" means, for any period, with respect to the Group on a consolidated basis, the sum of, without duplication, (a) Enterprise Interest Expense paid in cash during such period plus (b) Scheduled Principal Payments during such period plus (c) cash dividends and distributions in respect of preferred stock of the Group during such period (but excluding (i) redemption payments or charges in connection with the redemption of preferred stock and (ii) amounts paid to the Parent Guarantor, the Borrower or any of their respective Subsidiaries); provided that Enterprise Fixed Charges shall not include (i) any amounts with respect to any Intercompany Indebtedness, (ii) gains and losses from unwinding or break-funding of Swap Contracts, (iii) write-offs of unamortized deferred financing fees, (iv) prepayment fees, premiums and penalties, and (v) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

"Enterprise Gross Asset Value" means, as of any date of determination, the sum of (a) Gross Asset Value of the Group on a consolidated basis plus (b) without duplication, the Borrower's Pro Rata Share of Gross Asset Value of each Material Joint Venture; provided that, without duplication, for purposes of calculating the Leverage Ratio, Enterprise Gross Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents deducted in the calculation of Enterprise Total Indebtedness pursuant to the first proviso of the definition of "Enterprise Total Indebtedness."

"Enterprise Interest Expense" means, for any period, the sum of (a) Interest Expense of the Group on a consolidated basis for such period plus (b) without duplication, the Borrower's Pro Rata Share of Interest Expense of each Material Joint Venture for such period.

"Enterprise Secured Debt" means, as of any date of determination, that portion of Enterprise Total Indebtedness that is subject to a Lien (other than Permitted Specified Liens); provided that in no event shall the Obligations hereunder and under the other Loan Documents constitute "Enterprise Secured Debt" solely as a result of any security interest granted to the Administrative Agent or any L/C Issuer, solely in any Cash Collateral or any account or other property, including proceeds thereof, established for the purpose of securing obligations in respect of Letters of Credit, exchange rate fluctuations or otherwise to the extent required pursuant to any of the cash collateralization provisions of the Loan Documents.

"Enterprise Total Indebtedness" means, as of any date of determination, an amount equal to, without duplication, (a) Indebtedness of the Group on a consolidated basis outstanding on such date, plus (b) without duplication, the Borrower's Pro Rata Share of Indebtedness of each Material Joint Venture outstanding on such date; provided that for purposes of calculating the Leverage Ratio, (x) clause (a) shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of the Group and (ii) escrow and other deposits to the extent available on such date for the repayment of any of the Indebtedness included in the calculation of clause (a) above up to an amount in the aggregate for this clause (x) not to exceed the aggregate amount of Indebtedness reflected in clause (a) above maturing in the immediately succeeding 24 months and (y) clause (b) shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of each such applicable Material Joint Venture and (ii) escrow and other deposits to the extent available on such date for the repayment of any of the Indebtedness included in the calculation of clause (b) above up to an amount in the aggregate for this clause (y) not to exceed the aggregate amount of Indebtedness reflected in clause (b) above maturing in the immediately succeeding 24 months; provided, further, that Enterprise Total Indebtedness shall not include accounts

payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

"Enterprise Unencumbered Asset Value" means, as of any date of determination, the sum of (a) Unencumbered Asset Value of the Group on a consolidated basis plus (b) without duplication, the Borrower's Pro Rata Share of Unencumbered Asset Value of each Material Joint Venture.

"Enterprise Unsecured Debt" means, as of any date of determination, that portion of Enterprise Total Indebtedness that is not Enterprise Secured Debt or a Guarantee of Enterprise Secured Debt.

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

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

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person and all of the warrants or options for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person (but excluding any debt security that is convertible into or exchangeable for capital stock).

"ERISA" means the Employee Retirement Income Security Act of 1974.

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

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001 (a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) 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 a Loan Party or any ERISA Affiliate in excess of the Threshold Amount.

"ESG Report" means the annual non-financial disclosure substantially similar to the GRI Standards as publicly reported by the Parent Guarantor or the Borrower and published on an Internet or

intranet website to which each Revolving Lender and the Administrative Agent has or has been granted access free of charge.

"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.

"EURIBOR" has the meaning specified in the definition of "Alternative Currency Term Rate."

"Euro" and "EUR" mean the single currency of the Participating Member States.

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Swap Obligations" means, with respect to the Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of the Guarantor of, or the grant by the Guarantor of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of the Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 11.11 and any other "keepwell", support or other agreement for the benefit of the Guarantor and any and all guarantees of the Guarantor's Swap Obligations by other guarantors (if any)) at the time the Guaranty of the Guarantor, or grant by the Guarantor of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes in each case (i) imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which any Loan Party is located, (c) any backup withholding tax that is required to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any U.S. withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Loan Parties with respect to such withholding tax pursuant to Section 3.01(a); provided that if the Alternative Currency Fronting Lender is a Foreign Lender, the Alternative Currency Fronting Lender shall be entitled to receive additional amounts from the Loan Parties with respect to any withholding tax imposed on amounts payable to it pursuant to Section 3.01(a) and (e) United States federal withholding Taxes imposed under FATCA.

"Existing Credit Agreement" means that certain Amended and Restated Credit Agreement, dated as of May 23, 2019, among the Borrower, Bank of America, N.A., as administrative agent, issuing bank and alternative currency fronting lender, and the lenders and other agents party thereto.

"Existing Letters of Credit" means the Letters of Credit issued under the Existing Credit Agreement and outstanding on the Closing Date and set forth on Schedule 2.03.

"Existing Revolving Notes" means the "Revolving Notes" as defined in the Existing Credit Agreement.

"Extended Letter of Credit" means any Letter of Credit with an expiration date occurring up to one year beyond the Letter of Credit Expiration Date pursuant to the terms of Section 2.03(a)(ii)(B).

"Facility Fee Rate" means, from time to time, the number of basis points per annum set forth in the following table, with reference to the Pricing Levels set forth in the definition of "Applicable Rate":

| Pricing Level | Facility Fee |
|---|---|
| 1 | 10.0 bps |
| 2 | 12.5 bps |
| 3 | 15.0 bps |
| 4 | 20.0 bps |
| 5 | 25.0 bps |
| 6 | 30.0 bps |

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the Closing Date (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, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that, if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Financing Lease" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a financing lease on the balance sheet of that Person.

"First Amendment" means that certain Consent and Amendment No. 1 to Second Amended and Restated Credit Agreement dated as of February 10, 2023, by and among the Parent Guarantor, the Borrower, the Lenders party thereto and the Administrative Agent.

"First Amendment Conversion" means the "Conversion" (as defined in the First Amendment).

"First Amendment Merger" means the "Merger" (as defined in the First Amendment).

"Fitch" means Fitch Ratings, Inc. and any successor thereto.

"Fixed Charge Coverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise EBITDA for the twelve-month period ending on such date to (b) Enterprise Fixed Charges for the twelve-month period ending on such date.

"Floor" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to CDOR.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, an amount equal to such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations, less the amount of such L/C Obligations as to which such Defaulting Lender has funded its participation obligation or as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Alternative Currency Fronting Lender, an amount equal to such Defaulting Lender's Alternative Currency Participant's Share of all outstanding Revolving Loans denominated in Alternative Currencies advanced by the Alternative Currency Fronting Lender, less the amount of such Revolving Loans as to which such Defaulting Lender has funded its Alternative Currency Risk Participation or as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Fund" means any Person (other than a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

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

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

"GRI Standards" means the Global Reporting Initiative Sustainability Reporting Standards (2016) (or successor standards) published by the Global Reporting Initiative.

"Gross Asset Value" means, as of any date of determination, an amount equal to (a) all assets of a Person and its Subsidiaries as determined in accordance with GAAP plus (b) all accumulated depreciation and accumulated amortization associated with such assets minus (c) Intangible Assets of such Person and its Subsidiaries.

"Group" means the Parent Guarantor, the Borrower and their respective Subsidiaries.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any payment obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified in Section 11.01.

"Guarantor" means the Parent Guarantor.

"Guaranty" means the Guarantee made by the Parent Guarantor under Article XI in favor of the Administrative Agent and the Lenders.

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

"HMT" has the meaning specified in the definition of "Sanction(s)."

"Honor Date" has the meaning specified in Section 2.03(b)(v).

"Increase Effective Date" has the meaning specified in Section 2.16(d).

"Incremental Term Loan" has the meaning specified in Section 2.16(a).

"Incremental Term Loan Amendment" has the meaning specified in Section 2.16(e)(iii).

"Indebtedness" means, at any time and with respect to any Person, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money, whether secured or unsecured, and all obligations of such Person evidenced by bonds, debentures, notes, loan

agreements or other similar instruments, including, without limitation, recourse and non-recourse mortgage debt;

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

(c) aggregate net obligations of such Person under Swap Contracts;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable and other accrued obligations in the ordinary course of business and (ii) liabilities with respect to earnouts, reimbursements, true-ups and other similar obligations incurred in connection with the purchase or sale of assets except to the extent such liabilities are required to appear on the balance sheet of such Person prepared in accordance with GAAP);

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

(f) Financing Leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person (other than OP units or LTIP units issued by such Person) at any time prior to the date that is six (6) months after the latest Maturity Date then in effect (other than obligations that can solely be satisfied by delivery of Equity Interests of such Person), valued, in the case of a redeemable preferred interest, at the liquidation preference thereof; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, (i) the amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date (which shall be a positive number if such amount would be owed by the Parent Guarantor, the Borrower or any of their respective Subsidiaries and a negative number if such amount would be owed to the Parent Guarantor, the Borrower or any of their respective Subsidiaries) and the net obligations under Swap Contracts shall not be less than zero and (ii) the amount of any Financing Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. Any liability will be excluded so long as it is (1) secured by a letter of credit issued for the benefit of the Parent Guarantor, the Borrower or any of their respective Subsidiaries in form and substance and from a financial institution reasonably acceptable to the Administrative Agent, but only to the extent neither the Parent Guarantor, the Borrower nor any of their respective Subsidiaries has liability therefor, (2) any obligation (including obligations under so called "sandwich leases") against which a third party indemnifies the Parent Guarantor, the Borrower or any of their respective Subsidiaries, or guarantees all loss suffered by the Parent Guarantor, the Borrower or any of their respective Subsidiaries on account thereof, to the extent the indemnitor or guarantor has the financial wherewithal to satisfy its obligation, or (3) otherwise acceptable as a "Covered Liability" in the reasonable discretion of the Administrative Agent and the Required Lenders.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitee" has the meaning specified in Section 10.04(b).

"Initial Revolving Maturity Date" has the meaning specified in Section 2.15(a).

"Intangible Assets" means, as of any date of determination, assets of a Person and its Subsidiaries that are classified as intangible assets under GAAP, but excluding interests in real estate that are classified as intangible assets in accordance with GAAP.

"Intercompany Indebtedness" means, as of any date, Indebtedness to which the only parties are the Parent Guarantor, the Borrower and/or any of their respective Subsidiaries as of such date and which, if the Parent Guarantor or the Borrower is the borrower with respect to such Indebtedness, is subordinated to the obligations under this Agreement and the other Loan Documents.

"Interest Expense" means, for any period, for a Person and its Subsidiaries on a consolidated basis, the sum, without duplication, of all (a) interest expense for such period determined in accordance with GAAP (but excluding, to the extent included in Interest Expense, (i) any charges resulting from settlement of options to repurchase remarketable bonds, (ii) remaining unamortized fees paid pursuant to the Existing Credit Agreement, and (iii) amortization of deferred financing fees, amortization of debt discounts and swap breakage costs) and (b) interest that is capitalized in such period in accordance with GAAP.

"Interest Payment Date" means, (a) as to any Term SOFR Loan, Alternative Currency Term Rate Loan or a Negotiated Rate Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date; provided, however, that, if any Interest Period for a Term SOFR Loan, Alternative Currency Term Rate Loan or a Negotiated Rate Loan exceeds three months, then the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, Daily SOFR Loan or Alternative Currency Daily Rate Loan, the last Business Day of each calendar quarter and the applicable Maturity Date.

"Interest Period" means, (a) as to each Term SOFR Loan and each Alternative Currency Term Rate Loan, the period commencing on the date such Term SOFR Loan or Alternative Currency Term Rate Loan, as applicable, is disbursed or converted to or continued as a Term SOFR Loan or an Alternative Currency Term Rate Loan and ending on the numerically corresponding day in the calendar month that is one, three or six months (or, in the case of any Alternative Currency Term Rate Loan denominated in Canadian Dollars, one, two or three months) thereafter (in each case, subject to availability for the interest rate applicable to the relevant currency), as selected by the Borrower in its Committed Loan Notice, and (b) as to each Negotiated Rate Loan, the period commencing on the date such Negotiated Rate Loan is disbursed and ending on the date not more than 180 days thereafter as selected by the Borrower in the applicable Negotiated Rate Loan Notice; provided that:

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

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

(iii) no Interest Period shall extend beyond the applicable Maturity Date.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IP Rights" has the meaning specified in Section 5.16.

"IRS" means the United States Internal Revenue Service.

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

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

"Joint Venture" means any Person in which the Borrower, directly or indirectly, has an ownership interest but does not consolidate the assets or income of such Person in preparing its consolidated financial statements.

"JPMorgan" means JPMorgan Chase Bank, N.A. and its successors.

"Judgment Currency" has the meaning specified in Section 10.19.

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

"L/C Advance" means, with respect to each Revolving Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing. All L/C Borrowings shall be denominated in Dollars.

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

"L/C Issuer" means each of Bank of America, JPMorgan, Wells Fargo and any other Revolving Lender designated by the Borrower (to the extent such Lender has accepted such designation) and acceptable to the Administrative Agent (such acceptance not to be unreasonably withheld), in each case in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. For the avoidance of doubt, references to "L/C Issuer" in this Agreement shall refer to the L/C Issuers collectively; provided that the term "L/C Issuer" when used with respect to a Letter of Credit or L/C Obligations relating to a Letter of Credit shall refer to the L/C Issuer that issued such Letter of Credit.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.10. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lead Alternative Currency Fronting Lender" means Bank of America in its capacity as an Alternative Currency Fronting Lender.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Alternative Currency Fronting Lender, each Alternative Currency Funding Lender and each Alternative Currency Participating Lender, as applicable. For the avoidance of doubt, the term "Lenders" excludes the Departing Lenders.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Letter of Credit" means any standby letter of credit issued hereunder and shall include the Existing Letters of Credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

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

"Letter of Credit Expiration Date" means the day that is the fifth day prior to the Revolving Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(g).

"Letter of Credit Sublimit" means $100,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Level 1 Sustainability Metric Election Threshold" has the meaning specified in the definition of "Sustainability Metric Election Threshold."

"Level 2 Sustainability Metric Election Threshold" has the meaning specified in the definition of "Sustainability Metric Election Threshold."

"Leverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Total Indebtedness outstanding on such date to (b) Enterprise Gross Asset Value as of such date.

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

"Loan" means an extension of credit by a Lender to the Borrower under Article II in the form of a Committed Revolving Loan or a Negotiated Rate Loan.

"Loan Documents" means this Agreement, each Note, each Issuer Document, any Sustainability Metric Annual Certificate and any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.17.

"Loan Parties" means, collectively, the Borrower and the Guarantor.

"Master Agreement" has the meaning specified in the definition of "Swap Contract."

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, properties or financial condition of the Group, taken as a whole, (b) the ability of the Loan Parties to perform any of their material obligations under the Loan Documents, or (c) the rights of or remedies available to the Administrative Agent and the Lenders under the Loan Documents.

"Material Group" has the meaning specified in the definition of "Material Subsidiary."

"Material Joint Venture" means a Joint Venture in which the Borrower has made a net equity investment of $15,000,000 or greater. For purposes of this definition, the Borrower's aggregate Investment in a Joint Venture will be valued at book value as shown on the consolidated balance sheet of the Borrower, as determined in accordance with GAAP.

"Material Recourse Indebtedness" means any Indebtedness of the Parent Guarantor, the Borrower and/or any of their respective Subsidiaries (other than Indebtedness under the Loan Documents and Indebtedness under Swap Contracts) that (a) does not constitute Non-Recourse Indebtedness, and (b) individually or in the aggregate, has a principal amount (including, without duplication, undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount.

"Material Subsidiary" means each Subsidiary or any group of Subsidiaries (i) which, as of the most recent fiscal quarter of the Parent Guarantor or the Borrower, as applicable, for the period of four consecutive fiscal quarters then ended, for which financial statements have been delivered pursuant to Section 6.01, contributed greater than $100,000,000 of Enterprise EBITDA for such period or (ii) which contributed greater than $300,000,000 of Enterprise Gross Asset Value as of such date. A group of Subsidiaries (a "Material Group") each of which is not otherwise a Material Subsidiary (defined in the foregoing sentence) shall constitute a Material Subsidiary if the group taken as a single entity satisfies the requirements of the foregoing sentence.

"Maturity Date" means (a) with respect to the Revolving Facility, the Revolving Maturity Date, and/or (b) with respect to any tranche of Incremental Term Loans, subject to Section 2.16(e)(iii), the date set forth in the applicable Incremental Term Loan Amendment as the "Maturity Date" for such tranche of Incremental Term Loans, in each case, as the context may require.

"Maximum Rate" has the meaning specified in Section 10.09.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage Lien" means any Lien that encumbers a real property owned by a Person other than Permitted Specified Liens.

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

"Negative Pledge" means any provision of a document, instrument or agreement (other than this Agreement or any other Loan Document) that is binding on a Loan Party or any Wholly-Owned Subsidiary and prohibits the creation or assumption of any Lien on any assets of such Person to secure the Obligations; provided, however, that a provision conditioning a Person's ability to encumber its assets upon the maintenance of one or more specified ratios shall not constitute a Negative Pledge so long as such provision does not generally prohibit the encumbrance of such Person's assets or the encumbrance of specific assets.

"Negotiated Rate Borrowing" means one or more Negotiated Rate Loans made to the Borrower by one or more of the Revolving Lenders and of which the Administrative Agent is given notice by a Negotiated Rate Loan Notice.

"Negotiated Rate Funding Date" shall have the meaning specified in Section 2.05(b).

"Negotiated Rate Loan" shall have the meaning specified in Section 2.05(a).

"Negotiated Rate Loan Notice" means the notice, in substantially the form of Exhibit C, pursuant to a Negotiated Rate Loan, and made pursuant to Section 2.05, duly completed and executed and personally delivered or transmitted by facsimile by the Borrower.

"Negotiated Rate Sublimit" means an amount equal to fifty percent (50%) of the Aggregate Revolving Commitments, which shall be available for negotiated rate advances. The Negotiated Rate Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

"Net Income" means, for any period, for a Person and its Subsidiaries on a consolidated basis, the net income of such Person and its Subsidiaries for such period as determined in accordance with GAAP (without giving effect to (i) any net after tax gains or losses attributable to sales of non-current assets out of the ordinary course of business and write-downs of non-current assets in anticipation of losses to the extent they have decreased net income, and (ii) gains and losses from dispositions of depreciable real estate investments, impairment charges, the early extinguishment of debt and transaction costs of acquisitions not permitted to be capitalized pursuant to GAAP and other non-recurring items, including, without limitation, charges resulting from settlement of options to repurchase remarketable bonds and other similar charges).

"New Lender Joinder Agreement" has the meaning specified in Section 2.16(c).

"Non-Extension Notice Date" has the meaning specified in Section 2.03(b)(iii).

"Non-Recourse Indebtedness" of a Person means any Indebtedness of such Person, the recourse for which is limited to the asset or assets securing such Indebtedness (and, if applicable, in the event such Person owns no assets other than real estate that secures such Indebtedness and assets incident to ownership of such real estate (e.g., personal property) and has no other Indebtedness, to such Person and/or such Person's Equity Interests), other than in respect of environmental liabilities, fraud, misrepresentation and other similar matters.

"Notes" means, collectively, the Revolving Notes and any promissory notes made by the Borrower evidencing any Incremental Term Loans in a form agreed between the Borrower and the Administrative Agent, as the context may require, and "Note" means any of them individually.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that, without limiting the foregoing, the Obligations of the Guarantor shall exclude any Excluded Swap Obligations with respect to the Guarantor.

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

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

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

"Other Taxes" means all present or future stamp, court, documentary intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other 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 3.06 or Section 10.13).

"Outstanding Amount" means (a) with respect to Committed Revolving Loans and Negotiated Rate Loans on any date, the Dollar Equivalent of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Revolving Loans and Negotiated Rate Loans, as the case may be, occurring on such date; and (b) with respect to any L/C

Obligations on any date, the Dollar Equivalent of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by or on behalf of the Borrower of Unreimbursed Amounts or any refinancings thereof.

"Overnight Rate" means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

"Parent Guarantor" means, upon completion of the First Amendment Merger, Healthpeak Properties, Inc., a Maryland corporation.

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

"Participant Register" has the meaning specified in Section 10.06(d).

"Participating Member State" means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with EMU Legislation.

"Patriot Act" has the meaning specified in Section 10.17.

"PBGC" means the Pension Benefit Guaranty Corporation.

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

"Permitted Specified Liens" means Liens permitted under Section 7.01(c) – (m) and (o) – (q).

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

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

"Platform" has the meaning specified in Section 6.02.

"Pro Forma Basis" means, for purposes of determining any financial covenant hereunder, that the subject transaction shall be deemed to have occurred as of the first day of the period of four (4) consecutive fiscal quarters ending as of the end of the most recent fiscal quarter for which annual or quarterly financial statements shall have been delivered in accordance with the provisions of this Agreement. Further, for purposes of making calculations on a "Pro Forma Basis" hereunder, (a) in the case of a Disposition, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such Disposition shall be excluded to the extent

relating to any period prior to the date of the subject transaction, and (ii) Indebtedness paid or retired in connection with the subject transaction shall be deemed to have been paid and retired as of the first day of the applicable period; (b) in the case of an acquisition, development or redevelopment, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such acquisition, development or redevelopment shall be included to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness incurred in connection with the subject transaction shall be deemed to have been incurred as of the first day of the applicable period (and interest expense shall be imputed for the applicable period utilizing the actual interest rates thereunder or, if actual rates are not ascertainable, assuming prevailing interest rates hereunder) and (c) in the case of the issuance or exercise of Equity Interests, Indebtedness paid or retired in connection therewith shall be deemed to have been paid and retired as of the first day of the applicable period.

"Pro Rata Share" means (a) with respect to the EBITDA, Net Income, Interest Expense, Gross Asset Value and Unencumbered Asset Value of each Joint Venture, the Borrower's direct or indirect percentage ownership interest in such Joint Venture and (b) with respect to the Indebtedness of each Joint Venture (i) if the Indebtedness is recourse to the Parent Guarantor, the Borrower or any of their respective Subsidiaries, the amount of such Indebtedness that is recourse to the Parent Guarantor, the Borrower or such Subsidiary and (ii) if the Indebtedness is not recourse to the Parent Guarantor, the Borrower or any of their respective Subsidiaries, the Borrower's percentage ownership interest in such Joint Venture.

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

"Public Lender" has the meaning specified in Section 6.02.

"QFC Credit Support" has the meaning specified in Section 10.24.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Rate Determination Date" means, with respect to any Interest Period, two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as reasonably determined by the Administrative Agent; provided that, to the extent such market practice is not administratively feasible for the Administrative Agent, then "Rate Determination Date" means such other day as otherwise reasonably determined by the Administrative Agent).

"Recipient" means the Administrative Agent, any Lender and any L/C Issuer, as applicable.

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

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

"Related Indemnified Party" of an Indemnitee means (a) any trustees, members, administrators, managers, partners, Controlling Person or Controlled Affiliate of such Indemnitee, (b) the respective directors, officers or employees of such Indemnitee or any of its Controlling Persons or Controlled Affiliates and (c) the respective advisors, attorneys, accountants, agents and representatives of such Indemnitee or any of its Controlling Persons or Controlled Affiliates, in the case of this clause (c), acting

on behalf of, or at the express instructions of, such Indemnitee, Controlling Person or such Controlled Affiliate.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Relevant Governmental Body" means the Bank of Canada, or a committee officially endorsed or convened by the Bank of Canada, or any successor thereto.

"Relevant Rate" means with respect to any Credit Extension denominated in (a) Dollars, initially, SOFR, (b) Sterling, SONIA, (c) Swiss Francs, SARON, (d) Euro, EURIBOR, (e) Canadian Dollars, the CDOR Rate, (f) Yen, TIBOR, and (g) Australian Dollars, BBSY, as applicable, and, in each case, if such rate is replaced pursuant to Section 3.03(b), (c) or (d), any replacement rate in respect thereof.

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

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

"Required Class Lenders" means, at any time with respect to any Class of Loans (or any Class of commitments to make Loans), Lenders having Total Credit Exposures with respect to such Class representing more than 50% of the Total Credit Exposures of all Lenders of such Class. The Total Credit Exposure of any Defaulting Lender with respect to such Class shall be disregarded in determining Required Class Lenders at any time.

"Required Lenders" means, as of any date of determination, (a) Revolving Lenders having more than 50% of the Aggregate Revolving Commitments or (b) if the Revolving Commitment of each Revolving Lender to make Revolving Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Revolving Lenders holding in the aggregate more than 50% of the Total Revolving Outstandings (with the aggregate amount of each Revolving Lender's risk participation and funded participation in L/C Obligations and Alternative Currency Risk Participations being deemed "held" by such Revolving Lender for purposes of this definition); provided that (i) any Revolving Commitment of, and the portion of the Total Revolving Outstandings (other than risk participations in Letters of Credit, which risk participations shall be deemed to be held by the applicable Issuing Bank in its capacity as a Revolving Lender for purposes of making a determination of Required Lenders) held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders and (ii) the Alternative Currency Risk Participations of any Defaulting Lender at such time shall be deemed to be held by the Alternative Currency Fronting Lender for purposes of making a determination of Required Lenders.

"Rescindable Amount" has the meaning specified in Section 2.13(b)(ii).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, president, chief financial officer, each executive vice president and senior vice president, and the treasurer of any Loan Party, and solely for

purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party or any entity authorized to act on behalf of such Loan Party, and, solely for purposes of notices given pursuant to Article II, any other officer or employee of a Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of such Loan Party designated in or pursuant to an agreement between such Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the applicable Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any payment (whether in cash, securities or other property) by the Parent Guarantor, the Borrower or any of their respective Subsidiaries, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any of the Parent Guarantor's or Borrower's capital stock or other Equity Interest, or on account of any return of capital to the Parent Guarantor's or the Borrower's stockholders, partners or members (or the equivalent Person thereof); provided that dividends to the extent in the form of Equity Interests shall not constitute Restricted Payments.

"Revaluation Date" means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of an Alternative Currency Loan, (ii) with respect to an Alternative Currency Daily Rate Loan, each Interest Payment Date, (iii) each date of a continuation of an Alternative Currency Term Rate Loan pursuant to Section 2.02, (iv) the date the Alternative Currency Fronting Lender has requested payment from the Alternative Currency Participating Lenders in Dollars, and with respect to all other instances pursuant to Section 2.02(f) the date on which payments in Dollars are made between the Alternative Currency Fronting Lender and Alternative Currency Participating Lenders with respect to such Loan, and (v) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance, amendment and/or extension of a Letter of Credit denominated in an Alternative Currency, (ii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, and (iii) such additional dates as the Administrative Agent or the L/C Issuer shall determine or the Required Lenders shall require.

"Revolving Commitment" means, as to each Revolving Lender, its obligation to (a) make Committed Revolving Loans to the Borrower pursuant to Section 2.01, (b) purchase participations in L/C Obligations and (c) if such Lender is an Alternative Currency Participating Lender with respect to any Alternative Currency, purchase Alternative Currency Risk Participations in Loans denominated in such Alternative Currency, in an aggregate principal amount at any one time outstanding the Dollar Equivalent of which does not exceed the Dollar amount set forth opposite such Lender's name in the column entitled "Revolving Commitment" on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Credit Exposure" means, as to any Revolving Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Loans and such Lender's participation in L/C Obligations and Alternative Currency Risk Participations at such time.

"Revolving Facility" means, at any time, the aggregate amount of the Revolving Lenders' Revolving Commitments at such time.

"Revolving Lender" means a Lender with a Revolving Commitment or an outstanding Committed Revolving Loan or an outstanding Negotiated Rate Loan and, as the context requires, includes the L/C Issuer.

"Revolving Loan" means any extension of credit under the Revolving Facility in the form of a loan by a Revolving Lender to the Borrower under Article II.

"Revolving Maturity Date" means January 20, 2026, subject to extension in accordance with Section 2.15.

"Revolving Note" means a promissory note made by the Borrower in favor of a Revolving Lender evidencing Revolving Loans made by such Lender, substantially in the form of Exhibit D.

"Rolling Base Year Methodology" has the meaning specified in the definition of "Sustainability Metric."

"Rolling Base Year Percentage" has the meaning specified in the definition of "Sustainability Metric."

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

"Same Day Funds" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

"Sanction(s)" means any international economic sanctions administered or enforced by the United States federal government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty's Treasury of the United Kingdom ("HMT") or other relevant sanctions authority.

"SARON" means, with respect to any applicable determination date, the Swiss Average Rate Overnight published on the fifth Business Day preceding such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time); provided, however, that, if such determination date is not a Business Day, SARON means such rate that applied on the first Business Day immediately prior thereto.

"SARON Adjustment" means, with respect to SARON, 0.0031% per annum.

"Scheduled Principal Payment" means, for any period, (a) all regularly scheduled principal payments during such period by the Parent Guarantor and its Subsidiaries with respect to Indebtedness of the Parent Guarantor and its Subsidiaries (other than payments due at final maturity of any tranche of Indebtedness) and (b) without duplication, the Borrower's Pro Rata Share of all regularly scheduled principal payments during such period with respect to the Indebtedness (other than payments due at final maturity of any tranche of Indebtedness) of each Material Joint Venture. For purposes of determining Scheduled Principal Payments, Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

"Scheduled Unavailability Date" has the meaning specified in Section 3.03(d).

"Scope 1" means direct greenhouse gas emissions relating to natural gas, transport fuel and refrigerants (or other similar categories) as disclosed in the applicable annual Sustainability Metric Report.

"Scope 2" means indirect greenhouse gas emissions relating to purchased electricity and purchased chilled water refrigerants (or other similar categories) as disclosed in the applicable annual Sustainability Metric Report.

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

"Secured Debt Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Secured Debt outstanding on such date to (b) Enterprise Gross Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Unsecured Leverage Ratio as of such date.

"Senior Managing Agents" means each of Capital One National Bank, The Huntington National Bank, Regions Bank, Sumitomo Mitsui Banking Corporation, TD Bank, N.A., and U.S. Bank National Association, in their capacity as Senior Managing Agents.

"Significant Acquisition" means the acquisition (in one or a series of related transactions) of all or substantially all of the assets or Equity Interests of a Person or any division, line of business or business unit of a Person for an aggregate consideration in excess of $450,000,000.

"SOFR" means, with respect to any applicable determination date, the Secured Overnight Financing Rate published on the fifth U.S. Government Securities Business Day preceding such date by the Federal Reserve Bank of New York (or a successor administrator of such rate) on the Federal Reserve Bank of New York's website (or any successor source); provided however that if such determination date is not a U.S. Government Securities Business Day, then SOFR means such rate that applied on the first U.S. Government Securities Business Day immediately prior thereto.

"SOFR Adjustment" with respect to Daily Simple SOFR means 0.10% (10 basis points); with respect to Daily SOFR means 0.10% (10 basis points); and with respect to Term SOFR means 0.10% (10 basis points).

"SOFR Scheduled Unavailability Date" has the meaning specified in Section 3.03(b).

"SOFR Successor Rate" has the meaning specified in Section 3.03(b).

"SONIA" means, with respect to any applicable determination date, the Sterling Overnight Index Average Reference Rate published on the fifth Business Day preceding such date on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time); provided, however, that, if such determination date is not a Business Day, SONIA means such rate that applied on the first Business Day immediately prior thereto.

"SONIA Adjustment" means, with respect to SONIA, 0.1193% per annum.

"Special Notice Currency" means at any time an Alternative Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

"Specified Default" means an Event of Default arising under Section 8.01(a) or 8.01(f).

"Specified Representations" means the representations and warranties set forth in the Loan Documents (or otherwise mutually agreed between the Borrower and the applicable Lenders providing any applicable Incremental Term Loans) relating to: corporate existence of each Loan Party and good standing of such Loan Party in its jurisdiction of organization; power and authority, due authorization, execution and delivery and enforceability, in each case, relating to such Loan Party entering into and performance of the Loan Documents; no conflicts with or consents under such Loan Party's Organization Documents, applicable Law or material contractual obligations (in each case, as they relate to the entering into and performance of the Loan Documents); use of proceeds of the Incremental Term Loans on the relevant Increase Effective Date; solvency of the Loan Parties and their Subsidiaries on a consolidated basis; Federal Reserve margin regulations; the Investment Company Act of 1940; the Patriot Act; OFAC; and Sanctions and Anti-Corruption Laws.

"Specified Test Year" has the meaning specified in the definition of "Applicable Rate."

"Spot Rate" for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; provided, further, that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

"Sterling" and "£" mean the lawful currency of the United Kingdom.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity the accounts of which are consolidated with the accounts of such Person in such Person's consolidated financial statements prepared in accordance with GAAP. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

"Successor Rate" has the meaning specified in Section 3.03(d).

"Supported QFC" has the meaning specified in Section 10.24.

"Sustainability Assurance Provider" means Cventure LLC, or any replacement sustainability assurance provider thereof as designated from time to time by the Borrower; provided that any such replacement Sustainability Assurance Provider (a) shall be (i) a qualified external reviewer, independent of the Loan Parties and their Subsidiaries, believed in good faith by the Borrower to have relevant expertise, such as an auditor, environmental consultant and/or independent ratings agency or (ii) another

firm designated by the Borrower and identified in writing to the Administrative Agent and the Revolving Lenders, so long as Revolving Lenders constituting the Required Lenders do not object to such designation pursuant to this clause (a)(ii) within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection), and (b) to the extent relevant to the Sustainability Metric Components, shall apply auditing standards and methodology that are the same as or substantially consistent with the auditing standards and methodology used in the Borrower's ESG Report for the calendar year ended December 31, 2020, except for any changes to such standards and/or methodology that (x) are not material, (y) are consistent with then generally accepted industry standards or (z) if not so consistent, are proposed by the Borrower and notified in writing to the Administrative Agent and the Revolving Lenders, so long as, in the case of this subclause (z), Revolving Lenders constituting Required Lenders do not object to such changes within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection).

"Sustainability Metric" means, for any given Specified Test Year, the percentage change of the Sustainability Metric Components relative to the Sustainability Metric Baseline, which percentage change for any Specified Test Year shall be determined and calculated based on the following methodology: (a) the Sustainability Metric Components for such Specified Test Year shall be compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of such Specified Test Year (such methodology described in this clause (a), the "Rolling Base Year Methodology," and the percentage change of such Sustainability Metric Components for a Specified Test Year relative to such Sustainability Metric Components for the immediately preceding calendar year being referred to as the "Rolling Base Year Percentage", which, for the avoidance of doubt, shall be expressed as a negative percentage in the event such Sustainability Metric Components for such Specified Test Year are less than such Sustainability Metric Components for the immediately preceding calendar year); (b) in the case of the Specified Test Year ending December 31, 2021, the Sustainability Metric for such Specified Test Year shall equal the Rolling Base Year Percentage for such Specified Test Year; and (c) in the case of a Specified Test Year ending after December 31, 2021, the Sustainability Metric for such Specified Test Year shall be the percentage equal to the sum of (i) the Rolling Base Year Percentage for such Specified Test Year and (ii) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021.

"Sustainability Metric Annual Certificate" means a certificate substantially in the form of Exhibit G (or such other form as may be approved by the Administrative Agent), signed by a Responsible Officer, and attaching a copy of the Sustainability Metric Report for the most recently ended calendar year (provided that such a copy shall not be required to be so attached if such Sustainability Metric Report has been published on an Internet or intranet website to which each Revolving Lender and the Administrative Agent has or has been granted access free of charge); provided that the Borrower may, but shall not be required to, include a certification regarding whether or not any level of the Sustainability Metric Election Threshold has been satisfied as of December 31 of the then most recently ended calendar year (commencing with the calendar year ending December 31, 2021) in any Compliance Certificate delivered by the Borrower from time to time pursuant to Section 6.02(a), and any Compliance Certificate containing such a certification (and attaching a copy of the applicable Sustainability Metric Report, except to the extent such attachment is not required as described above) shall be deemed to be the Sustainability Metric Annual Certificate for the calendar year most recently ended prior to the delivery of such Compliance Certificate.

"Sustainability Metric Annual Certificate Inaccuracy" has the meaning specified in the definition of "Applicable Rate."

"Sustainability Metric Baseline" means the Borrower's Sustainability Metric Components for the calendar year ended December 31, 2020, as set forth in the applicable Sustainability Metric Report (for the avoidance of doubt, subject to the Rolling Base Year Methodology).

"Sustainability Metric Components" means, for any calendar year of the Borrower, the combined Scope 1 and Scope 2 greenhouse gas emissions of the Parent Guarantor, the Borrower and their respective Controlled Subsidiaries for such calendar year (determined in all material respects in conformity with the GRI Standards), less any qualified emissions offsets (including, but not limited to, renewable energy certificates) of the Parent Guarantor, the Borrower and their respective Controlled Subsidiaries during such calendar year, in each case, with respect to the Boundary Properties (subject to the Rolling Base Year Methodology). Qualified emissions offsets include any offsets used to calculate Scope 1 and Scope 2 emissions for reporting emissions in the applicable annual Sustainability Metric Report, including any offsets in which Parent Guarantor, Borrower and/or any of their respective Controlled Subsidiaries has an interest as a result of purchasing environmental attributes of projects other than those owned directly by the Parent Guarantor, the Borrower and/or any of their respective Controlled Subsidiaries.

"Sustainability Metric Election Threshold" means, with respect to any Specified Test Year of the Borrower listed in the first column of the table set forth below, the percentage change specified opposite such Specified Test Year in either (a) the second column of the table below (such change specified in such column, the "Level 1 Sustainability Metric Election Threshold") or (b) the third column of the table below (such change specified in such column, the "Level 2 Sustainability Metric Election Threshold").

| **Specified Test Year ending December 31 of** | **Required Sustainability Metric Reduction for Level 1 Sustainability Metric Election Threshold** | **Required Sustainability Metric Reduction for Level 2 Sustainability Metric Election Threshold** |
|---|---|---|
| 2021 | -1.00% | -2.50% |
| 2022 | -2.00% | -5.00% |
| 2023 | -3.00% | -7.50% |
| 2024 | -4.00% | -10.00% |
| 2025 and thereafter | -5.00% | -12.50% |

For purposes hereof, (i) the Level 1 Sustainability Metric Election Threshold for any Specified Test Year shall be satisfied if the Sustainability Metric for such Specified Test Year is a negative number the absolute value of which is (x) equal to or greater than the absolute value of such Level 1 Sustainability Metric Election Threshold but (y) less than the absolute value of the Level 2 Sustainability Metric Election Threshold for such Specified Test Year, and (ii) the Level 2 Sustainability Metric Election Threshold for any Specified Test Year shall be satisfied if the Sustainability Metric for such Specified Test Year is a negative number the absolute value of which is equal to or greater than the absolute value of such Level 2 Sustainability Metric Election Threshold. Any reference herein to any level of the Sustainability Metric Election Threshold for any Specified Test Year shall mean a reference to the Level 1 Sustainability Metric Election Threshold and/or the Level 2 Sustainability Metric Election Threshold for such Specified Test Year, as the context may require.

"Sustainability Metric Pricing Grid" has the meaning specified in the definition of "Applicable Rate."

"Sustainability Metric Report" means an annual report by the Parent Guarantor or the Borrower (it being understood that such annual report for any Specified Test Year may take the form of the annual ESG Report) that sets forth the Sustainability Metric Components for a specific calendar year and with respect to which a verification review of the Scope 1 and Scope 2 emissions reported therein for such

calendar year has been conducted by the Sustainability Assurance Provider; provided that, to the extent relevant to such Sustainability Metric Components, the qualified or limited statement of assurance from the Sustainability Assurance Provider that is set forth in, or attached to, such report shall be the same as or substantially similar in all material respects to the statement of the Sustainability Assurance Provider set forth on page 54 of the ESG Report for the calendar year ended December 31, 2020, except for any changes that (x) are with respect to any additional or increased level of assurance or any expanded scope of review, (y) are with respect to accounting standards or methodology, so long as, in the case of this subclause (y), such changes are consistent with the requirements of clause (b) of the definition of "Sustainability Assurance Provider" (without regard to whether such Sustainability Assurance Provider is a replacement Sustainability Assurance Provider) or (z) are proposed by the Borrower and notified in writing to the Administrative Agent and the Revolving Lenders, so long as, in the case of this subclause (z), Revolving Lenders constituting Required Lenders do not object to such changes within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection).

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

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

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

"Swiss Francs" means the lawful currency of Switzerland.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) any similar off-balance sheet financing product that is considered borrowed money indebtedness for tax purposes but classified as an operating lease under GAAP.

"TARGET2" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

"TARGET Day" means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

"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 CORRA" means, for the applicable corresponding tenor, the forward-looking term rate based on CORRA that has been selected or recommended by the Relevant Governmental Body, and that is published by an authorized benchmark administrator and is displayed on a screen or other information service, as identified or selected by the Administrative Agent in its reasonable discretion at approximately a time and as of a date prior to the commencement of an Interest Period determined by the Administrative Agent in its reasonable discretion in a manner substantially consistent with market practice.

"Term CORRA Notice" means the notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term CORRA Transition Event.

"Term CORRA Transition Date" means, in the case of a Term CORRA Transition Event, the date that is set forth in the Term CORRA Notice provided to the Lenders and the Borrower, for the replacement of the then-current Canadian Benchmark with the Canadian Benchmark Replacement described in clause (a)(i) of such definition, which date shall be at least thirty (30) Business Days from the date of the Term CORRA Notice.

"Term CORRA Transition Event" means the determination by the Administrative Agent that (a) Term CORRA has been recommended for use by the Relevant Governmental Body, and is determinable for any Available Tenor, (b) the administration of Term CORRA is administratively feasible for the Administrative Agent, (c) a Canadian Benchmark Replacement, other than Term CORRA, has replaced CDOR in accordance with Section 3.03(c) and (d) Borrower has provided a written request to Administrative Agent to transition to Term CORRA.

"Term SOFR" means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that, if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto for which such rate was published, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day; provided that, if the rate is not published prior to 11:00 a.m. on such determination date then

Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto for which such rate was published;

provided that, if Term SOFR determined in accordance with the provisions of either clause (a) or (b) above would otherwise be less than 0.00%, then Term SOFR shall be deemed 0.00% for purposes of this Agreement.

"Term SOFR Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "Term SOFR."

"Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

"Threshold Amount" means $150,000,000.

"TIBOR" has the meaning specified in the definition of "Alternative Currency Term Rate."

"Total Credit Exposure" means, as to any Lender at any time, the unused Revolving Commitments and Revolving Credit Exposure of such Lender at such time.

"Total Revolving Outstandings" means the aggregate Outstanding Amount of all Committed Revolving Loans, all L/C Obligations and all Negotiated Rate Loans.

"Treasury Management Agreement" means any treasury, depository or cash management arrangements, services or products, including, without limitation, overdraft services and automated clearinghouse transfers of funds.

"Treasury Management Lender" means any Person that, at the time it enters into a Treasury Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Treasury Management Agreement.

"Type" means, with respect to a Committed Revolving Loan, its character as a Base Rate Loan, a Daily SOFR Loan, a Term SOFR Loan, an Alternative Currency Term Rate Loan or an Alternative Currency Daily Rate Loan.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unencumbered Asset Value" means, for a Person and its Subsidiaries on a consolidated basis, as of any date of determination, the sum of (a) the aggregate net book value, as determined in accordance with GAAP, of all real property of a Person that is not subject to a Mortgage Lien plus (b) all accumulated depreciation and amortization with respect to such real properties plus (c) unrestricted cash

and cash equivalents of such Person plus (d) the sum of (i) unencumbered mezzanine and mortgage loan receivables (at the value reflected in the consolidated financial statements of the Parent Guarantor, in accordance with GAAP, as of such date, including the effect of any impairment charges) and (ii) unencumbered marketable securities (at the value reflected in the consolidated financial statements of the Parent Guarantor, in accordance with GAAP, as of such date, including the effect of any impairment charges); provided that the items described in this clause (ii) and in the preceding clause (i) shall not be taken into account to the extent that the amounts of such items exceed, in the aggregate, 20% of Unencumbered Asset Value. For purposes of this definition, (1) "Mortgage Lien" shall not include any lien securing Intercompany Indebtedness and (2) for the avoidance of doubt, the value of any asset or property subject to Liens on assets of the Parent Guarantor, the Borrower or any of their respective Subsidiaries securing obligations under Swap Contracts shall not be included in the calculation of Unencumbered Asset Value.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(b)(v).

"Unsecured Leverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Unsecured Debt outstanding on such date to (b) Enterprise Unencumbered Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Secured Debt Ratio as of such date.

"U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

"U.S. Special Resolution Regimes" has the meaning specified in Section 10.24.

"Wells Fargo" means Wells Fargo Bank, National Association and its successors.

"Wholly-Owned Subsidiary" means any wholly-owned Subsidiary of the Parent Guarantor or the Borrower, as applicable, in each case, that is not a special purpose entity.

"Write-Down and Conversion Powers" means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right

had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

"Yen" and "¥" mean the lawful currency of Japan.

**1.02 Other Interpretive Provisions.**

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

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

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

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

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

(e) For the avoidance of doubt, the parties intend that the term "Enterprise" refer to financial calculations that cover (i) the Group and (ii) the Borrower's Pro Rata Share of Material Joint Ventures.

**1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent Guarantor and its Subsidiaries shall be deemed to be carried in accordance with GAAP, excluding the effects of FASB ASC 825 on financial liabilities.

(b) Changes in GAAP. 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 Required 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 Required Lenders and the Borrower); provided 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) the Borrower shall provide to the Administrative Agent financial statements and other documents required under this Agreement or as reasonably requested in writing hereunder by the Administrative Agent setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.04 Rounding.**

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

**1.05 Exchange Rates; Currency Equivalents.** (a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalents and/or Alternative Currency Equivalents of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies or Dollars. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be its Dollar Equivalent as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Committed Borrowing, conversion, continuation or prepayment of an Alternative Currency Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Committed Borrowing, Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

**1.06 Additional Alternative Currencies.** (a) With respect to (i) Revolving Loans to be made as Alternative Currency Loans and (ii) Letters of Credit, the Borrower may from time to time request that

such Loans be made in, and/or Letters of Credit be issued in, a currency other than those specifically listed in the definition of "Alternative Currency"; provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Revolving Loans as Alternative Currency Loans, such request shall be subject to the approval of the Administrative Agent and each Revolving Lender; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent, the L/C Issuer issuing such Letter of Credit and each Revolving Lender.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., twenty (20) Business Days prior to the date of the desired Credit Extension (or such other time or date (but not less than eleven (11) Business Days prior) as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Revolving Loans to be made as Alternative Currency Loans, the Administrative Agent shall promptly notify each Revolving Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Revolving Lender (in the case of any such request pertaining to Revolving Loans to be made as Alternative Currency Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of such Alternative Currency Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Revolving Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Revolving Lender or the L/C Issuer, as the case may be, to permit Revolving Loans to be made as Alternative Currency Loans, or Letters of Credit to be issued, in such requested currency. If the Administrative Agent and the Revolving Lenders consent to making Alternative Currency Loans in such requested currency and the Administrative Agent and such Revolving Lenders reasonably determine that an appropriate interest rate is available to be used for such requested currency, the Administrative Agent shall so notify the Borrower and the Revolving Lenders and (i) the Administrative Agent and the Borrower may amend the definition of Alternative Currency Term Rate and/or Alternative Currency Daily Rate, as applicable, to the extent necessary to add the applicable rate for such currency and any applicable adjustment for such rate and (ii) to the extent the definition of Alternative Currency Term Rate and/or Alternative Currency Daily Rate, as applicable, reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Committed Borrowings of Alternative Currency Loans. If the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and the Revolving Lenders and (i) the Administrative Agent, the Borrower and the L/C Issuer may amend the definition of Alternative Currency Term Rate and/or Alternative Currency Daily Rate, as applicable, to the extent necessary to add the applicable rate for such currency and any applicable adjustment for such rate and (ii) to the extent the definition of Alternative Currency Term Rate and/or Alternative Currency Daily Rate, as applicable, reflects the appropriate interest rate for such currency or has been amended to reflect the appropriate rate for such currency, such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain any consent required to any request for an additional currency under this Section 1.06, the Administrative Agent shall promptly so notify the Borrower and the Revolving Lenders.

**1.07 Change of Currency.** (a) Each obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the

Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the applicable interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Committed Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Committed Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent (in consultation with the Borrower) may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to such change in currency.

**1.08 Interest Rates.** Except as specifically set forth herein, the Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate or any Canadian Benchmark Replacement) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate or any Canadian Benchmark Replacement) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate or any Canadian Benchmark Replacement) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any such rate (or component thereof) provided by any such information source or service.

**1.09 Times of Day.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**1.10 Letter of Credit Amounts.**

Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document

related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit at any given time shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all increases that are scheduled to occur at any time thereafter (notwithstanding that such maximum stated amount is not in effect at such time).

## ARTICLE II

## THE REVOLVING COMMITMENTS AND CREDIT EXTENSIONS

**2.01 Committed Revolving Loans**. Prior to the Closing Date, certain revolving loans were previously made to the Borrower under the Existing Credit Agreement which remain outstanding as of the Closing Date (such outstanding loans being hereinafter referred to as the "Existing Loans"). Subject to the terms and conditions set forth in this Agreement, the parties hereto agree that (x) on the Closing Date, the Existing Loans shall be re-evidenced as Committed Revolving Loans under this Agreement and the terms of the Existing Loans shall be restated in their entirety and shall be evidenced by this Agreement and (y) in connection therewith, the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Revolving Lender's credit exposure under the Existing Credit Agreement as are necessary in order that each such Lender's Revolving Credit Exposure hereunder reflects such Lender's Applicable Percentage of the Total Revolving Outstandings on the Closing Date. In addition, subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make revolving loans (each such loan, a "Committed Revolving Loan") to the Borrower in Dollars or (subject to the provisions of Section 2.02(f)) in one or more Alternative Currencies from time to time, on any Business Day during the Availability Period for the Revolving Facility, in an aggregate amount not to exceed at any time outstanding the amount of such Revolving Lender's Revolving Commitment; provided, however, that after giving effect to any Committed Borrowing, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (ii) the aggregate Outstanding Amount of the Committed Revolving Loans of any Revolving Lender (less, with respect only to the Alternative Currency Fronting Lender, the aggregate Alternative Currency Risk Participations in all Committed Revolving Loans denominated in Alternative Currencies), plus, with respect only to the Alternative Currency Participating Lenders, the Outstanding Amount of such Lender's Alternative Currency Risk Participations in Loans denominated in Alternative Currencies and advanced by the Alternative Currency Fronting Lender, plus such Revolving Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Revolving Lender's Revolving Commitment, (iii) the aggregate Outstanding Amount of all Revolving Loans denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit and (iv) the aggregate Outstanding Amount of all Committed Revolving Loans denominated in an Alternative Currency fronted by any Alternative Currency Fronting Lender shall not exceed $37,500,000. Within the limits of each Revolving Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.06, and reborrow under this Section 2.01. Committed Revolving Loans may be Base Rate Loans, Daily SOFR Loans, Term SOFR Loans, Alternative Currency Term Rate Loans or Alternative Currency Daily Rate Loans, as further provided herein.

**2.02 Borrowings, Conversions and Continuations of Committed Revolving Loans.**

(a) Each Committed Borrowing, each conversion of Committed Revolving Loans from one Type to another Type, and each continuation of Term SOFR Loans and Alternative Currency Term Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such

Committed Loan Notice must be received by the Administrative Agent not later than 12:00 Noon (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Committed Revolving Loans, (ii) on the requested date of any Borrowing of, or conversion to Daily SOFR Loans or of any conversion of Daily SOFR Loans to Base Rate Committed Revolving Loans, (iii) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency and any Alternative Currency Daily Rate Loan denominated in Sterling or Swiss Francs) prior to the requested date of any Borrowing or continuation of Alternative Currency Loans, and (iv) on the requested date of any Borrowing of Base Rate Committed Revolving Loans. Each Borrowing of or conversion to Term SOFR Loans, Daily SOFR Loans, Alternative Currency Daily Rate Loans and Alternative Currency Term Rate Loans, or continuation of Term SOFR Loans and Alternative Currency Term Rate Loans, shall be in a principal amount the Dollar Equivalent of which is $1,000,000 or a whole multiple of $100,000 in excess thereof. Except as provided in Section 2.03(b), each Borrowing of or conversion to Base Rate Committed Revolving Loans shall be in a principal amount the Dollar Equivalent of which is $500,000 or a whole multiple of $100,000 in excess thereof.

Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Committed Borrowing, a conversion of Committed Revolving Loans from one Type to another Type, or a continuation of Term SOFR Loans or Alternative Currency Term Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Revolving Loans to be borrowed, converted or continued, (iv) the Type and Class of Committed Revolving Loans to be borrowed or to which existing Committed Revolving Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and (vi) the currency of the Committed Revolving Loans to be borrowed or continued. If the Borrower fails to specify a Type of Committed Revolving Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Committed Revolving Loans shall be made as, or converted to, Base Rate Loans; provided, however, that, in the case of a failure to timely request a continuation of Term SOFR Loans or Alternative Currency Term Rate Loans, such Loans shall be continued as a Term SOFR Loan or an Alternative Currency Term Rate Loan in its original currency, as applicable, with an Interest Period of one month (unless an Event of Default exists and is continuing at such time and the Administrative Agent has notified the Borrower that the Required Lenders have determined that such a continuation as Term SOFR Loans or Alternative Currency Term Rate Loans, as applicable, is not appropriate in accordance with Section 2.02(c)). Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans or Alternative Currency Term Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Loans or Alternative Currency Term Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Except as provided pursuant to Section 3.03, no Committed Revolving Loan may be converted into or continued as a Committed Revolving Loan denominated in a different currency, but instead must be prepaid in the original currency of such Committed Revolving Loan and reborrowed in the other currency.

(b) Following receipt of a Committed Loan Notice requesting a Committed Borrowing denominated in Dollars or in an Alternative Currency with respect to which the Administrative Agent has not received notice that any Revolving Lender is an Alternative Currency Participating Lender, the Administrative Agent shall promptly notify each applicable Lender of the amount (and, with respect to Committed Revolving Loans, currency) of its Applicable Percentage of the applicable Committed Revolving Loans. Following receipt of a Committed Loan Notice requesting a Committed Borrowing denominated in an Alternative Currency with respect to which the Administrative Agent and the Borrower have received notice that one or more Revolving Lenders is an Alternative Currency

Participating Lender, the Administrative Agent shall on or prior to the next following Business Day notify (i) each Alternative Currency Funding Lender of both the Dollar Equivalent and the Alternative Currency Equivalent of its Alternative Currency Funding Applicable Percentage, (ii) the Alternative Currency Fronting Lender of both the Dollar Equivalent and the Alternative Currency Equivalent of the aggregate Alternative Currency Risk Participations in such Committed Borrowing, (iii) each Alternative Currency Participating Lender of both the Dollar Equivalent and the Alternative Currency Equivalent of its Alternative Currency Risk Participation in such Committed Borrowing, and (iv) all Revolving Lenders and the Borrower of the aggregate Alternative Currency Equivalent and the Dollar Equivalent of such Committed Borrowing and the applicable Spot Rate used by the Administrative Agent to determine such Dollar Equivalent and Alternative Currency Equivalent. If no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Committed Revolving Loans denominated in a currency other than Dollars, in each case as described in Section 2.02(a).

In the case of a Committed Borrowing in Dollars or in an Alternative Currency with respect to which the Administrative Agent has not received notice that any Revolving Lender is an Alternative Currency Participating Lender, each applicable Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds for the applicable currency at the Administrative Agent's Office not later than 1:00 p.m., in the case of any Committed Revolving Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Committed Revolving Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Committed Loan Notice. In the case of a Committed Borrowing in an Alternative Currency with respect to which the Administrative Agent has received notice that any Revolving Lender is an Alternative Currency Participating Lender, each Alternative Currency Funding Lender shall make the amount of its Alternative Currency Funding Applicable Percentage of such Revolving Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than the Applicable Time, on the Business Day specified in the applicable Committed Loan Notice. In any event, a Revolving Lender may cause any foreign or domestic branch or Affiliate to fund or make the amount of its Revolving Loan available in accordance with the foregoing provisions. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to a Committed Borrowing denominated in Dollars is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and, second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, Term SOFR Loans and Alternative Currency Term Rate Loans may be continued or converted only on the last day of an Interest Period for the applicable Term SOFR Loan or Alternative Currency Term Rate Loan. During the existence of an Event of Default that is continuing, (i) no Loans may be requested as, converted to or continued as Term SOFR Loans, Daily SOFR Loans, Alternative Currency Term Rate Loans or Alternative Currency Daily Rate Loans if the Administrative Agent has notified the Borrower that the Required Lenders have determined that such a continuation or conversion is not appropriate, and (ii) the Required Lenders may require that any or all of the then outstanding Alternative Currency Term Rate Loans be prepaid, or redenominated into Base Rate Loans denominated in Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Loans and Alternative Currency Term Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Committed Borrowings, all conversions of Committed Revolving Loans from one Type to another Type, and all continuations of Committed Revolving Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect with respect to all Committed Revolving Loans.

(f) Alternative Currency Funding and Participation.

(i) Subject to all the terms and conditions set forth in this Agreement, including the provisions of Section 2.01, and without limitation of the provisions of Section 2.02, with respect to any Revolving Loans denominated in an Alternative Currency with respect to which one or more Revolving Lenders has given notice to the Administrative Agent that it is an Alternative Currency Participating Lender, (A) each Revolving Lender agrees from time to time on any Business Day during the Availability Period for the Revolving Facility to fund its Applicable Percentage of Revolving Loans denominated in an Alternative Currency with respect to which it is an Alternative Currency Funding Lender; and (B) each Revolving Lender severally agrees to acquire an Alternative Currency Risk Participation in Revolving Loans denominated in an Alternative Currency with respect to which it is an Alternative Currency Participating Lender.

(ii) Each Revolving Loan denominated in an Alternative Currency shall be funded upon the request of the Borrower in accordance with Section 2.02(b). Immediately upon the funding by the Alternative Currency Fronting Lender of its Alternative Currency Funding Applicable Percentage of any Revolving Loan denominated in an Alternative Currency with respect to which one or more Revolving Lenders is an Alternative Currency Participating Lender, each Alternative Currency Participating Lender shall be deemed to have absolutely, irrevocably and unconditionally purchased (and the Administrative Agent may apply any Cash Collateral that is available with respect to such purchase by any Alternative Currency Participating Lender) from such Alternative Currency Fronting Lender an Alternative Currency Risk Participation in such Loan in an amount such that, after such purchase, each Revolving Lender (including the Alternative Currency Funding Lenders, the Alternative Currency Fronting Lender and the Alternative Currency Participating Lenders) will have an Alternative Currency Loan Credit Exposure with respect to such Revolving Loan equal in amount to its Applicable Percentage of such Revolving Loan.

(iii) Upon the occurrence and during the continuance of an Event of Default, the Alternative Currency Fronting Lender may, by written notice to the Administrative Agent delivered not later than 11:00 a.m., on the second Business Day preceding the proposed date of funding and payment by Alternative Currency Participating Lenders of their Alternative Currency Risk Participations purchased in such Revolving Loans as shall be specified in such notice (the "Alternative Currency Participation Payment Date"), request each Alternative Currency Participating Lender to fund the Dollar Equivalent of its Alternative Currency Risk Participation purchased with respect to such Revolving Loans to the Administrative Agent on the Alternative Currency Participation Payment Date in Dollars. Following receipt of such notice, the Administrative Agent shall promptly notify each Alternative Currency Participating Lender of the Dollar Equivalent of its Alternative Currency Risk Participation purchased with respect to

each such Revolving Loan (determined at the Spot Rate on the date of advance of such Revolving Loan) and the applicable Alternative Currency Participation Payment Date. Any notice given by the Alternative Currency Fronting Lender or the Administrative Agent pursuant to this Section 2.02(f) may be given by telephone if immediately confirmed in writing; provided that the absence of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(iv) On the applicable Alternative Currency Participation Payment Date, each Alternative Currency Participating Lender in the Revolving Loans specified for funding pursuant to this Section 2.02(f) shall deliver the Dollar Equivalent of such Alternative Currency Participating Lender's Alternative Currency Risk Participation with respect to such specific Revolving Loans in Dollars and in Same Day Funds to the Administrative Agent; provided, however, that no Alternative Currency Participating Lender shall be (i) responsible for any default by any other Alternative Currency Participating Lender in such other Alternative Currency Participating Lender's obligation to pay such amount and/or (ii) required to fund an amount under this Section 2.02(f) that would exceed the amount of such Revolving Lender's Revolving Commitment. Upon receipt of any such amounts from the Alternative Currency Participating Lenders, the Administrative Agent shall distribute such Dollar amounts in Same Day Funds to the Alternative Currency Fronting Lender.

(v) In the event that any Alternative Currency Participating Lender fails to make available to the Administrative Agent the Dollar Equivalent of its Alternative Currency Risk Participation as provided herein, the Administrative Agent shall be entitled to recover such amount on behalf of the Alternative Currency Fronting Lender on demand from such Alternative Currency Participating Lender together with interest at the Overnight Rate for three (3) Business Days and thereafter at a rate per annum equal to the Default Rate. A certificate of the Administrative Agent submitted to any Alternative Currency Participating Lender with respect to amounts owing hereunder shall be conclusive in the absence of demonstrable error.

(vi) In the event that the Alternative Currency Fronting Lender receives a payment in respect of any Revolving Loan, whether directly from the Borrower or otherwise, in which Alternative Currency Participating Lenders have fully funded in Dollars their purchase of Alternative Currency Risk Participations, the Alternative Currency Fronting Lender shall promptly distribute to the Administrative Agent, for its distribution to each such Alternative Currency Participating Lender, the Dollar Equivalent of such Alternative Currency Participating Lender's Alternative Currency Participant's Share of such payment in Dollars and in Same Day Funds. If any payment received by the Alternative Currency Fronting Lender with respect to any Revolving Loan in an Alternative Currency made by it shall be required to be returned by the Alternative Currency Fronting Lender after such time as the Alternative Currency Fronting Lender has distributed such payment to the Administrative Agent pursuant to the immediately preceding sentence, each Alternative Currency Participating Lender that has received a portion of such payment shall pay to the Alternative Currency Fronting Lender an amount equal to its Alternative Currency Participant's Share in Dollars of the amount to be returned; provided, however, that no Alternative Currency Participating Lender shall be responsible for any default by any other Alternative Currency Participating Lender in that other Alternative Currency Participating Lender's obligation to pay such amount.

(vii) Anything contained herein to the contrary notwithstanding, each Alternative Currency Participating Lender's obligation to acquire and pay for its purchase of Alternative Currency Risk Participations as set forth herein shall be absolute, irrevocable and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off,

counterclaim, recoupment, defense or other right which such Alternative Currency Participating Lender may have against the Alternative Currency Fronting Lender, the Administrative Agent, the Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default; (iii) any adverse change in the condition (financial or otherwise) of the Parent Guarantor, the Borrower or any of their respective Subsidiaries; (iv) any breach of this Agreement or any other Loan Document by, the Parent Guarantor, the Borrower or any other Lender; or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(viii) In no event shall (i) the Alternative Currency Risk Participation of any Alternative Currency Participating Lender in any Revolving Loans denominated in an Alternative Currency pursuant to this Section 2.02(f) be construed as a loan or other extension of credit by such Alternative Currency Participating Lender to the Borrower, any Revolving Lender or the Administrative Agent or (ii) this Agreement be construed to require any Revolving Lender that is an Alternative Currency Participating Lender with respect to a specific Alternative Currency to make any Revolving Loans in such Alternative Currency under this Agreement or under the other Loan Documents, subject to the obligation of each Alternative Currency Participating Lender to give notice to the Administrative Agent and the Borrower at any time such Revolving Lender acquires the ability to make Revolving Loans in such Alternative Currency.

(ix) The Administrative Agent shall change a Revolving Lender's designation from Alternative Currency Participating Lender to Alternative Currency Funding Lender with respect to an Alternative Currency for which such Lender previously has been designated an Alternative Currency Participating Lender, upon receipt of a written notice to the Administrative Agent and the Borrower from such Alternative Currency Participating Lender requesting that its designation be so changed. Each Alternative Currency Participating Lender agrees to give such notice to the Administrative Agent and the Borrower promptly upon its acquiring the ability to make Revolving Loans in such Alternative Currency. Schedule 2.02 hereto lists each Alternative Currency Participating Lender as of the Closing Date in respect of each Alternative Currency.

(g) With respect to any Alternative Currency Daily Rate, Alternative Currency Term Rate, SOFR, Daily SOFR or Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

**2.03 Letters of Credit.**

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of the Borrower or its Subsidiaries, and to amend Letters of Credit previously issued by it, in accordance with Section 2.03(b), and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in

Letters of Credit issued for the account of the Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (y) the Outstanding Amount of the Committed Revolving Loans of any Revolving Lender (less, with respect only to the Alternative Currency Fronting Lender, the aggregate Alternative Currency Risk Participations in all Revolving Loans denominated in Alternative Currencies), plus, with respect only to the Alternative Currency Participating Lenders, such Lender's Alternative Currency Risk Participations in Revolving Loans denominated in Alternative Currencies advanced by the Alternative Currency Fronting Lender for such Lender, plus such Revolving Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Revolving Lender's Revolving Commitment and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit; provided, further, that unless the applicable L/C Issuer shall otherwise consent, no L/C Issuer shall be obligated to issue Letters of Credit hereunder in an aggregate face amount at any time outstanding in excess of an amount equal to the lesser of (i) one-third of the Letter of Credit Sublimit at such time and (ii) the Revolving Commitment of the Revolving Lender acting as such L/C Issuer at such time. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. The Existing Letters of Credit shall be deemed to have been issued hereunder by the issuer thereof, to the extent such issuer is a Revolving Lender, and such issuer shall have the obligation to amend, renew, extend or otherwise modify any such Existing Letter of Credit, subject to terms, conditions and limitations hereunder. From and after the Closing Date, the Existing Letters of Credit shall be subject to and governed by the terms and conditions hereof.

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

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Lenders have approved such expiry date; provided that a Letter of Credit may expire up to one year beyond the Letter of Credit Expiration Date so long as the Borrower Cash Collateralizes 105% of the face amount of such Letter of Credit no later than the Letter of Credit Expiration Date.

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

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated

hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it (for which the L/C Issuer is not otherwise compensated hereunder);

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

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than $500,000;

(D) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) the L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency;

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

(G) any Revolving Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrower or such Defaulting Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.18(a)(iv)) with respect to such Defaulting Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other L/C Obligations as to which the L/C Issuer has Fronting Exposure, as it may elect in its sole discretion.

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

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

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

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof, (C) the expiry date thereof, (D) the name and address of the beneficiary thereof, (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Lender, the Administrative Agent or the Borrower, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Lender's Applicable Percentage of the Aggregate Revolving Commitments times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve (12) month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve (12) month period to be agreed upon by the Borrower and the applicable L/C Issuer at the time such Letter of Credit is issued. Unless otherwise directed by

the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date (except as set forth in Section 2.03(a)(ii)(B)); provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

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

(v) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall promptly notify the Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that the Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. If a notice of such payment with respect to a Letter of Credit is received by the Borrower (x) on or prior to 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), then, not later than 1:00 p.m. on the Honor Date, the Borrower shall reimburse such L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency or (y) after 11:00 a.m. or the Applicable Time, as the case may be, on the Honor Date, then, not later than 11:00 a.m. on the first Business Day following the Honor Date, the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Committed Borrowing of Base Rate Committed Revolving Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Committed Revolving Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C

Issuer or the Administrative Agent pursuant to this Section 2.03(b)(v) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(vi) Each Revolving Lender shall upon any notice pursuant to Section 2.03(b)(v) make funds available to the Administrative Agent (and the Administrative Agent may apply Cash Collateral that has been provided for such purpose) for the account of the L/C Issuer, in Dollars, at the Administrative Agent's Office for Dollar-denominated payments in an amount equal to its Applicable Percentage of the Dollar Equivalent of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(b)(vii), each Revolving Lender that so makes funds available shall be deemed to have made a Base Rate Committed Revolving Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars and such funds shall be applied to reimburse the L/C Issuer for the applicable draw under the Letter of Credit.

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

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

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

(x) If any Revolving Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(b) by the time specified in Section 2.03(b)(vi), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount

with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid (excluding such interest and fees) shall constitute such Lender's Committed Revolving Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this clause (x) shall be conclusive absent manifest error.

(c) Repayment of Participations.

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

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

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

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

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

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement

therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

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

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally; or

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

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

(e) Role of L/C Issuer. Each Revolving Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Revolving Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(d); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final and non-appealable judgment or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit or the L/C Issuer's payment under any Letter of Credit without presentation to it of a draft, certificates and/or other documents that substantially comply with the terms and conditions of the Letter of Credit, except where any order, judgment or decree of any Governmental

Authority or arbitrator shall by its terms have enjoined or restrained, or purported to enjoin or restrain, such L/C Issuer from making such payment. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

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

(g) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage in Dollars a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to Section 2.03(a)(iii) shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Lenders in accordance with the upward adjustments, if any, in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.18(a)(iv), with the balance of such fee, if any, retained by the Borrower, if it has provided Cash Collateral in respect of such Defaulting Lender's Fronting Exposure, or if the Borrower has not provided Cash Collateral in respect of such Fronting Exposure, payable to the L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.10. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable on the first Business Day after the end of each calendar quarter, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(h) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, a fronting fee per annum with respect to each Letter of Credit issued by it, equal to the greater of (i) the rate per annum of 12.5 basis points of the face amount of the Letter of Credit, in each case computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit and (ii) $1,500 per annum. The amount of such fronting fees shall be determined on a quarterly basis in arrears, and due and payable on the first Business Day after the end of each calendar quarter, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.10. In addition, the Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit issued by it as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

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

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

(k) Outstanding Letters of Credit. The L/C Issuer shall deliver to the Administrative Agent, for distribution to the Revolving Lenders, an accounting of all Letters of Credit outstanding as of the end of each fiscal quarter of the Borrower.

(l) L/C Issuer Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each L/C Issuer shall, in addition to its notification obligations set forth elsewhere in this Section 2.03, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such L/C Issuer, including all issuances, extensions, amendments and renewals, all expirations and cancellations and all disbursements and reimbursements, (ii) within five (5) Business Days following the time that such L/C Issuer issues, amends, renews or extends any Letter of Credit, the date of such issuance, amendment, renewal or extension, and the face amount of the Letters of Credit issued, amended, renewed or extended by it and outstanding after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such L/C Issuer makes any payment under any Letter of Credit, the date and amount of such payment, (iv) on any Business Day on which the Borrower fails to reimburse a payment under a Letter of Credit required to be reimbursed to such L/C Issuer on such day, the date of such failure and the amount of such payment and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such L/C Issuer.

**2.04 [Reserved].**

**2.05 Negotiated Rate Loans.**

(a) Negotiated Rate Loans. Subject to the terms and conditions set forth herein, each Revolving Lender, severally and for itself alone, may (but is not obligated to) make one or more loans (which loans may be made in Dollars or in any Alternative Currency) (each such loan, a "Negotiated Rate Loan") to the Borrower from time to time on any Business Day during the Availability Period for the Revolving Facility in an aggregate Outstanding Amount not to exceed at any time (i) the Negotiated Rate Sublimit and (ii) with respect to Negotiated Rate Loans made in an Alternative Currency (plus the aggregate Outstanding Amount of all Committed Revolving Loans denominated in an Alternative Currency), the Alternative Currency Sublimit, notwithstanding the fact that such Negotiated Rate Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Committed Revolving Loans and L/C Obligations of such Lender may exceed the amount of such Lender's Revolving Commitment; provided that Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments; provided, further, that Negotiated Rate Loans shall be available to the Borrower for periods of one day to 180 days, so long as two of the three Debt Ratings from S&P, Moody's and Fitch are BBB- or better (Baa3 or better in the case of Moody's). It is understood that should a Revolving Lender make a Negotiated Rate Loan it shall not relieve such Lender from its obligation to make its pro rata share of any future Committed Revolving Loan even if after making such Committed Revolving Loan the Outstanding Amount of Committed Revolving Loans and L/C Obligations of such Lender,

together with the Outstanding Amount of its Negotiated Rate Loans, exceeds the amount of such Lender's Revolving Commitment.

(b) Procedure for Negotiated Rate Loans. The Borrower may, from time to time, approach one or more of the Revolving Lenders to determine whether such Lender or Lenders will make one or more Negotiated Rate Loans. The Borrower and any Revolving Lender or Lenders shall, if each of them in their sole discretion elects to do so, agree to enter into one or more Negotiated Rate Loans as part of such proposed Negotiated Rate Borrowing on mutually agreed-upon terms, including the Interest Period with respect thereto, and notify the Administrative Agent by delivering a written Negotiated Rate Loan Notice from the Borrower and the Revolving Lender or Lenders proposing to make Negotiated Rate Loans (i) with respect to Negotiated Rate Loans denominated in Dollars, before 12:00 Noon on the date of the funding of such Negotiated Rate Loan, which shall be a Business Day (the "Negotiated Rate Funding Date") and (ii) with respect to Negotiated Rate Loans denominated in any Alternative Currency, before 12:00 Noon two (2) Business Days prior to the Negotiated Rate Funding Date. Such Negotiated Rate Loan Notice shall specify the amount of each Negotiated Rate Loan that such Revolving Lender or Lenders will make as part of such proposed Negotiated Rate Borrowing, the Negotiated Rate Funding Date, the currency of the Negotiated Rate Loan requested, the date or dates of maturity thereof, which date or dates may not occur after the Revolving Maturity Date, the rate or rates of interest applicable thereto and all other terms thereof. Each Negotiated Rate Loan shall be made pursuant to a Negotiated Rate Loan Notice. In lieu of delivering the written Negotiated Rate Loan Notice described above, the Borrower may give the Administrative Agent telephonic notice of any Negotiated Rate Borrowing by the time required under this clause (b); provided that such telephonic notice shall be confirmed by delivery of a written Negotiated Rate Loan Notice to the Administrative Agent by no later than 2:00 p.m., on the date of such telephonic notice.

(c) Funding of Negotiated Rate Loans in Dollars. No later than 2:00 p.m. on the applicable Negotiated Rate Funding Date, each applicable Revolving Lender will make available to the Administrative Agent in Dollars and immediately available funds at the Administrative Agent's Office the Negotiated Rate Loan, if any, to be made by such Lender as part of the Negotiated Rate Borrowing to be made on such date in the manner provided above. Upon receipt by the Administrative Agent of all such funds, the Administrative Agent shall disburse to the Borrower on such date such Negotiated Rate Loan in like funds at the Borrower's account specified in the relevant Negotiated Rate Loan Notice. The Administrative Agent may, but shall not be required to, advance on behalf of any Revolving Lender such Lender's Negotiated Rate Loan on the date a Negotiated Rate Loan is made unless such Lender shall have notified the Administrative Agent prior to such date that it does not intend to make available such Negotiated Rate Loan on such date. If the Administrative Agent makes such advance, the Administrative Agent shall be entitled to recover such amount on demand from the Revolving Lender on whose behalf such advance was made, and if such Lender does not pay the Administrative Agent the amount of such advance on demand, the Borrower shall promptly repay such amount to the Administrative Agent. Until such amount is repaid to the Administrative Agent by such Lender or the Borrower, such advance shall be deemed for all purposes to be a Negotiated Rate Loan made by the Administrative Agent. In such event, if a Revolving Lender has not in fact made its share of the applicable Negotiated Rate Loan available to the Administrative Agent, then the applicable Revolving Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) 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 Revolving Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly

remit to the Borrower the amount of such interest paid by the Borrower for such period. 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 such payment to the Administrative Agent.

(d) Funding of Negotiated Rate Loans in Alternative Currencies. No later than (i) the Applicable Time on the applicable Negotiated Rate Funding Date, each applicable Revolving Lender will, at the option of the Borrower, make available directly to the Borrower such Negotiated Rate Loans in the applicable currency either by (A) crediting the account of the Borrower on the books of such Lender with the amount of such funds or (B) wire transfer of such funds to the account of the Borrower, in each case in accordance with instructions provided to (and reasonably acceptable to) such Lender by the Borrower and (ii) promptly following receipt thereof, the Borrower shall provide the Administrative Agent written notice of receipt of the proceeds of such Negotiated Rate Loan.

**2.06 Prepayments.**

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time, voluntarily prepay any Class of Loans in whole or in part without premium or penalty pursuant to this Section 2.06(a) (other than Negotiated Rate Loans, which are subject to the provisions of clause (c) below); provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days (or such shorter period as the Administrative Agent shall agree) prior to any date of prepayment of Term SOFR Loans, (B) on the date of prepayment of Daily SOFR Loans, (C) four (4) Business Days (or five (5) Business Days, in the case of prepayment of Loans denominated in Special Notice Currencies and Alternative Currency Daily Rate Loans denominated in Sterling or Swiss Francs) (or such shorter period as the Administrative Agent shall agree) prior to any date of prepayment of Alternative Currency Loans and (D) on the date of prepayment of Base Rate Committed Revolving Loans; (ii) any prepayment of Term SOFR Loans or Daily SOFR Loans shall be in a principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof, (iii) any prepayment of Alternative Currency Loans shall be in a minimum principal amount the Dollar Equivalent of which is $1,000,000 or a whole multiple of $100,000 in excess thereof; and (iv) any prepayment of Base Rate Committed Revolving Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) and Class(es) of Loans to be prepaid and, if Term SOFR Loans or Alternative Currency Term Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment (including, in the event such prepayment is of a Revolving Loan denominated in an Alternative Currency, each Alternative Currency Funding Lender's Alternative Currency Funding Applicable Percentage of such payment). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, however, that a notice of voluntary prepayment may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice of prepayment may be revoked by the Borrower if such condition is not satisfied. Any prepayment of any Loan (other than any Base Rate Loan) shall be accompanied by all accrued interest on the amount prepaid, together with, in the case of any Term SOFR Loans and any Alternative Currency Loans, any additional amounts required pursuant to Section 3.05. Subject to Section 2.18, each prepayment of Committed Revolving Loans made pursuant to this clause (a) shall be made ratably among the Revolving Lenders in accordance with their respective Applicable Percentages of the Committed Revolving Loans.

(b) [Reserved].

(c) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Negotiated Rate Loans in whole or in part without premium or penalty (unless the Borrower and the applicable Revolving Lender have otherwise agreed, in which case such Loan may be prepaid in accordance with such agreement); provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. on the requested date of prepayment of such Negotiated Rate Loans; (ii) the Revolving Lender or Lenders making the Negotiated Rate Loans to be prepaid have consented to such prepayment; and (iii) unless agreed to by the applicable Revolving Lender(s) and the Administrative Agent (such consent not to be unreasonably withheld), any prepayment of Negotiated Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. The Administrative Agent will promptly notify each applicable Revolving Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, however, that a notice of voluntary prepayment may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice of prepayment may be revoked by the Borrower if such condition is not satisfied. Any prepayment of a Negotiated Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts as may be agreed to by the Borrower and the Revolving Lender or Lenders making such Negotiated Rate Loan.

(d) If the Administrative Agent notifies the Borrower at any time that (i) the Total Revolving Outstandings at such time exceed an amount equal to 105% of the Aggregate Revolving Commitments then in effect, (ii) the L/C Obligations at such time exceed the Letter of Credit Sublimit then in effect, (iii) the Negotiated Rate Loans outstanding at such time exceed the Negotiated Rate Sublimit then in effect, or (iv) the Outstanding Amount of all Loans denominated in Alternative Currencies at such time exceeds an amount equal to 105% of the Alternative Currency Sublimit then in effect, the Borrower shall prepay the applicable Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess within one (1) Business Day (or, with respect to clause (iv), within (x) four (4) Business Days, with respect to Outstanding Amounts denominated in Euro, Sterling or Canadian Dollars and (y) five (5) Business Days, with respect to Outstanding Amounts denominated in any other Alternative Currency) after the Administrative Agent notifies the Borrower that such a prepayment is required and of the amount thereof; provided, however, that, subject to the provisions of Section 2.17(a)(iv), the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.06(d) unless after the prepayment in full of the Committed Revolving Loans and the Negotiated Rate Loans, the Total Revolving Outstandings exceed the Aggregate Revolving Commitments then in effect.

**2.07 Termination or Reduction of Revolving Commitments.**

(a) Unless previously terminated, the Revolving Commitments will terminate on the Revolving Maturity Date.

(b) The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 12:00 Noon five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrower shall not terminate or reduce the Aggregate Revolving Commitments if, after

giving effect thereto and to any concurrent prepayments hereunder, (A) the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments, (B) the Outstanding Amount of Letters of Credit would exceed the Letter of Credit Sublimit, (C) the Outstanding Amount of Negotiated Rate Loans would exceed the Negotiated Rate Sublimit or (D) the Outstanding Amount of all Loans denominated in Alternative Currencies exceeds an amount equal to 105% of the Alternative Currency Sublimit. Each notice of termination shall specify such election to terminate and the effective date thereof. The Administrative Agent will promptly notify the Revolving Lenders of any such notice of termination or reduction of the Aggregate Revolving Commitments. The amount of any such Aggregate Revolving Commitment reduction shall not be applied to the Alternative Currency Sublimit or the Letter of Credit Sublimit unless otherwise specified by the Borrower. Any reduction of the Aggregate Revolving Commitments shall be applied to the Revolving Commitment of each Revolving Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination. A notice delivered by the Borrower pursuant to this Section 2.07 may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

**2.08 Repayment.**

The Borrower shall repay to the Revolving Lenders on the Revolving Maturity Date, unless accelerated sooner pursuant to Section 8.02, the entire outstanding principal balance of all Committed Revolving Loans, Negotiated Rate Loans and all L/C Obligations, together with accrued but unpaid interest, fees and all other sums with respect thereto.

**2.09 Interest.**

(a) Applicable Interest. Subject to the provisions of Section 2.09(b), (i) each Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period applicable thereto at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Rate; (ii) each Daily SOFR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to Daily SOFR plus the Applicable Rate; (iii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; (iv) each Alternative Currency Term Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Alternative Currency Term Rate plus the Applicable Rate; (v) each Alternative Currency Daily Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Alternative Currency Daily Rate plus the Applicable Rate and (vi) each Negotiated Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the amount agreed to between the Borrower and the Revolving Lender as set forth in the Negotiated Rate Loan Notice.

(b) Default Interest.

(i) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

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

(iii) Upon the request of the Required Lenders, while any Event of Default exists, (x) the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws and (y) any adjustment to the Applicable Rate pursuant to the Sustainability Metric Pricing Grid shall cease to apply.

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

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

(d) Interest Act (Canada). For the purposes of the Interest Act (Canada), (i) whenever a rate of interest or fee rate hereunder is calculated on the basis of a year (the "deemed year") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee rate by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year, (ii) the principle of deemed reinvestment of interest shall not apply to any interest calculation hereunder and (iii) the rates of interest stipulated herein are intended to be nominal rates and not effective rates or yields.

(e) Alternative Currency Fronting Lender. Interest on any Revolving Loan in an Alternative Currency advanced by the Alternative Currency Fronting Lender shall be for the benefit of the Alternative Currency Fronting Lender, and not any Alternative Currency Participating Lender, until the applicable Alternative Currency Participating Lender has funded its participation therein to the Alternative Currency Fronting Lender.

**2.10 Fees**.

In addition to certain fees described in Sections 2.03(g) and 2.03(h):

(a) Facility Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Lender in accordance with its Applicable Percentage of the Aggregate Revolving Commitments, a facility fee in Dollars equal to the Facility Fee Rate times the actual daily amount of the Aggregate Revolving Commitments (or, if the Aggregate Revolving Commitments have terminated, on the Outstanding Amount of all Committed Revolving Loans, Negotiated Rate Loans and L/C Obligations), regardless of usage, subject to adjustment as provided in Section 2.18. The facility fee shall accrue at all times during the Availability Period for the Revolving Facility (and thereafter so long as any Committed Revolving Loans, Negotiated Rate Loans or L/C Obligations remain outstanding), including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears (calculated on a 360-day basis) on the last Business Day of each calendar quarter, commencing with the first such date to occur after the Closing Date, and on the

Revolving Maturity Date (and, if applicable, thereafter on demand). The facility fee shall be calculated quarterly in arrears, and if there is any change in the Facility Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Facility Fee Rate separately for each period during such quarter that such Facility Fee Rate was in effect.

(b) Other Fees.

(i) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times as separately agreed upon in writing between the Borrower, the applicable Arrangers and the Administrative Agent, as applicable. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, absent manifest error.

(ii) The Borrower shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, absent manifest error.

(c) Alternative Currency Fronting Fee. The Borrower shall pay directly to the Alternative Currency Fronting Lender, for its own account, in Dollars, a fronting fee with respect to the portion of each Committed Borrowing in an Alternative Currency advanced by such Alternative Currency Fronting Lender for an Alternative Currency Participating Lender (but excluding the portion of such advance constituting the Alternative Currency Fronting Lender's Applicable Percentage of such Committed Borrowing as an Alternative Currency Funding Lender), equal to 0.125% times such portion of such Committed Borrowing, computed on the Dollar Equivalent of such Committed Borrowing, such fee to be payable on the date of such Committed Borrowing.

**2.11 Computation of Interest and Fees.**

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All computations of interest for Alternative Currency Term Rate Loans denominated in Australian Dollars, Canadian Dollars or Sterling shall be made on the basis of a 365-day year and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Committed Revolving Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.13(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

**2.12 Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the

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

(b) In addition to the accounts and records referred to in Section 2.12(a), each Revolving Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

**2.13 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrower hereunder with respect to principal of and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in an amount equal to the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein, including, without limitation, the Alternative Currency Fronting Lender's Alternative Currency Funding Applicable Percentage of any payment made with respect to any Revolving Loan as to which any Alternative Currency Participating Lender has not funded its Alternative Currency Risk Participation) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, such due date shall be extended to the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Committed Borrowing of Term SOFR Loans, Daily SOFR Loans, Alternative Currency Term

Rate Loans or Alternative Currency Daily Rate Loans (or, in the case of any Committed Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Committed Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Committed Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Committed Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to the Loans constituting such Borrowing. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. In the event the Borrower pays such amount to the Administrative Agent, then such amount shall reduce the principal amount of such Borrowing (subject to the last sentence of this paragraph and any applicable provisions of Section 2.18). If such Lender pays its share of the applicable Committed Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Committed Revolving Loan included in such Committed Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by the Borrower; Presumptions by Administrative Agent. 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 the L/C Issuer 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, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. With respect to any payment that the Administrative Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or the L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13(b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative

Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Revolving Loans (including Revolving Loans denominated in Alternative Currencies in the event they are Alternative Currency Funding Lenders), to fund participations in Letters of Credit, to make payments pursuant to Section 10.04(c) and to fund Alternative Currency Risk Participations (if they are Alternative Currency Participating Lenders) are several and not joint. The failure of any Lender to make any Loan (including Revolving Loans denominated in an Alternative Currency in the event it is an Alternative Currency Funding Lender), to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan (including Revolving Loans denominated in an Alternative Currency in the event it is an Alternative Currency Funding Lender), to purchase its participation or to make its payment under Section 10.04(c).

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

**2.14 Sharing of Payments by Lenders.**

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 the Committed Revolving Loans made by it, the participations in L/C Obligations or the Alternative Currency Risk Participations held by it (but not including any amounts applied by the Alternative Currency Fronting Lender to Revolving Loans in respect of Alternative Currency Risk Participations that have not yet been funded in accordance with the terms of this Agreement) resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Revolving Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, 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 Committed Revolving Loans (and purchase subparticipations in L/C Obligations and Alternative Currency Risk Participations of the other Revolving Lenders), or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the relevant Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Revolving Loans or such other amounts owing them, as applicable; provided that:

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

(ii) the provisions of this Section 2.14 shall not be construed to apply to (x) any payment made by or on behalf of 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 2.17 or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Revolving Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section 2.14 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.

**2.15 Extension of Revolving Maturity Date.**

(a) Requests for Extension. The Borrower may, by written notice to the Administrative Agent (who shall promptly notify the Revolving Lenders) not earlier than ninety (90) days and not later than thirty (30) days prior to the Revolving Maturity Date then in effect (such date, an "Initial Revolving Maturity Date"), elect that the Revolving Lenders extend the Revolving Maturity Date for an additional six (6) months after such Initial Revolving Maturity Date; provided that the Borrower may not make more than two (2) such elections pursuant to this Section 2.15 during the term of this Agreement.

(b) Confirmation by Administrative Agent. The Administrative Agent shall confirm receipt of the Borrower's notice delivered pursuant to Section 2.15(a) no later than the date that is fifteen (15) days prior to the applicable Initial Revolving Maturity Date (or, if such date is not a Business Day, on the next preceding Business Day).

(c) Extension of Revolving Maturity Date. If (and only if) the conditions precedent set forth in Section 2.15(d) have been met, then, effective as of the applicable Initial Revolving Maturity Date, the Revolving Maturity Date shall be extended to the date falling six (6) months after such Initial Revolving Maturity Date (except that, if such date is not a Business Day, such Revolving Maturity Date as so extended shall be the next preceding Business Day). Upon satisfaction of the conditions precedent set forth in Section 2.15(d), as certified by the Borrower to the Administrative Agent in writing, the Administrative Agent shall deliver a copy of such certification to each Revolving Lender.

(d) Conditions to Effectiveness of Extensions. As a condition precedent to such extension, (i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the applicable Initial Revolving Maturity Date signed by a Responsible Officer (x) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension and (y) certifying that (1) the representations and warranties contained in Article V and in the other Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Initial Revolving Maturity Date (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01 and (2) as of such Initial Revolving Maturity Date, and immediately after giving effect to such extension, no Default exists and (ii) the Borrower shall pay to the Revolving Lenders on such Initial Revolving Maturity Date a fee (to be shared among the Revolving Lenders based upon their Applicable Percentages of the Aggregate Revolving Commitments) equal to the product of (x) 0.0625% multiplied by (y) the then Aggregate Revolving Commitments.

(e) Conflicting Provisions. This Section 2.15 shall supersede any provisions in Section 2.02(b), 2.14 or 10.01 to the contrary.

**2.16 Increase in Revolving Commitments; Incremental Term Loans.**

(a) Request for Increase. From time to time, the Borrower shall have the right to increase the Aggregate Revolving Commitments and/or enter into one or more new tranches (or increasing an existing tranche) of term loans (each, an "Incremental Term Loan"); provided that (i) no Default has occurred and is continuing, (ii) each increase or tranche of Incremental Term Loans must be in a minimum amount of $10,000,000 and in integral multiples of $5,000,000 in excess thereof (or such other amounts as are agreed to by the Borrower and the Administrative Agent), and (iii) after giving effect to all such Aggregate Revolving Commitment increases and all such Incremental Term Loans, the sum of the aggregate principal amounts of the Revolving Facility and all such Incremental Term Loans shall not exceed $3,750,000,000. At the time of sending such notice to the Administrative Agent of the exercise of such right, the Borrower (in consultation with the Administrative Agent) shall specify the Lenders to be approached to provide all or a portion of such increase (subject in each case to any requisite consents required under Section 10.06) and the time period within which each such Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to such Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Commitment or participate in such tranche, as the case may be, and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase or tranche. Any Lender not responding within such time period shall be deemed to have declined to increase its Revolving Commitment, if any, or participate in such tranche, as the case may be. Any such increase or tranche shall be syndicated on a best efforts basis and no Lender shall be required to increase its Revolving Commitment, if any, or participate in any tranche of Incremental Term Loans to facilitate such increase or tranche.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. Subject to the approval of the Administrative Agent and, in the case of an increase to the Aggregate Revolving Commitments, the L/C Issuer (which approvals shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel (a "New Lender Joinder Agreement").

(d) Effective Date and Allocations. If the Aggregate Revolving Commitments are increased or any tranche of Incremental Term Loans is extended in accordance with this Section 2.16, the Administrative Agent and the Borrower shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase or tranche, as the case may be. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase or tranche, as the case may be, and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to any such increase or tranche, as the case may be:

(i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Increase Effective Date signed by a Responsible Officer (A) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such increase or tranche, as the case may be, and (B) certifying that (1) the representations and warranties

contained in Article V and in the other Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Increase Effective Date (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.16, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01; provided that, in the case of any Incremental Term Loan the proceeds of which are to be used to finance an acquisition (including by means of a merger, amalgamation or consolidation) or other Investment not prohibited by this Agreement (and related transaction costs) the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing or that is otherwise subject to customary "funds certain provisions," to the extent agreed by the applicable Lenders providing such Incremental Term Loans, the representations and warranties the accuracy of which in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be accurate in all respects) are a condition to the funding of such Incremental Term Loan shall be limited to (x) the Specified Representations (or such other formulation thereof as may be agreed by the applicable Lenders providing such Incremental Term Loans) and (y) those representations of the acquired company in the applicable acquisition agreement that are material to the interests of the applicable Lenders providing such Incremental Term Loans and which, if breached or inaccurate, would give the Parent Guarantor, the Borrower or any Subsidiary the right to terminate or refuse to close under the applicable acquisition agreement, and (2) as of the Increase Effective Date, and immediately after giving effect to such increase or tranche, as the case may be, no Default or Event of Default exists; provided that, in the case of any Incremental Term Loan the proceeds of which are to be used to finance an acquisition or other Investment not prohibited by this Agreement (and related transaction costs) the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing or that is otherwise subject to customary "funds certain provisions," to the extent agreed by the applicable Lenders providing such Incremental Term Loans, this condition shall be limited to (x) at the time of the execution and delivery of the applicable acquisition agreement related to such acquisition, no Default shall have occurred and be continuing or shall occur as a result thereof and (y) upon the effectiveness and making of any Incremental Term Loan on the applicable Increase Effective Date, no Specified Default shall have occurred and be continuing or shall occur as a result thereof;

(ii) (A) upon the reasonable request of any Lender made at least five (5) days prior to the applicable Increase Effective Date, the Borrower shall have provided to such Lender the documentation and other information so requested by such Lender that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and (B) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation it shall have delivered, to each Lender that so requests at least five (5) days prior to the applicable Increase Effective Date, a Beneficial Ownership Certification in relation to the Borrower;

(iii) in the case of any tranche of Incremental Term Loans, such Incremental Term Loans (A) shall rank pari passu in right of payment with the Revolving Loans and any other outstanding Incremental Term Loans, (B) shall not mature earlier than the latest Maturity Date then in effect (but may have amortization prior to such date so long as the weighted average life to maturity of any Incremental Term Loans shall be no shorter than the remaining weighted average life to maturity of any previously funded and then outstanding Incremental Term Loans (if any) at such time) and (C) shall be treated substantially the same as (and in any event no more favorably than) the Revolving Loans and any other outstanding Incremental Term Loans; provided that (1) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the latest Maturity Date then in effect may provide for material additional or different financial or other covenants or requirements applicable only during periods after such Maturity Date then in effect, (2) the Incremental Term Loans may be priced differently than the Revolving Loans and any other outstanding Incremental Term Loans and (3) other terms and conditions applicable to Incremental Term Loans may be materially different from those of the Revolving Loans to the extent such differences are solely administrative in nature or are terms and conditions reasonably acceptable to the Administrative Agent that customarily apply to syndicated term loan facilities but not revolving credit facilities (as determined in good faith by the board of directors or other equivalent governing body of the Borrower). Incremental Term Loans may be made hereunder pursuant to an amendment or 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 2.16; and

(iv) in the case of any increase in the Aggregate Revolving Commitments, the Borrower shall prepay any Committed Revolving Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Committed Revolving Loans ratable with any revised Applicable Percentages of the Revolving Lenders arising from any non-ratable increase in the Revolving Commitments under this Section 2.16; and

(v) the Borrower shall provide a Note to any Lender increasing its Revolving Commitment or otherwise joining on the Increase Effective Date, if requested.

(f) Conflicting Provisions. This Section 2.16 shall supersede any provisions in Sections 2.14 or 10.01 to the contrary.

(g) Fees. The Borrower shall pay such fees to the Administrative Agent, for its own account and for the benefit of the Lenders providing such additional Revolving Commitments or participating in such tranche of Incremental Term Loans, as the case may be, as determined at the time of such increase or funding of such tranche of Incremental Term Loans and agreed to by the Borrower in writing.

(h) Lenders. In connection with any increase of the Aggregate Revolving Commitments or Incremental Term Loans pursuant to this Section 2.16, any new Lender party hereto shall (i) execute such documents and agreements as the Administrative Agent may reasonably request and (ii) in the case of any new 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 rules and regulations, including, without limitation, the Patriot Act.

**2.17 Cash Collateral.**

(a) Certain Credit Support Events. (i) (A) Upon the request of the Administrative Agent or the L/C Issuer (x) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (y) if, as of the Letter of Credit Expiration Date, any L/C Obligation (other than in respect of an Extended Letter of Credit) for any reason remains outstanding or (B) upon the request of the Administrative Agent pursuant to Section 8.02, the Borrower shall, in each case, promptly, and in any event, no later than three (3) Business Days after receipt of such request, Cash Collateralize the then Outstanding Amount of all L/C Obligations.

(ii) If at any time that there shall exist a Defaulting Lender under the Revolving Facility, promptly upon the request of the Administrative Agent, the L/C Issuer or the Alternative Currency Fronting Lender, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.18(a)(iv) and any Cash Collateral provided by such Defaulting Lender).

(iii) In addition, if the Administrative Agent notifies the Borrower at any time that the Outstanding Amount of all L/C Obligations at such time exceeds 105% of the Letter of Credit Sublimit then in effect, then, within five (5) Business Days after receipt of such notice, the Borrower shall Cash Collateralize the L/C Obligations in an amount equal to the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit; provided that Cash Collateral provided pursuant to this Section 2.17(a)(iii) shall be refunded to the Borrower when the Outstanding Amount of all L/C Obligations is less than 105% of the Letter of Credit Sublimit then in effect.

(iv) The Administrative Agent may, at any time and from time to time after the initial deposit of Cash Collateral, request that additional Cash Collateral be provided as required in the reasonable judgment of the Administrative Agent in order to protect against the results of exchange rate fluctuations.

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, interest bearing deposit accounts at Bank of America. Each of the Borrower, and to the extent provided by any Revolving Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Revolving Lenders (including the Alternative Currency Fronting Lender), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.17(c). If at any time the Administrative Agent reasonably determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an aggregate amount equal to the excess of (x) the aggregate amount of such applicable Fronting Exposure and obligations, over (y) the total amount of funds or other credit support, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under or applied pursuant to any of this Section 2.17 or Sections 2.02, 2.03,

2.06, 2.18 or 8.02 in respect of Letters of Credit or Alternative Currency Risk Participations shall be held and applied to the satisfaction of the specific L/C Obligations or obligations to fund Alternative Currency Risk Participations (including, as to Cash Collateral provided by a Defaulting Lender under the Revolving Facility, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly (and in any event within two (2) Business Days), together with all interest, if any, that has accrued on such amount, following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by (x) the cure or waiver of the relevant Event of Default in respect of Cash Collateral provided pursuant to Section 8.02 and (y) the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vii))), (ii) as provided in Section 2.17(a)(iii) (solely to the extent described therein) or (iii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided, however, (x) that Cash Collateral furnished by or on behalf of the Borrower (including any interest thereon) shall not be released during the continuance of a Default or an Event of Default (and following application as provided in this Section 2.17 may be otherwise applied in accordance with Section 8.03 during the continuance of an Event of Default), and (y) the Person providing Cash Collateral and the L/C Issuer or Alternative Currency Fronting Lender, as applicable, may agree that Cash Collateral (including any interest thereon) shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

**2.18 Defaulting Lenders.**

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

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

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or the Alternative Currency Fronting Lender hereunder; third, if so determined by the Administrative Agent or requested by the L/C Issuer, to be held as Cash Collateral for future funding obligations of such Defaulting Lender of any participation in any Letter of Credit or any Alternative Currency Risk Participation; fourth, as the Borrower may request (so long as no 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 non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders or the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the L/C

Issuer against such Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no 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 L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.18(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. Such Defaulting Lender (x) shall not be entitled to receive any facility fee on unfunded amounts pursuant to Section 2.10(a) for any period during which that Lender is a Defaulting Lender except only to the extent allocable to the sum of (1) the Outstanding Amount of the Committed Revolving Loans funded by it, (2) its Applicable Percentage of the stated amount of Letters of Credit for which it has provided (or is deemed to have provided) Cash Collateral pursuant to Section 2.03(a)(iii), Section 2.17 or Section 2.18(a)(ii), as applicable, and (3) its Alternative Currency Participant's Share of all Revolving Loans denominated in Alternative Currencies for which it is deemed to have provided Cash Collateral pursuant to Section 2.17 or Section 2.18(a)(ii), as applicable (and the Borrower shall (A) be required to pay to each of the L/C Issuer and the Alternative Currency Fronting Lender, as applicable, the amount of such facility fee allocable to its Fronting Exposure arising from such Defaulting Lender (solely to the extent not Cash Collateralized by the Borrower) and (B) not be required to pay the remaining amount of such facility fee that otherwise would have been required to have been paid to such Defaulting Lender during such period), and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(g).

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender under the Revolving Facility, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Alternative Currency Risk Participations pursuant to Sections 2.02 and 2.03, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving Commitment of such Defaulting Lender; provided that, (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Event of Default exists; and (ii) the aggregate obligation of each such non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Alternative Currency Risk Participations shall not exceed the positive difference, if any, of (1) the Revolving Commitment of such non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Committed Revolving Loans of such Lender. Subject to Section 10.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a non-Defaulting Lender as a result of such non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders and, if such Lender is a Revolving Lender, funded and unfunded participations in Letters of Credit and Alternative Currency Risk Participations of the other Revolving Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Alternative Currency Risk Participations to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages of the Revolving Facility (without giving effect to Section 2.18(a)(iv)), 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 such Lender was a Defaulting Lender; and provided, further, that subject to Section 10.20 and 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 such Lender's having been a Defaulting Lender.

## ARTICLE III

## TAXES, YIELD PROTECTION AND ILLEGALITY

**3.01 Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes; provided that, if the applicable Loan Party or the Administrative Agent shall be required by applicable Law to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to Section 3.01(e), (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the Administrative Agent, the applicable Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of Section 3.01(a), the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnification. (i) Without limiting the provisions of Section 3.01(a) or 3.01(b), each of the Loan Parties shall, and does hereby, jointly and severally, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof, within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by the Administrative Agent, such Lender or any L/C Issuer, as the case may be, or required to be withheld or deducted from a payment to the Administrative Agent,

such Lender or any L/C Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, to the extent such Indemnified Taxes or Other Taxes are payable in respect of any payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document or otherwise with respect to any Loan Document or activities related thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any such payment or liability delivered to the Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of Section 3.01(a) or 3.01(b), each Lender and the L/C Issuer shall, and do hereby, indemnify the Loan Parties and the Administrative Agent, and shall make payment in respect thereof, within ten (10) days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Loan Parties and the Administrative Agent) incurred by or asserted against the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the L/C Issuer, as the case may be, to the Borrower or the Administrative Agent pursuant to Section 3.01(e). Each Lender and the L/C Issuer hereby authorize the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Loan Party to a Governmental Authority, the Borrower 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.

(e) Status of Lenders. (i) Each Lender shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made by the Borrower hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdictions. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), Section 3.01(e)(ii)(B) and Section 3.01(e)(ii)(C)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States:

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed copies of IRS Form W-9 or such other documentation or information prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine that such Lender is not subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall 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 request of Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed executed copies of IRS Form W-8ECI,

(iii) duly completed executed copies of IRS Form W-8IMY and all required supporting documentation,

(iv) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, or

(v) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States 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

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by 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 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 (C), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Law of any jurisdiction that any Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

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

(f) Treatment of Certain Refunds. Unless required by applicable Law, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that each Loan Party, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This Section 3.01(f) shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person. Notwithstanding anything to the contrary in this Section 3.02(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.02(f) if 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.

**3.02 Illegality.**

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund any Loans (other than Base Rate Loans), or to determine or charge interest rates based upon SOFR, Daily SOFR or Term SOFR or any Loans whose interest is determined by reference to a Relevant Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the applicable interbank market (each an "Affected Loan"), then (a) such Lender shall promptly give written notice of such circumstances to

the Borrower through the Administrative Agent, which notice shall (i) in the case of any such restriction or prohibition with respect to an Alternative Currency, include such Revolving Lender's notification that it will thenceforth be an Alternative Currency Participating Lender with respect to such Alternative Currency, and (ii) be withdrawn whenever such circumstances no longer exist, (b) the obligation of such Lender hereunder to make Affected Loans, continue Affected Loans as such and, in the case of Term SOFR Loans and Daily SOFR Loans, to convert a Base Rate Loan to an Affected Loan shall forthwith be suspended and, until such time as it shall no longer be unlawful for such Lender to make or maintain such Affected Loans, such Lender shall then have a commitment only to make a Base Rate Loan when an Affected Loan denominated in Dollars is requested and to purchase Alternative Currency Risk Participations when an Affected Loan denominated in an Alternative Currency is requested, (c) such Lender's Loans then outstanding as Affected Loans, denominated in Dollars, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law, (d) such Lender's Loans then outstanding as Affected Loans, if any, denominated in an Alternative Currency shall be immediately repaid by the Borrower on the last day of the then current Interest Period with respect thereto (or such earlier date as may be required by any such requirement of Law) together with accrued interest thereon and (e) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. If any such conversion or prepayment of an Affected Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 3.05. Any Lender that is or becomes an Alternative Currency Participating Lender with respect to any Alternative Currency pursuant to this Section 3.02 or otherwise as provided in this Agreement shall promptly notify the Administrative Agent and the Borrower in the event that the impediment resulting in its being or becoming an Alternative Currency Participating Lender is alleviated in a manner such that it can become an Alternative Currency Funding Lender with respect to such Alternative Currency.

**3.03 Inability to Determine Rates**.

(a) Subject to Sections 3.03(b), (c) and (d), if in connection with any request for a Term SOFR Loan or an Alternative Currency Term Rate Loan or a conversion of Base Rate Loans to Term SOFR Loans or Daily SOFR Loans or a continuation of any of such Loans, as applicable, or at any time in connection with a Daily SOFR Loan or an Alternative Currency Daily Rate Loan (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate for the Relevant Rate for the applicable Agreed Currency has been determined in accordance with Section 3.03(b) or Section 3.03(d) and the circumstances under clause (i) of Section 3.03(b) or of Section 3.03(d) or the Scheduled Unavailability Date, or the SOFR Scheduled Unavailability Date, has occurred with respect to Term SOFR, Daily SOFR or such Relevant Rate (as applicable) or a Canadian Benchmark Replacement has not been determined in accordance with Section 3.03(c), or (B) adequate and reasonable means do not otherwise exist for determining SOFR, Term SOFR, Daily SOFR or the Relevant Rate for the applicable Agreed Currency for any determination date(s) or requested Interest Period, as applicable, with respect to a proposed Term SOFR Loan, Daily SOFR Loan or an Alternative Currency Loan or in connection with an existing or proposed Base Rate Loan, or (ii) the Administrative Agent or the Required Lenders determine that for any reason that the Relevant Rate with respect to a proposed Loan denominated in an Agreed Currency for any requested Interest Period or determination date(s) does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender.

Thereafter, (x) the obligation of the Lenders to make or maintain Loans in the affected currencies, as applicable, or to convert Base Rate Loans to Term SOFR Loans or Daily SOFR Loans, shall be suspended in each case to the extent of the affected Term SOFR Loans, Daily SOFR Loans, Alternative Currency Loans or Interest Period or determination date(s), as applicable, and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of the first paragraph of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, or conversion to Daily SOFR Loans, a Borrowing of, or continuation of, or conversion to Term SOFR Loans, or a Borrowing of, or continuation of Alternative Currency Loans to the extent of the affected Daily SOFR Loans, Term SOFR Loans, Alternative Currency Loans or Interest Period or determination date(s), as applicable or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of, or conversion to, as applicable, Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount specified therein and (ii) (A) any outstanding affected Term SOFR Loans and Daily SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately, in the case of Daily SOFR Loans, or at the end of the applicable Interest Period, in the case of Term SOFR Loans, and (B) any outstanding affected Alternative Currency Loans, at the Borrower's election, shall either (1) be converted into a Committed Borrowing of Base Rate Loans denominated in Dollars in the Dollar Equivalent of the amount of such outstanding Alternative Currency Loan immediately, in the case of an Alternative Currency Daily Rate Loan or at the end of the applicable Interest Period, in the case of an Alternative Currency Term Rate Loan or (2) be prepaid in full immediately, in the case of an Alternative Currency Daily Rate Loan, or at the end of the applicable Interest Period, in the case of an Alternative Currency Term Rate Loan; provided that if no election is made by the Borrower (x) in the case of an Alternative Currency Daily Rate Loan, by the date that is three Business Days after receipt by the Borrower of such notice or (y) in the case of an Alternative Currency Term Rate Loan, by the last day of the current Interest Period for the applicable Alternative Currency Term Rate Loan, the Borrower shall be deemed to have elected clause (1) above.

(b) Replacement of SOFR, Term SOFR or SOFR Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining SOFR or one month, three month and six month interest periods of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of SOFR or Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR, the Term SOFR Screen Rate or SOFR shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease; provided that, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Administrative Agent, that will continue to provide such interest periods of Term SOFR or SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR, SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the "SOFR Scheduled Unavailability Date");

then, on a date and time determined by the Administrative Agent (any such date, the "SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the SOFR Scheduled Unavailability Date, Term SOFR and/or Daily SOFR, as applicable, will be replaced hereunder and under any Loan Document with Daily Simple SOFR *plus* the SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "SOFR Successor Rate").

If the SOFR Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the SOFR Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing Term SOFR, SOFR or any then current SOFR Successor Rate in accordance with this Section 3.03(b) at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a "SOFR Successor Rate". Any such amendment executed by the Administrative Agent and the Borrower shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

This Section 3.03(b) shall supersede any provisions in Section 10.01 to the contrary.

(c) Canadian Benchmark Replacement Setting. Notwithstanding anything to the contrary in this Agreement or in any other Loan Documents:

(i) Replacing CDOR. On May 16, 2022 Refinitiv Benchmark Services (UK) Limited ("RBSL"), the administrator of CDOR, announced in a public statement that the calculation and publication of all tenors of CDOR will permanently cease immediately following

a final publication on Friday, June 28, 2024. On the earlier of (A) the date that all Available Tenors of CDOR have either permanently or indefinitely ceased to be provided by RBSL and (B) June 28, 2024 (the "CDOR Cessation Date"), if the then-current Canadian Benchmark is CDOR, the Canadian Benchmark Replacement will replace such Canadian Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Canadian Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Canadian Benchmark Replacement is Daily Compounded CORRA, all interest payments will be payable on a monthly basis.

(ii) Replacing Future Canadian Benchmarks. Upon the occurrence of a Canadian Benchmark Transition Event, the Canadian Benchmark Replacement will replace the then-current Canadian Benchmark for all purposes hereunder and under any Loan Document in respect of any Canadian Benchmark setting at or after 5:00 p.m. on the fifth (5th) Business Day after the date notice of such Canadian Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Canadian Benchmark Replacement from Lenders comprising the Required Lenders. At any time that the administrator of the then-current Canadian Benchmark has permanently or indefinitely ceased to provide such Canadian Benchmark or such Canadian Benchmark has been announced by the administrator or the regulatory supervisor for the administrator of such Canadian Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Canadian Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any request for a Borrowing of, conversion to or continuation of Loans denominated in Canadian Dollars to be made, converted or continued that would bear interest by reference to such Canadian Benchmark until the Borrower's receipt of notice from the Administrative Agent that a Canadian Benchmark Replacement has replaced such Canadian Benchmark, and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Canadian Prime Rate Loans. During the period referenced in the foregoing sentence, the component of Canadian Prime Rate based upon the Benchmark will not be used in any determination of Canadian Prime Rate.

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

(iv) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Canadian Benchmark Replacement, (ii) any occurrence of a Term CORRA Transition Event, and (iii) the effectiveness of any Conforming Changes. Any determination, decision or election that may be made by the Administrative Agent pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 3.03(c).

(v) Unavailability of Tenor of Canadian Benchmark. At any time (including in connection with the implementation of a Canadian Benchmark Replacement), if the then-current Canadian Benchmark is a term rate (including Term CORRA or CDOR), then (i) the Administrative Agent may remove any tenor of such Canadian Benchmark that is unavailable or non-representative for Canadian Benchmark (including Canadian Benchmark Replacement) settings and (ii) the Administrative Agent may reinstate any such previously removed tenor for Canadian Benchmark (including Canadian Benchmark Replacement) settings.

(vi) Secondary Term CORRA Conversion. Notwithstanding anything to the contrary in this Agreement or in any Loan Documents and subject to the proviso below in this clause, if a Term CORRA Transition Event and its related Term CORRA Transition Date have occurred, then on and after such Term CORRA Transition Date (i) the Canadian Benchmark Replacement described in clause (a)(i) of such definition will replace the then-current Canadian Benchmark for all purposes hereunder or under any Loan Document in respect of any setting of such Canadian Benchmark on such day and all subsequent settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; and (ii) each Loan outstanding on the Term CORRA Transition Date bearing interest based on the then-current Canadian Benchmark shall convert, at the last day of the then current interest payment period, into a Loan bearing interest at the Canadian Benchmark Replacement described in clause (a)(i) of such definition for the respective Available Tenor as selected by the Borrower as is available for the then-current Canadian Benchmark; provided that, this clause (vi) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term CORRA Notice, and so long as the Administrative Agent has not received, by 5:00 p.m. (Toronto time) on the fifth (5th) Business Day after the date of the Term CORRA Notice, written notice of objection to such conversion to Term CORRA from Lenders comprising the Required Lenders or the Borrower.

This Section 3.03(c) shall supersede any provisions in Section 10.01 to the contrary.

(d) Replacement of Relevant Rate or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, but subject to the provisions of Section 3.03(b) and (c) with respect to the replacement of Term SOFR, SOFR and CDOR, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining the Relevant Rate (other than Term SOFR, SOFR and CDOR) for an Agreed Currency (other than Dollars and Canadian Dollars) because none of the tenors of such Relevant Rate (other than Term SOFR, SOFR and CDOR) under this Agreement is available or published on a current basis, and such circumstances are unlikely to be temporary; or

(ii) the Applicable Authority has made a public statement identifying a specific date after which all tenors of the Relevant Rate (other than Term SOFR, SOFR and CDOR) for an Agreed Currency (other than Dollars and Canadian Dollars) under this Agreement shall or will no longer be representative or made available, or permitted to be used for determining the interest rate of syndicated loans denominated in such Agreed Currency (other than Dollars and Canadian Dollars), or shall or will otherwise cease, *provided* that, in each case, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent that will continue to provide such representative tenor(s) of the Relevant Rate (other than Term SOFR, SOFR and CDOR) for such Agreed Currency (other than Dollars and Canadian

Dollars) (the latest date on which all tenors of the Relevant Rate for such Agreed Currency (other than Dollars and Canadian Dollars) under this Agreement are no longer representative or available permanently or indefinitely, the "Scheduled Unavailability Date");

or if the events or circumstances of the type described in Section 3.03(c)(i) or (ii) have occurred with respect to the Successor Rate (as defined below) then in effect, then, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing the Relevant Rate for an Agreed Currency or any then current Successor Rate for an Agreed Currency in accordance with this Section 3.03(d) with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the United States and denominated in such Agreed Currency for such alternative benchmarks, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar credit facilities syndicated and agented in the United States and denominated in such Agreed Currency for such benchmarks (and any such proposed rate, including for the avoidance of doubt, any adjustment thereto, a "Non-SOFR Successor Rate", and collectively with the SOFR Successor Rate, each a "Successor Rate"). Any such amendment executed by the Administrative Agent and the Borrower shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

This Section 3.03(d) shall supersede any provisions in Section 10.01 to the contrary.

(e) Successor Rate. The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than 0.00%, the Successor Rate will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

This Section 3.03(e) shall supersede any provisions in Section 10.01 to the contrary.

(f) For purposes of this Section 3.03, those Lenders that either have not made, or do not have an obligation under this Agreement to make, the relevant Loans in the relevant Alternative Currency shall be excluded from any determination of Required Lenders with respect to the replacement of the Relevant Rate for such Alternative Currency.

**3.04 Increased Costs.**

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

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

(ii) subject the Administrative Agent, any Lender or the L/C Issuer to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Term SOFR Loan, Daily SOFR Loan, or Alternative Currency Loan made by it, or change the basis of taxation of payments to the Administrative Agent, such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Administrative Agent, such Lender or the L/C Issuer); or

(iii) impose on the Administrative Agent, any Lender or the L/C Issuer or any applicable interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement, Term SOFR Loans, Daily SOFR Loans, or Alternative Currency Loans made by such Lender or any Letter of Credit or participation therein;

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

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered. The Borrower shall not be required to pay such additional amounts unless such amounts are the result of requirements imposed generally on lenders similar to such Lender or such L/C Issuer and not the result of some specific reserve

or similar requirement imposed on such Lender or such L/C Issuer as a result of such Lender's or such L/C Issuer's special circumstances.

(c) Certificates for Reimbursement. A certificate of the Administrative Agent, a Lender or the L/C Issuer setting forth in reasonable detail the basis for and calculation of the amount or amounts necessary to compensate the Administrative Agent, such Lender or the L/C Issuer or its holding company, as the case may be, as specified in Section 3.04(a) or 3.04(b) and delivered to the Borrower, in detail sufficient to enable the Borrower to verify the computation thereof, shall be conclusive absent manifest error. The Borrower shall pay the Administrative Agent, such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof. Any amounts requested to be payable pursuant to this Section 3.04 shall be requested in good faith (and not on an arbitrary and capricious basis) and consistent with similarly situated customers of the Administrative Agent, the applicable Lender or L/C Issuer after consideration of factors as the Administrative Agent, such Lender or L/C Issuer, as the case may be, then reasonably determines to be relevant.

(d) Delay in Requests. Failure or delay on the part of the Administrative Agent, any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of the Administrative Agent, such Lender's or the L/C Issuer's right to demand such compensation; provided that the Borrower shall not be required to compensate the Administrative Agent, a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that the Administrative Agent, such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Administrative Agent's, such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) [Reserved].

(f) The provisions set forth in Sections 3.04(a) and (b) above shall not apply to the extent any increased cost is already compensated for by payment made by or on behalf of the Borrower pursuant to Section 3.01.

**3.05 Compensation for Losses.**

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 (other than loss of anticipated profits) incurred by it as a result of:

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

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan, a Daily SOFR Loan or an Alternative Currency Daily Rate Loan on the date or in the amount notified by the Borrower;

(c) any failure by the Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency;

(d) any assignment of a Term SOFR Loan or an Alternative Currency Term Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13; or

(e) any change in the applicable Spot Rate between the date of funding of an Alternative Currency Risk Participation pursuant to Section 2.02(f)(iii) and the date of repayment by the Borrower pursuant to Section 2.02(f)(vi).

The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing, including, without limitation, any loss or expense arising from the termination of any foreign exchange contract.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Term SOFR Loan or Alternative Currency Term Rate Loan, as applicable, made by it at Term SOFR or the applicable Alternative Currency Term Rate, as applicable, for such Loan by a matching deposit or other borrowing in the applicable interbank market for the relevant currency for a comparable amount and for a comparable period, whether or not such Term SOFR Loan or Alternative Currency Term Rate Loan, as applicable, was in fact so funded.

**3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, the L/C Issuer or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.**

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Revolving Commitments, repayment of all other Obligations hereunder and resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender.

## ARTICLE IV

## CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**4.01 Conditions of Initial Credit Extension.**

The effectiveness of this Agreement and the obligation of the L/C Issuer and of each Lender to make its initial Credit Extension hereunder on the Closing Date, if any, are subject to satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or facsimile or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement, executed and delivered by the Administrative Agent, the Borrower and each Lender listed on Schedule 2.01;

(ii) a Revolving Note executed by the Borrower in favor of each Revolving Lender requesting a Revolving Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower is duly organized or formed, and that the Borrower is validly existing, in good standing and qualified to engage in business in its state of organization and in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) favorable opinions of Skadden, Arps, Slate Meagher & Flom LLP and Ballard Spahr LLP, counsels to the Borrower, addressed to the Administrative Agent and each Lender; and

(vi) a certificate signed by a Responsible Officer certifying (A) that the conditions specified in Section 4.02 have been satisfied; (B) the current Debt Ratings; and (C) that, as of the date of the last financial statements delivered pursuant to the Existing Credit Agreement, the Borrower was in pro forma compliance with the financial covenants contained in Section 7.10.

(b) Any fees required to be paid by the Borrower on or prior to the Closing Date pursuant to the Loan Documents and all expenses required to be reimbursed by the Borrower on or prior to the Closing Date pursuant to the Loan Documents shall have been paid; provided that invoices for such expenses have been presented to the Borrower a reasonable period of time (and

in any event not less than one (1) Business Day) prior to the Closing Date (including, unless waived by the Administrative Agent, all reasonable, documented, out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent)).

(c) (i) Upon the reasonable request of any Lender made in writing at least ten (10) Business Days prior to the Closing Date, the Borrower shall have provided to such Lender the documentation and other information so requested by such Lender that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five (5) Business Days prior to the Closing Date and (ii) at least five (5) Business Days prior to the Closing Date, if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation it shall have delivered, to each Lender that so requests at least ten (10) Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower.

(d) The Administrative Agent's receipt of an executed copy of a certificate signed by a Responsible Officer certifying the Borrower's Sustainability Metric Components for the calendar year ended December 31, 2020 (solely for purposes of this Section 4.01(d), reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ended December 31, 2020).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, (i) this Agreement and each other document to which it is a party or which it has reviewed or (ii) any other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions to All Credit Extensions.**

The obligation of each Lender to honor any Request for Credit Extension (other than (x) the initial extensions of credit on the Closing Date and (y) a Committed Loan Notice requesting only a conversion of Loans to another Type, or a continuation of Term SOFR Loans or Alternative Currency Term Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Loan Parties contained in Article V or any other Loan Document, or which are contained in any document required to be furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Credit Extension (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse

Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist on the date of such Credit Extension, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which, in the reasonable opinion of the Administrative Agent, the Required Lenders (in the case of any Loans (other than Negotiated Rate Loans) to be denominated in an Alternative Currency), the applicable Lenders (in the case of any Negotiated Rate Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency), would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to another Type or a continuation of Term SOFR Loans or Alternative Currency Term Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V

## REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

### 5.01 Existence, Qualification and Power.

Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and (c) is duly qualified to do business and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a) (other than with respect to any Loan Party or any Material Subsidiary), clause (b)(i) or clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

### 5.02 Authorization; No Contravention.

The execution, delivery and performance by each Loan Party of each Loan Document to which it is party has been duly authorized by all necessary corporate or other organizational action, and do not

and will not (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Loan Party is party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (c) violate any Law; except in each case referred to in clause (b) or (c), to the extent such conflict, breach, contravention or violation, or creation of any such Lien or required payment, could not reasonably be expected to have a Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents**.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for such approvals, consents, exemptions, authorizations or other actions or notices or filings which have already been completed or obtained.

**5.04 Binding Effect**.

This Agreement has been, and each other Loan Document to which each Loan Party is a party, when delivered hereunder, will have been, duly executed and delivered by such Loan Party. This Agreement constitutes, and each other Loan Document to which each Loan Party is a party when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws, now or hereafter in effect, relating to or affecting the enforcement of creditors' rights generally and except that the remedy of specific performance and other equitable remedies are subject to judicial discretion.

**5.05 Financial Statements; No Material Adverse Effect**.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and material Indebtedness, in each case, to the extent required by GAAP.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal quarter ended June 30, 2021, and the related unaudited consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on such date, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein or as otherwise permitted pursuant to Section 1.03, (ii) fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and material Indebtedness, in each case, to the extent required by GAAP.

(c) Since the date of the Audited Financial Statements, there has been no event or condition, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

**5.06 Litigation.**

There are no actions, suits, proceedings, claims, investigations or disputes pending or, to the knowledge of any Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of their respective Subsidiaries or against any of their properties or revenues that (a) affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.**

No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property and Valid Leasehold Interests; Liens.**

(a) Each of the Loan Parties and each of their respective Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title or valid leasehold interests as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

**5.09 Environmental Compliance.**

There are no existing violations of Environmental Laws by any Loan Party or any Subsidiary or claims against any Loan Party or any Subsidiary alleging potential liability under, or responsibility for the violation of, any Environmental Law that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10 Insurance.**

Each Loan Party and each of its Subsidiaries maintain or require the tenants or managers of their owned properties to maintain insurance that complies with the requirements set forth in Section 6.07.

**5.11 Taxes.**

Each Loan Party and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which 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, or (b) where the failure to take any of the foregoing actions could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect. To the knowledge of any Loan Party, there is no proposed tax assessment

against such Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. As of the Closing Date, neither the Borrower nor any Subsidiary thereof is party to any tax sharing agreement.

**5.12 ERISA Compliance.**

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws, except for any such failures to comply as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of any Loan Party, nothing has occurred that could reasonably be expected to prevent, or cause the loss of, such qualification. Each Loan Party and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA; except in each case referred to in clauses (i) through (v), to the extent that any such event, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) As of the Closing Date, the Borrower is not and will not be (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to Section 4975 of the Code, (iii) 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, the Letters of Credit or the Revolving Commitments or (iv) a "governmental plan" within the meaning of ERISA.

**5.13 Margin Regulations; Investment Company Act; REIT Status.**

(a) No Loan Party is engaged and no Loan Party will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) No Loan Party is, and no Loan Party is required to be, registered as an "investment company" under the Investment Company Act of 1940.

(c) The Parent Guarantor meets all requirements to qualify as a REIT.

**5.14 Disclosure.**

(a) No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party or any of its Subsidiaries to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as and when furnished and as modified or supplemented by other information so furnished), together with all such information previously provided and when taken as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made (together with all such information previously provided and when taken as a whole), not materially misleading; provided, however, that it is understood that no Loan Party makes any representation or warranty with respect to any general economic or specific industry information, any projections, pro forma financial information, financial estimates, forecasts and forward-looking information, except that, with respect to projected financial information concerning the Loan Parties and their respective Subsidiaries furnished in writing by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information was prepared. It is further understood that (i) any projected financial information furnished to the Administrative Agent or any Lender is not to be viewed as facts, is not a guarantee of future performance and is subject to significant uncertainties and contingencies, many of which are beyond a Loan Party's control, (ii) no assurance is given by such Loan Party that such projections will be realized and (iii) the actual results may differ from such projections and such differences may be material.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification delivered to the Administrative Agent and/or any Lender pursuant to Section 4.01(c), if applicable, is true and correct in all respects.

**5.15 Compliance with Laws.**

Each of the Loan Parties and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**5.16 Intellectual Property; Licenses, Etc.**

Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing is not a representation or warranty with respect to infringement or other violation of the IP Rights of any other Person (which is addressed in the following sentence of this Section 5.16). To the knowledge of any Loan Party, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by such Loan Party or any Subsidiary infringes upon any rights held by any other Person to an extent that such infringement could reasonably be expected to result in a Material Adverse Effect. No claim or litigation regarding any of the

foregoing is pending against any Loan Party or any of its Subsidiaries or, to the knowledge of any Loan Party, threatened against such Loan Party or any of its Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.17 Use of Proceeds.**

The proceeds of the Loans hereunder will be used solely for the purposes specified in Section 6.11. No proceeds of the Loans hereunder will be used for the acquisition of another Person unless the board of directors (or other comparable governing body) or stockholders (or other equity owners), as appropriate, of such other Person has approved such acquisition.

**5.18 Taxpayer Identification Number.**

Each Loan Party's true and correct U.S. taxpayer identification number is set forth on Schedule 10.02.

**5.19 Sanctions.**

None of the Loan Parties, any Subsidiary of the Loan Parties or, to the knowledge of the chief executive officer, chief financial officer or general counsel of any Loan Party, any director, officer or employee thereof is an individual or entity that is currently (i) the subject of any Sanctions or in violation of any Sanctions or (ii) located, organized or resident in a Designated Jurisdiction.

**5.20 Affected Financial Institution.**

No Loan Party is an Affected Financial Institution.

**5.21 Anti-Corruption Laws.**

Each Loan Party and each of its Subsidiaries (a) have conducted their businesses for the past two years (or if any Loan Party or Subsidiary was formed within the past two years, for the duration of such Loan Party's or Subsidiary's existence) and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of such Loan Party, their respective directors, officers, agents and employees are, in each case, in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar applicable anti-money-laundering and anti-corruption legislation in other applicable jurisdictions, in any such case of the foregoing, to the extent applicable to, and binding on, the Loan Parties and their Subsidiaries (collectively, "Anti-Corruption Laws"), and (b) have instituted and maintain policies and procedures reasonably designed to promote and achieve compliance by each Loan Party, its Subsidiaries and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of such Loan Party, their respective directors, officers, agents and employees with applicable Anti-Corruption Laws and applicable Sanctions.

**5.22 Solvency.**

As of the Closing Date, immediately after giving effect to the initial Credit Extensions made on the Closing Date, (a) the fair value of the assets of the Borrower and its Subsidiaries, taken as a whole, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and mature; and (c) the

Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

## ARTICLE VI

## AFFIRMATIVE COVENANTS

So long as any Lender shall have any Revolving Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent Obligations that are not then due and payable), or any Letter of Credit shall remain outstanding, each Loan Party shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.12) cause each of its Subsidiaries to:

**6.01 Financial Statements.**

Deliver to the Administrative Agent (for distribution to each Lender):

(a) as soon as available, but in any event within five (5) Business Days following the date the Parent Guarantor is required to file its Form 10-K with the SEC (without giving effect to any extension of such due date, whether obtained by filing the notification permitted by Rule 12b-25 or any successor provision thereto or otherwise) (commencing with the fiscal year ending December 31, 2021), a consolidated balance sheet of the Group as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable securities laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (provided that to the extent the components of such consolidated financial statements relating to a prior fiscal period are separately audited by different independent public accounting firms, the audit report of any such accounting firm may contain a qualification or exception as to scope of such consolidated financial statements as they relate to such components); and

(b) as soon as available, but in any event within five (5) Business Days following the date the Parent Guarantor is required to file its Form 10-Q with the SEC (without giving effect to any extension of such due date, whether obtained by filing the notification permitted by Rule 12b-25 or any successor provision thereto or otherwise) (commencing with the fiscal quarter ending September 30, 2021), an unaudited consolidated balance sheet of the Group as at the end of such fiscal quarter, and the related unaudited consolidated statements of income or operations for such fiscal quarter and for the portion of the Parent Guarantor's fiscal year then ended, and an unaudited statement of cash flow for the portion of the Parent Guarantor's fiscal year then ended setting forth in each case in comparative form the figures for the corresponding date of the previous fiscal year or the corresponding portion of the previous fiscal year, as applicable, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer as fairly presenting the consolidated financial condition of the Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

**6.02 Certificates; Other Information.**

Deliver to the Administrative Agent (for distribution to each Lender):

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ending September 30, 2021), a duly completed Compliance Certificate signed by a Responsible Officer;

(b) promptly after any request by the Administrative Agent, copies of any management letters submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with an audit of the accounts of the Loan Parties and their respective Subsidiaries;

(c) [reserved];

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of any Loan Party, and copies of all annual, regular, periodic and special reports and registration statements which such Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation by such agency regarding financial or other operational results of such Loan Party or any Subsidiary thereof, other than ordinary course or routine notices, correspondence, inquiries, examinations or audits;

(f) promptly following any written request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation (to the extent any Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and has provided a Beneficial Ownership Certification to any Lender or the Administrative Agent in connection with this Agreement as required by the Beneficial Ownership Regulation); and

(g) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the

Borrower or the Parent Guarantor posts such documents, or provides a link thereto on the Borrower's or the Parent Guarantor's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's or the Parent Guarantor's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail), which shall notify each Lender, of the posting of any such documents and, upon request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower or the Parent Guarantor with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Loan Party hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of any Loan Party hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel that do not wish to receive material non-public information with respect to any Loan Party or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agrees that so long as such Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (x) by marking Borrower Materials "PUBLIC," each Loan Party shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to such Loan Party or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07) (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Arrangers shall treat any Borrower Materials that are not marked "PUBLIC" or that are marked "PRIVATE" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, no Loan Party shall be under any obligation to mark any Borrower Materials "PUBLIC."

**6.03 Notices.**

Promptly following knowledge thereof by a Responsible Officer, notify the Administrative Agent (which shall notify each Lender) of:

(a) the occurrence of any Default or Event of Default;

(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) the information set forth in Section 6.13 at the times required therein;

(d) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary; and

(e) any announcement by Moody's, S&P or Fitch of any change or possible adverse change in a Debt Rating.

Each notice pursuant to this Section 6.03 (other than Section 6.03(e)) shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the applicable Loan Party has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Taxes.**

Pay and discharge as the same shall become due and payable, all of its tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person, in each case in this Section 6.04, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.05 Preservation of Existence, Etc.**

(a) Preserve, renew and maintain in full force and effect its legal existence and, where applicable, good standing under the Laws of the jurisdiction of its organization except in a transaction not prohibited by Section 7.04 or 7.05, or to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.**

(a) Maintain, preserve and protect, or make contractual or other provisions to cause to maintain, preserve or protect, all of its properties and equipment necessary in the operation of its business in good working order and condition, 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; and (b) make, or make contractual or other provisions to cause to be made, all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.**

Maintain, or use reasonable efforts to cause the tenants under all leases to which it is a party as landlord or the manager of its facilities to maintain, insurance with respect to its owned properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons (including with respect to any captive insurance subsidiary

or self-insurance, a system or systems of self-insurance and reinsurance which accords with the practices of similar businesses).

**6.08 Compliance with Laws.**

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.**

Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of any Loan Party or its Subsidiary, as the case may be.

**6.10 Inspection Rights.**

Subject to (x) rights of tenants, (y) applicable health and safety laws, and (z) except to the extent disclosure could reasonably be expected to contravene attorney client privilege or similar protection or violate any confidentiality or privacy obligation or otherwise contravene applicable law, permit representatives and independent contractors of the Administrative Agent and each Lender (in each case of a Lender, coordinated through the Administrative Agent) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (provided that the Loan Parties shall have the right to participate in any such discussions), all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Loan Parties; provided, however, that, excluding any such visits and inspections during the continuation of an Event of Default, only one (1) such visit and inspection by the Administrative Agent during any calendar year shall be at the reasonable expense of the Borrower; provided, further, however, that when an Event of Default exists and is continuing the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

**6.11 Use of Proceeds.**

Use proceeds from the Committed Revolving Loans for working capital and general corporate purposes, including Investments not prohibited by Section 7.02, dividends and distributions, and acquisitions and developments and, in each case, not in contravention of any applicable Law in any material respect or of any Loan Document.

**6.12 REIT Status.**

The Parent Guarantor shall maintain its qualification as a real estate investment trust under Sections 856 through 860 of the Code.

**6.13 Employee Benefits.**

(a) Comply with the applicable provisions of ERISA and the Code with respect to each Plan, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect and (b) furnish to the Administrative Agent (x) within five (5) Business Days after any Responsible Officer or any ERISA Affiliate knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of any Loan Party or any of its ERISA Affiliates in an aggregate amount exceeding the Threshold Amount or the imposition of a Lien, a statement setting forth details as to such ERISA Event and the action, if any, that such Loan Party or ERISA Affiliate proposes to take with respect thereto, and (y) upon request by the Administrative Agent, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Loan Party or any ERISA Affiliate with the Internal Revenue Service with respect to each Pension Plan; (ii) the most recent actuarial valuation report for each Pension Plan; (iii) all notices received by any Loan Party or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan as the Administrative Agent shall reasonably request.

**6.14 Anti-Corruption Laws.**

Conduct its businesses in compliance in all material respects with applicable Anti-Corruption Laws and maintain policies and procedures reasonably designed to promote and achieve compliance by each Loan Party, its Subsidiaries and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of such Loan Party, their respective directors, officers, agents and employees with applicable Anti-Corruption Laws.

## ARTICLE VII

## NEGATIVE COVENANTS

So long as any Lender shall have any Revolving Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent Obligations that are not then due and payable), or any Letter of Credit shall remain outstanding, no Loan Party shall, nor shall it permit any Subsidiary (except Section 7.09 shall apply only to Wholly-Owned Subsidiaries) to, directly or indirectly:

**7.01 Liens.**

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens securing Indebtedness of the Parent Guarantor and its Subsidiaries permitted under Section 7.03;

(c) Liens for Taxes not yet due 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;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than

thirty (30) days 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;

(e) pledges or deposits or other Liens arising in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, or to secure statutory obligations, other than any Lien imposed by ERISA;

(f) Liens and rights of setoff of banks and securities intermediaries in respect of deposit accounts and securities accounts maintained in the ordinary course of business;

(g) the interests of lessees and lessors under leases or subleases of, and the interest of managers or operators with respect to, real or personal property made in the ordinary course of business;

(h) Liens on property where the Parent Guarantor or its Subsidiaries is insured against such Liens by title insurance;

(i) Liens on property acquired by the Parent Guarantor or any of its Subsidiaries after the date hereof and which are in place at the time such properties are so acquired and not created in contemplation of such acquisition;

(j) Liens securing assessments or charges payable to a property owner association or similar entity, which assessments are not yet due and payable or that 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;

(k) Liens securing assessment bonds, so long as the Parent Guarantor or its Subsidiaries is not in default under the terms thereof;

(l) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(m) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(n) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h) or securing appeal or other surety bonds related to such judgments;

(o) Liens solely on any cash earnest money deposits made by the Parent Guarantor or any of its Subsidiaries in connection with any letter of intent or purchase agreement;

(p) assignments to a reverse Section 1031 exchange trust;

(q) licenses of intellectual property granted in the ordinary course of business;

(r) Liens on assets of the Borrower or any of its Subsidiaries securing obligations under Swap Contracts; and

(s) precautionary UCC filings in respect of operating leases

; provided that, notwithstanding the forgoing, in no event shall any Loan Party create, incur, assume or suffer to exist any Lien on the Equity Interests of Borrower or any other Subsidiary of Parent Guarantor that directly or indirectly owns any Equity Interests of Borrower, in each case, that is owned by a Loan Party.

**7.02 Investments.**

(a) Make or allow Investments in Development Property to exceed, in the aggregate at any one time outstanding, 35% of Enterprise Gross Asset Value.

(b) Make or allow Investments in Joint Ventures to exceed, in the aggregate at any one time outstanding, 25% of Enterprise Gross Asset Value. For purposes of this Section 7.02(b), the Loan Parties' aggregate Investment in Joint Ventures will be valued at book value as shown on the consolidated balance sheet of the Parent Guarantor, as determined in accordance with GAAP.

**7.03 Indebtedness**.

Create, incur, assume or suffer to exist any Indebtedness of any Loan Party or any of its Subsidiaries, except:

(a) Indebtedness under the Loan Documents; and

(b) other Indebtedness; provided that (i) at the time of the incurrence of such Indebtedness and immediately after giving effect thereto (including any Liens associated therewith) no Event of Default has occurred and is continuing or would result therefrom and (ii) with respect to obligations of a Loan Party in respect of Swap Contracts, such Swap Contracts shall be (x) entered into in order to manage existing or anticipated risk and not for speculative purposes or (y) (i) for the sale of Equity Interests issued by Guarantor at a future date that could be discharged solely by (1) delivery of the Parent Guarantor's Equity Interests, or, (2) solely at Parent Guarantor's option made at any time, payment of the net cash value of such Equity Interests at the time, irrespective of the form or duration of such agreement, commitment or arrangement and (ii) not for speculative purposes.

**7.04 Fundamental Changes.**

Merge, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom, (i) any Person may merge with or into, consolidate with or amalgamate with the Borrower in a transaction in which the Borrower shall be the continuing or surviving Person, (ii) any Person (other than Parent Guarantor) may merge with or into, consolidate with or amalgamate with any Subsidiary (other than the Borrower) in a transaction in which the continuing or surviving Person shall be a Subsidiary of the Borrower, (iii) any Subsidiary of the Borrower may merge with or into, consolidate with or amalgamate with any Person in order to consummate an Investment permitted by Section 7.02 or a Disposition permitted by Section 7.05; (iv) any Subsidiary of the Borrower may merge into, the Parent Guarantor, the Borrower or any other Subsidiary of the Borrower; and (v) any Subsidiary of the Borrower may liquidate or dissolve if the Borrower determines in good

faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders.

**7.05 Dispositions**.

Make any Disposition (other than any Disposition to any Loan Party or any Subsidiary) of all or substantially all of the assets (whether now owned or hereafter acquired, including pursuant to a Delaware LLC Division) of any Loan Party and its Subsidiaries, taken as a whole.

**7.06 Restricted Payments.**

Declare or make, directly or indirectly, any Restricted Payment; provided that, (i) (a) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment required to qualify and maintain such Loan Party's qualification as a real estate investment trust under Sections 856 through 860 of the Code, and (b) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment required to avoid the payment of federal or state income or excise tax; which permitted Restricted Payments under clauses (i)(a) and (i)(b), for the avoidance of doubt, include Restricted Payments from the Borrower to its equity holders in order for the Parent Guarantor to comply with the foregoing, (ii) so long as no Default shall have occurred and be continuing or would result therefrom, each Loan Party and each Subsidiary may purchase, redeem, retire, acquire, cancel or terminate Equity Interests issued by such Loan Party or such Subsidiary so long as immediately after giving effect thereto the Parent Guarantor is in compliance on a Pro Forma Basis with the requirements of Section 7.10(e), (iii) so long as no Default shall have occurred and be continuing or would result therefrom, each Loan Party and each Subsidiary may make any payment on account of any return of capital to the Parent Guarantor's stockholders, partners or members (or the equivalent Person thereof), (iv) each Loan Party and each Subsidiary may declare and make dividend payments, other distributions or other Restricted Payments payable solely in the Equity Interests in such Person, (v) any Subsidiary may at any time make Restricted Payments to the Parent Guarantor, the Borrower or any other Subsidiary and, solely to the extent such Restricted Payments to other holders of its Equity Interests are required by its Organization Documents, to such other holders of Equity Interests, and (vi) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment within sixty (60) days after the date of declaration thereof, if on the date of declaration of such payment, such payment would have been permitted pursuant to another clause of this Section 7.06 and, on the date of such payment, no Default under Section 8.01(a), (f) or (g) shall have occurred and be continuing.

**7.07 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by each Loan Party and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.**

Enter into any transaction of any kind with any Affiliate of any Loan Party (other than transactions between or among a Loan Party and a Subsidiary (including any entity that becomes a Subsidiary as a result of such transaction) (or any combination thereof)), whether or not in the ordinary course of business, except (i) transactions on fair and reasonable terms substantially as favorable to such Loan Party or such Subsidiary as would be obtainable by such Loan Party or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (ii) payments of compensation, perquisites and fringe benefits arising out of any employment or consulting relationship in the ordinary course of business, (iii) making Restricted Payments permitted by this Agreement,

(iv) payments (whether in cash, securities or other property) by any non-Wholly-Owned Subsidiary of the Borrower, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests of such Subsidiary, or on account of any return of capital to such Subsidiary's stockholders, partners or members (or the equivalent Person thereof), in any such case, made to holders of Equity Interests in such Subsidiary (x) to the extent required pursuant to such Subsidiary's Organization Documents or (y) to the extent such payment would have been permitted by Section 7.06 had it constituted a Restricted Payment, (v) other transactions expressly permitted by this Agreement, (vi) transactions with Affiliates that are Disclosed Matters (together with any amendments, restatements, extensions, replacements or other modifications thereto that are not adverse to the interests of the Lenders in their capacities as such), (vii) transactions in the ordinary course of business that comply with the requirements of the North American Securities Administrators Association's Statement of Policy of Real Estate Investment Trusts and (viii) transactions between a Loan Party or Subsidiary and any "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of any Loan Party or Subsidiary.

**7.09 Burdensome Agreements**.

Enter into, assume or otherwise be bound, or permit any Wholly-Owned Subsidiary to enter into, assume or otherwise be bound, by any Negative Pledge other than (i) any Negative Pledge contained in an agreement entered into in connection with any Indebtedness that is permitted pursuant to Section 7.03, which Indebtedness is of a type that customarily includes a Negative Pledge or with respect to which such Negative Pledge is no more restrictive on a Loan Party or such Wholly-Owned Subsidiary in any material respect, when taken as a whole, than this Section 7.09 (as determined in good faith by the Borrower); (ii) any Negative Pledge required or imposed by, or arising under or as a result of, any Law; (iii) Negative Pledges contained in (x) the agreements set forth on Schedule 7.09 or that are Disclosed Matters; (y) any agreement relating to the Disposition of any Subsidiary or any assets pending such Disposition; provided that, in any such case, the Negative Pledge applies only to the Subsidiary or the assets that are the subject of such Disposition; or (z) any agreement in effect at the time any Person becomes a Wholly-Owned Subsidiary so long as such agreement was not entered into in contemplation of such Person becoming a Wholly-Owned Subsidiary and such restriction only applies to such Person and/or its assets, (iv) customary restrictions in leases, licenses and other contracts restricting the assignment thereof, (v) other customary restrictions set forth in agreements relating to assets specified in such agreements and entered into in the ordinary course of business to the extent such restrictions shall solely apply to such specified assets; and (vi) restrictions that apply only to the Equity Interests in, or assets of, any Person other than a Loan Party or a Wholly-Owned Subsidiary, in each case as such agreements, leases or other contracts may be amended from time to time and including any renewal, extension, refinancing or replacement thereof; provided that, with respect to any agreement described in clause (iii), such amendment, renewal, extension, refinancing or replacement does not contain restrictions of the type prohibited by this Section 7.09 that are, in the aggregate, more onerous in any material respect on a Loan Party or any Wholly-Owned Subsidiary than the restrictions, in the aggregate, in the original agreement.

**7.10 Financial Covenants.**

(a) Leverage Ratio. Permit the Leverage Ratio to be greater than 0.60 to 1.00 as of the end of any fiscal quarter. Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the Parent Guarantor shall be permitted to increase the maximum Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Leverage Ratio exceed 0.65 to 1.00 as of the end of any

fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

(b) Secured Debt Ratio. Permit the Secured Debt Ratio to be greater than 0.40 to 1.00 as of the end of any fiscal quarter.

(c) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio to be less than 1.50 to 1.00 as of the end of any fiscal quarter.

(d) Unsecured Leverage Ratio. Permit the Unsecured Leverage Ratio to be greater than 0.60 to 1.00 as of the end of any fiscal quarter. Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the Parent Guarantor shall be permitted to increase the maximum Unsecured Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Unsecured Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

(e) Consolidated Tangible Net Worth. Permit the Consolidated Tangible Net Worth to be less than $7,700,000,000 as of the end of any fiscal quarter.

**7.11 Sanctions.**

Directly or, to its knowledge, indirectly, use any part of the proceeds of any Credit Extension or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions (except to the extent permitted for a Person required to comply with such Sanctions) or (ii) in any other manner that will result in a violation by any Person of Sanctions.

**7.12 Anti-Corruption Laws.**

Directly or, to its knowledge, indirectly use the proceeds of any Credit Extension for any purpose which would violate in any material respect any applicable Anti-Corruption Laws.

## ARTICLE VIII

## EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.**

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan or any L/C Obligation, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower, any other Loan Party or any of their respective Subsidiaries fails to perform or observe any term, covenant or agreement contained in any of (i) Section 6.03(b), 6.05 (solely with respect to the legal existence of the Loan Parties) or 6.11 or Article VII and such failure continues for five (5) consecutive Business Days, or (ii) Section 6.03(a) or Section 6.03(d) and such failure continues for fifteen (15) consecutive Business Days; or

(c) Other Defaults. The Borrower, any Loan Party or any of their respective Subsidiaries fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or 8.01(b)) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) consecutive days after the receipt by the Borrower of written notice of such failure from the Administrative Agent; provided that, if such failure is of such a nature that can be cured but cannot with reasonable effort be completely cured within thirty (30) days, then such thirty (30) day period shall be extended for such additional period of time (not exceeding ninety (90) additional days) as may be reasonably necessary to cure such failure so long as such Loan Party or its Subsidiaries, as applicable, commence such cure within such thirty (30) day period and diligently prosecute same until completion; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made (or, in the case of the representations and warranties in Section 5.14(b) or any representation and warranty that is qualified by materiality, shall be incorrect in any respect when made or deemed made) and, with respect to any representation, warranty, certification or statement (other than the representations and warranties in Section 5.14(b)) not known by such Loan Party at the time made or deemed made to be incorrect, the defect causing such representation or warranty to be incorrect when made or deemed made is not removed within thirty (30) days after the first to occur of (i) the date upon which a Responsible Officer of any Loan Party obtains knowledge thereof or (ii) receipt by the Borrower of written notice thereof from the Administrative Agent; or

(e) Cross-Default. (i) The Borrower, the Parent Guarantor or any of their respective Subsidiaries (x) fails (after giving effect to any notice or grace periods applicable thereto) to make any required payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Recourse Indebtedness or (y) fails to observe or perform any other agreement or condition relating to any such Material Recourse Indebtedness contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, with the giving of notice if required, such Material Recourse Indebtedness pursuant to the terms thereof to be demanded or to become due or to require the Borrower, the Parent Guarantor or such Subsidiary to repurchase, prepay, defease or redeem (automatically or otherwise) or make an offer to repurchase, prepay, defease or redeem such Material Recourse Indebtedness pursuant to the terms thereof, prior to its stated maturity; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; provided that this clause (e) shall not apply to (1) secured Indebtedness that becomes due and payable (or as to which an offer

to repurchase, prepay, defease or redeem is required to be made) as a result of the voluntary Disposition of the property or assets securing such Indebtedness, if such Disposition is permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness that has become so due and payable (including as a result of such offer to repurchase, prepay, defease or redeem such Indebtedness) is assumed or repaid in full when and to the extent required under the document providing for such Indebtedness (after giving effect to any notice or grace periods applicable thereto), (2) any redemption, repurchase, conversion or settlement with respect to any convertible debt security which is consummated in accordance with the terms of such convertible debt security, unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (3) any early payment requirement or unwinding or termination with respect to any Swap Contract (A) not arising out of a default by any Loan Party or any Subsidiary and (B) to the extent that such Swap Termination Value owed has been paid in full by any Loan Party or any of its Subsidiaries when due; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Material Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged, undismissed or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undischarged, undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any of its Material Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any of its Material Subsidiaries (i) a final non-appealable judgment or order that has not been discharged, satisfied, dismissed or vacated for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent (x) not paid, fully bonded or covered by independent third-party insurance as to which the insurer has not denied coverage or (y) for which such Loan Party or applicable Material Subsidiary has not been indemnified), or (ii) any one or more non-monetary final non-appealable judgments that have not been discharged, dismissed or vacated and that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case of clause (i) or (ii), (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party or any of its Subsidiaries contests in writing in any manner the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports in writing to revoke, terminate or rescind any material provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control.

For purposes of clauses (f), (g), and (h) above, no Event of Default shall be deemed to have occurred with respect to a Material Group unless the type of event specified therein has occurred with respect to each Subsidiary that is a member of such Material Group.

**8.02 Remedies Upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Revolving Commitments of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such Revolving Commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an Event of Default with respect to any Loan Party pursuant to Section 8.01(f) or (g) or the occurrence of an actual or deemed entry of an order for relief with respect to any Loan Party under the Bankruptcy Code, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

**8.03 Application of Funds.**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.17 and 2.18, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans and L/C Borrowings and fees, premiums and scheduled periodic payments, and any interest accrued thereon, due under any Swap Contract between any Loan Party and any Lender, or any Affiliate of a Lender, ratably among the Lenders (and, in the case of such Swap Contracts, Affiliates of Lenders) and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, payment of breakage, termination or other payments, and any interest accrued thereon, due under any Swap Contract between any Loan Party and any Lender, or any Affiliate of a Lender and amounts owing under Treasury Management Agreements, ratably among the Lenders (and, in the case of such Swap Contracts, Affiliates of Lenders), the Treasury Management Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03, 2.06(d) and/or 2.17; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.17, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

## ARTICLE IX

## ADMINISTRATIVE AGENT

### 9.01 Appointment and Authority.

Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to

the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as otherwise expressly set forth herein and except with respect to Section 9.06, the provisions of this Article IX are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and no Loan Party shall have any rights as a third-party beneficiary of any of such provisions.

**9.02 Rights as a Lender.**

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders. The foregoing provisions of this Section 9.02 shall likewise apply to the Person serving as the Alternative Currency Fronting Lender.

**9.03 Exculpatory Provisions.**

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**9.06 Resignation of Administrative Agent.**

The Administrative Agent may at any time resign as Administrative Agent upon thirty (30) days' notice to the Lenders, the L/C Issuer and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the approval (not to be unreasonably withheld or delayed) of the Borrower (unless an Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States; provided that if any such potential successor is not classified as a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, then the Borrower shall have the right to prohibit such potential successor from becoming the Administrative Agent in its reasonable discretion. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on

behalf of the Lenders and the L/C Issuer (and subject to the approval (not to be unreasonably withheld or delayed) of the Borrower (unless an Event of Default has occurred and is continuing)), appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if any such potential successor is not classified as a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, then the Borrower shall have the right to prohibit such potential successor from becoming the Administrative Agent in its reasonable discretion; provided, further, that, if the retiring Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security on behalf of the Lenders or the L/C Issuer until such time as a successor Administrative Agent is appointed hereunder) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as L/C Issuer and Alternative Currency Fronting Lender, unless otherwise agreed to between the Borrower and Bank of America. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Alternative Currency Fronting Lender, (b) the retiring L/C Issuer and Alternative Currency Fronting Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents as an L/C Issuer and Alternative Currency Fronting Lender, (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, issued by the retiring L/C Issuer and outstanding at the time of such succession or make other arrangement satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit and (d) the successor Alternative Currency Fronting Lender shall make arrangements with the resigning Alternative Currency Fronting Lender for the funding of all outstanding Alternative Currency Risk Participations.

**9.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to

make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Syndication Agents, Co-Documentation Agents or Senior Managing Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

**9.09 Administrative Agent May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding under any Debtor Relief Law relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(g) and (h), 2.10 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.10 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.10 Recovery of Erroneous Payments.**

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender, whether or not in respect of an Obligation due and owing by Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender in Same Day Funds in the

currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by 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. Each Lender irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender promptly upon determining that any payment made to such Lender comprised, in whole or in part, a Rescindable Amount.

## ARTICLE X

## MISCELLANEOUS

**10.01 Amendments, Etc.**

Except as set forth in Section 1.06 in respect of the addition of other currency options and the applicable interest rate with respect thereto, Section 2.02(g) in respect of Conforming Changes made pursuant to such section, Section 2.15 in respect of an extension of a Maturity Date, Section 2.16 in respect of an Incremental Term Loan Amendment or Section 3.03 in respect of the replacement of Term SOFR, SOFR or the Relevant Rate and/or Conforming Changes or other amendments or modifications made pursuant to such section, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend the expiration date or increase the amount of any Revolving Commitment of any Lender (or reinstate any Revolving Commitment terminated pursuant to Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or Event of Default is not considered an extension or increase in the Revolving Commitments of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment (other than mandatory prepayments (if any) with respect to any Incremental Term Loans) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder (including pursuant to Section 2.06) or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided, however, that (i) only the consent of the Required Class Lenders shall be necessary to amend the definition of "Default Rate" with respect to such Class or to waive any obligation of the Borrower to pay interest at the Default Rate with respect to such Class, and (ii) only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay Letter of Credit Fees at the Default Rate;

(d) change Section 2.14 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(e) change any provision of this Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(f) release all or substantially all of the value of the Guaranteed Obligations of the Guarantor under the Guaranty (except as provided herein) without the written consent of each Lender;

(g) amend, modify, or waive any provision of this Agreement or any other Loan Document affecting the rights or duties of the Alternative Currency Fronting Lender under this Agreement or any other Loan Document without the written consent of such Alternative Currency Fronting Lender;

(h) directly and materially adversely affect the rights of Lenders holding Revolving Commitments or Loans of one Class differently from the rights of Lenders holding Revolving Commitments or Loans of any other Class without the written consent of the applicable Required Class Lenders;

(i) the written consent of each Revolving Lender shall be required to the extent such amendment, waiver or consent shall change any provision of Section 1.06 or the definition of "Alternative Currency"; or

(j) the written consent of the Required Lenders, and, to the extent required pursuant to clause (i) of the proviso below, the L/C Issuer, shall be required to the extent such amendment, waiver or consent shall (x) amend, waive or otherwise modify any of the conditions precedent set forth in Section 4.02 with respect to any Credit Extension under the Revolving Facility or (y) impose any greater restriction on the ability of any Revolving Lender to assign any of its rights or obligations hereunder;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) [reserved]; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) any fee letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto (and, for the avoidance of doubt, no other parties shall have any right to approve or disapprove any such amendment, waiver or consent). 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 (or all Lenders of a Class or each affected Lender of a Class) may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Commitment of any Defaulting Lender may not be increased or extended without the 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 consent of such Defaulting Lender.

Notwithstanding anything to the contrary herein, (A) the Administrative Agent and the Borrower may, with the consent of the other (but without the consent of any other Person), amend, modify or supplement any Loan Document to correct, amend or cure any ambiguity, inconsistency, omission, mistake or defect or correct any obvious error or any error or omission of an administrative or technical nature so long as such amendment, modification or supplement does not impose additional obligations on any Lender; provided that the Administrative Agent shall promptly give the Lenders notice of, and provide to the Lenders a copy of, any such amendment, modification or supplement, and (B) this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Revolving Commitments of such Lender shall have terminated, and such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

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

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

In addition, notwithstanding the foregoing, the Borrower may, by written notice to the Administrative Agent from time to time, make one or more offers (each, a "Loan Modification Offer") to all the Lenders to make one or more amendments or modifications to (A) allow the maturity of the Revolving Commitments or Loans of the Accepting Lenders (as defined below) to be extended, (B) modify the Applicable Rate and/or fees payable with respect to the Loans and Revolving Commitments of the Accepting Lenders, (C) modify any covenants or other provisions or add new covenants or provisions that are agreed between the Borrower, the Administrative Agent and the Accepting Lenders; provided that such modified or new covenants and provisions are applicable only during periods after the applicable Maturity Date that is in effect on the effective date of such Permitted Amendment, and (D) any other amendment to a Loan Document required to give effect to the Permitted Amendments described in clauses (A), (B) and (C) of this paragraph ("Permitted Amendments," and any amendment to this Agreement to implement Permitted Amendments, a "Loan Modification Agreement") pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower. Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendments and (ii) the date on which such Permitted Amendments are requested to become effective. Permitted

Amendments shall become effective only with respect to the Revolving Commitments and/or Loans of the Lenders that accept the applicable Loan Modification Offer (such Lenders, the "Accepting Lenders") and, in the case of any Accepting Lender, only with respect to such Lender's Revolving Commitments and/or Loans as to which such Lender's acceptance has been made. The Borrower and each Accepting Lender shall execute and deliver to the Administrative Agent a Loan Modification Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof, and the Borrower shall also deliver such resolutions, opinions and other documents as reasonably requested by the Administrative Agent. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each of the parties hereto hereby agrees that (1) upon the effectiveness of any Loan Modification Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Permitted Amendments evidenced thereby and only with respect to the Revolving Commitments and Loans of the Accepting Lenders as to which such Lenders' acceptance has been made, (2) any applicable Lender who is not an Accepting Lender may be replaced by the Borrower in accordance with Section 10.13, and (3) the Administrative Agent and the Borrower shall be permitted to make any amendments or modifications to any Loan Documents necessary to allow any borrowings, prepayments, participations in Letters of Credit and commitment reductions to be ratable across each Class of commitments to make Loans the mechanics for which may be implemented through the applicable Loan Modification Agreement and may include technical changes related to the borrowing and repayment procedures of the Lenders; provided that with the consent of the Accepting Lenders such prepayments and commitment reductions and reductions in participations in Letters of Credit may be applied on a non-ratable basis to the class of non-Accepting Lenders.

Notwithstanding anything herein to the contrary, this Agreement may be amended in connection with Incremental Term Loans, as set forth in Section 2.16(e)(iii).

**10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.02(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party, the Administrative Agent, the L/C Issuer or Alternative Currency Fronting Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Loan Parties).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered

through electronic communications to the extent provided in Section 10.02(b) below, shall be effective as provided in such Section 10.02(b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer provided pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent, the L/C Issuer or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice, e-mail or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower and any other Loan Party, the Administrative Agent, the L/C Issuer and the Alternative Currency Fronting Lender may change its address, facsimile number, telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number, telephone number or e-mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, and, in the case of Revolving Lenders, the L/C Issuer. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile

number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to any Loan Party or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in accordance with Section 10.02. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.**

No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against any Loan Party and its Subsidiaries or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Alternative Currency Fronting Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Alternative Currency Fronting Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from enforcing payments of amounts payable to such Lender pursuant to Sections 3.01, 3.04, 3.05 and 10.04 or from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.14), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party or any Subsidiary under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.14, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. Each Loan Party shall, jointly and severally, pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Arrangers (limited, in the case of legal fees, to the reasonable and documented fees, charges and disbursements of one primary counsel, and, if applicable, one local counsel in each material jurisdiction, for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, due diligence, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder (subject to the limitations set forth in clause (i) above with respect to legal fees) and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent, any Lender, the L/C Issuer or the Alternative Currency Fronting Lender (limited, in the case of legal fees, to the reasonable and documented fees, charges and disbursements of (x) one primary counsel for the Administrative Agent (and, if reasonably required, one counsel for the Administrative Agent per specialty area and one local counsel for the Administrative Agent per applicable jurisdiction) and (y) one additional counsel for all the Lenders (and, if reasonably required, one additional counsel per specialty area and one local counsel per applicable jurisdiction), plus additional counsel for the Lenders as necessary in the event of an actual or potential conflict of interest among the Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such reasonable and documented out-of-pocket expenses (subject to the limitations set forth above with respect to legal fees) incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Loan Parties. Each Loan Party shall, jointly and severally, indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, the Agents and their Affiliates and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related reasonable and documented out-of-pocket expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of one primary counsel for the Indemnitees; provided that reimbursement for reasonable and documented out-of-pocket fees, charges and disbursements of additional counsel of the Indemnitees will be limited to such specialist counsel as may reasonably be required by the Indemnitees, a single firm of local counsel for the Indemnitees in each material jurisdiction and, in the event of an actual or potential conflict of interest (as reasonably determined by the applicable Indemnitee), one additional firm of counsel to each group of similarly affected Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby (including, without limitation, each Lender's agreement to make Loans or the use or intended use of the proceeds thereof) or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or

from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses (A)(x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Indemnified Parties or (y) result from a claim brought by any Loan Party against an Indemnitee for breach in bad faith or a material breach of the obligations of such Indemnitee or any of its Related Indemnified Parties hereunder or under any other Loan Document, if any Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (B) arise out of a dispute solely among Indemnitees and not resulting from any act or omission by any Loan Party or any of its Affiliates (other than any such losses, claims, damages, penalties, liabilities or related reasonable and documented out-of-pocket expenses against an Indemnitee in its capacity or in fulfilling its role as an Agent). Notwithstanding the foregoing, Section 3.01 shall be the sole remedy for any indemnification claim in respect of Taxes. No Loan Party shall, except as a result of its indemnification obligations hereunder, and nor shall any of its Related Parties have any liability for any indirect or consequential damages (as opposed to direct or actual damages) in connection with its activities related to the Revolving Facility.

(c) Reimbursement by Lenders. To the extent that any Loan Party for any reason fails to indefeasibly pay any amount required under Section 10.04(a) or 10.04(b) to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing and without relieving such Loan Party of its obligations with respect thereto, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this Section 10.04(c) are subject to the provisions of Section 2.13(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, each Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee or Related Indemnified Party referred to in Section 10.04(b) 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 to the extent of such Indemnitee's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment.

(e) Payments. All amounts due under this Section 10.04 shall be payable not later than ten (10) Business Days after demand therefor (accompanied by backup documentation to the extent available).

(f) Survival. The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent, the L/C Issuer, the Alternative Currency Fronting Lender, the replacement of any Lender, the termination of the Aggregate Revolving Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.**

To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent, the L/C Issuer and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment or grant of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment(s) and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Alternative Currency Risk Participations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment(s) and/or the 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 subsection (b)(i)(A) of this Section, the aggregate amount of the Revolving Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Revolving Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 in the case of any assignment unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Revolving Commitments assigned;

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Person that is a Revolving Lender, an Affiliate of any Revolving Lender or an Approved Fund with respect to any Revolving Lender; 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 ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless such assignment is to a Person that is a Revolving Lender, an Affiliate of any Revolving Lender or an Approved Fund with respect to any Revolving Lender;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment of a Revolving Commitment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding);

(D) [reserved]; and

(E) the consent of the Lead Alternative Currency Fronting Lender (such consent not to be unreasonably withheld or delayed) shall be required if upon effectiveness of the applicable assignment the proposed assignee would be an Alternative Currency Participating Lender with respect to any Alternative Currency.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to the Loan Parties. No such assignment shall be made to any Loan Party or any of the Loan Parties' Affiliates or Subsidiaries.

(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) No Assignment to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (vii).

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

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver Note(s) to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for

purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive 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, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower, the L/C Issuer and any Lender (with respect to its own interest only), 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 or the Administrative Agent, sell participations to any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person), a Defaulting Lender (or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or any of its Subsidiaries) or any Loan Party or any of the Loan Parties' 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 Commitments and/or the Loans (including such Lender's participations in L/C Obligations and its Alternative Currency Risk Participations under the Revolving Facility) 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 Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b); provided that such Participant agrees to be subject to the provisions of Sections 3.01, 3.04, 3.05, 3.06 and 10.13 and any requirements or limitations contained therein as if it were an assignee under subsection (b) of this Section. 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 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.14 as though it were a Lender.

Each Lender that sells a participation 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) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

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

(g) [Reserved].

(h) Resignation as L/C Issuer or Alternative Currency Fronting Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Commitment and Revolving Loans pursuant to subsection (b) above, Bank of America may, (i) upon thirty (30) days' notice to the Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon thirty (30) days' notice to the Borrower, resign as Alternative Currency Fronting Lender. In the event of any such resignation or any other Person's resignation as L/C Issuer or Alternative Currency Fronting Lender, the Borrower shall be entitled to appoint from among the Revolving Lenders (with the applicable Revolving Lender's consent) a successor L/C Issuer or Alternative Currency Fronting Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Alternative Currency Fronting Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Revolving Lenders to make Base Rate Committed Revolving Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(b)). If the Alternative Currency Fronting Lender resigns as Alternative Currency Fronting Lender, it shall retain all the rights and obligations of the Alternative Currency Fronting Lender hereunder with respect to all Alternative Currency Risk Participations outstanding as of the effective date of its resignation as the Alternative Currency Fronting Lender and all obligations of the Borrower or any other Revolving Lender with respect thereto (including the right to require Alternative Currency Participating Lenders to fund any Alternative Currency Risk Participations therein in the manner provided in Section 2.02(f)). Upon the

appointment of a successor L/C Issuer and/or Alternative Currency Fronting Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Alternative Currency Fronting Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, issued by the resigning L/C Issuer and outstanding at the time of such succession or make other arrangements reasonably satisfactory to Bank of America to effectively assume the obligations of the resigning L/C Issuer with respect to such Letters of Credit.

**10.07 Treatment of Certain Information; Confidentiality.**

Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need-to-know basis to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors, consultants, service providers and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any governmental agency or regulatory authority purporting to have jurisdiction over it or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section 10.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 10.07 or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower that the Administrative Agent, any such Lender or the L/C Issuer reasonably believes is not bound by a duty of confidentiality to the Borrower, (i) to any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder (provided such rating agencies are advised of the confidential nature of such information and agree to keep such information confidential) or (j) to any Person that would qualify as an Eligible Assignee hereunder (without giving effect to the consent required under Section 10.06(b)(iii)) providing financing to the disclosing Lender, to the extent reasonably required by such Person (provided such other Persons are advised of the confidential nature of such information and agree to keep such information confidential). In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and customary information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Revolving Commitments.

For purposes of this Section 10.07, "Information" means all information received from or on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary; provided that, in the case of information received from the Borrower or any Subsidiary 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 10.07 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 or its other similarly situated customers' confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning any Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08 Right of Setoff.**

If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of the applicable Loan Party against any and all of the Obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.18 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 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. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall

constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

**10.12 Severability.**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent or the L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.**

If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if any Lender does not consent to any amendment or waiver of any provision hereof or of any other Loan Document for which its consent is required under Section 10.01 after Required Lenders or applicable Required Class Lenders have consented thereto, 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 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the assignment fee specified in Section 10.06(b) shall have been paid to or waived by the Administrative Agent;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, funded Alternative Currency Risk Participations and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

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 party hereto agrees that (i) an assignment required pursuant to this Section 10.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender; provided, further, that any such documents shall be without recourse to or warranty by the parties thereto.

**10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER

LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.14(b). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial.**

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.15.**

**10.16 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrower and each other Loan Party, on the one hand, and the Administrative Agent, the Lenders and the Arrangers, on the other hand, (B) the Borrower and each other Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) 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 and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any other Loan Party or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Lender nor any Arranger has any obligation to the Borrower or any other Loan Party or any of its Affiliates with respect to the transactions

contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lenders and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and each other Loan Party and its Affiliates, and neither the Administrative Agent, any Lender nor any Arranger has any obligation to disclose any of such interests to the Borrower or any other Loan Party or its Affiliates. To the fullest extent permitted by law, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Lenders and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 USA Patriot Act and Beneficial Ownership Regulation Notice.**

Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and each other Loan Party that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act") and the Beneficial Ownership Regulation, as applicable, it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act and the Beneficial Ownership Regulation, as applicable.

**10.18 Delivery of Signature Page.**

Each Lender to become a party to this Agreement on the date hereof shall do so by delivering to the Administrative Agent a counterpart of this Agreement duly executed by such Lender.

**10.19 Judgment Currency.**

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or such other Loan Party (or to any other Person who may be entitled thereto under applicable law). All of the Borrower's and each other Loan Party's obligations under this Section 10.19 shall survive termination of the Aggregate Revolving Commitments and repayment of all other Obligations hereunder.

**10.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.**

Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an Affected 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 the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an Affected 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 Affected 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 the applicable Resolution Authority.

**10.21 Electronic Execution of Assignments and Certain Other Documents.**

The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, and waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

**10.22 No Novation.**

(a) As of the Closing Date, the Revolving Commitments under (and as defined) in the Existing Credit Agreement of the Departing Lenders shall be terminated by the Borrower. The remaining Lenders under (and as defined in) the Existing Credit Agreement shall be Lenders under this Agreement with Revolving Commitments as set forth on Schedule 2.01 hereto. By its execution and delivery of this Agreement, each Lender that was a Lender under (and as defined in) the Existing Credit Agreement

hereby consents to the execution and delivery of this Agreement and to the non-pro rata reduction of Revolving Commitments under (and as defined in) the Existing Credit Agreement occurring on the Closing Date as a result of the termination of the Revolving Commitments of the Departing Lenders, and the concurrent repayment in full of all loans and other obligations owing (whether or not due) to the Departing Lenders. On the Closing Date, effective immediately following such termination and repayment, the Existing Credit Agreement shall be amended, restated and superseded in its entirety by this Agreement. This Agreement amends, restates and supersedes the Existing Credit Agreement in its entirety and is not intended to be or operate as a novation or an accord and satisfaction of the Existing Credit Agreement or the obligations evidenced thereby or provided for thereunder. Without limiting the generality of the foregoing, (i) all Existing Letters of Credit shall on the Closing Date become Letters of Credit hereunder, (ii) the "Loans" under (and as defined in) the Existing Credit Agreement of each applicable Departing Lender shall be repaid in full (provided that any accrued and unpaid interest and fees thereon shall be paid to such Departing Lender concurrently with payment of such interest and fees to the other applicable Lenders and such "Loans" under (and as defined in) the Existing Credit Agreement shall be assigned and reallocated among the remaining Lenders as set forth below), each applicable Departing Lender's "Revolving Commitment" under the Existing Credit Agreement shall be terminated and each applicable Departing Lender shall not be a Lender hereunder, (iii) the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Lender's credit and loan exposure under the Existing Credit Agreement as are necessary in order that each such Lender's outstanding Loans and Revolving Commitments hereunder reflect such Lender's pro rata share of the outstanding aggregate Loans and Revolving Commitments on the Closing Date, and (iv) all other Obligations outstanding under the Existing Credit Agreement shall on the Closing Date be Obligations under this Agreement (to the extent not repaid on the Closing Date). To the extent the Existing Credit Agreement provides that certain terms survive the termination of the Existing Credit Agreement or survive the payment in full of principal, interest and all other amounts payable thereunder, then such terms shall survive the amendment and restatement of the Existing Credit Agreement.

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

(c) On the Closing Date, the Existing Revolving Note, if any, held by each Departing Lender shall be deemed to be cancelled. On the Closing Date, the Existing Revolving Note, if any, held by each Revolving Lender shall be deemed to be cancelled and, if such Revolving Lender has requested a Revolving Note hereunder, amended and restated by the Revolving Note delivered to such Lender hereunder on or about the Closing Date (regardless of whether any Revolving Lender shall have delivered to the Borrower for cancellation the Existing Revolving Note held by it). Each Revolving Lender, whether or not requesting a Revolving Note hereunder, shall use its commercially reasonable efforts to deliver the Existing Revolving Note held by it to the Borrower for cancellation and/or amendment and restatement. All amounts owing under, and evidenced by, the Existing Revolving Notes as of the Closing Date shall continue to be outstanding hereunder (subject to such reallocations, sales, assignments or other relevant actions in respect of each Lender's credit and loan exposure under the Existing Credit Agreement as referred to in Section 10.22(a)(iii)), and shall from and after the Closing Date, if requested by the Revolving Lender holding such Existing Revolving Note, be evidenced by the Revolving Notes, and shall in any event be evidenced by, and governed by the terms of, this Agreement. Each Revolving Lender hereby agrees to indemnify and hold harmless the Borrower from and against any and all liabilities, losses, damages, actions or claims that may be imposed on, incurred by or asserted against the Borrower arising out of such Revolving Lender's failure to deliver the Existing Revolving Note held by it to the Borrower for cancellation, subject to the condition that the Borrower shall not make any payment to any Person claiming to be the holder of such Existing Revolving Note unless such

Revolving Lender is first notified of such claim and is given the opportunity, at such Revolving Lender's sole cost and expense, to assert any defenses to such payment.

(d) Notwithstanding anything to the contrary herein or in the Existing Credit Agreement, each lender party to the Existing Credit Agreement hereby waives any compensation pursuant to Section 3.05 of the Existing Credit Agreement in connection with any reallocations, sales, assignments or other relevant actions in respect of any credit and loan exposure under the Existing Credit Agreement as referred to in Section 10.22(a)(iii) or any other payment or prepayment of Obligations on the Closing Date.

**10.23 Lender Representations**.

(a) Each Lender (x) represents and warrants, as of the Closing Date or such later date such Person became a Lender party hereto, to, and (y) covenants, from the Closing Date or such later 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 and the Arrangers and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of any 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 Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments or this Agreement,

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

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Revolving Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving 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 either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding clause (a), such Lender further (x)

represents and warrants, as of the Closing Date or such later date such Person became a Lender party hereto, to, and (y) covenants, from the Closing Date or such later 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 and the Arrangers and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of any Loan Party, that none of the Administrative Agent or the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent or the Arrangers under this Agreement, any Loan Document or any documents related hereto or thereto).

**10.24 Acknowledgement Regarding Any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support," and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.24, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

## ARTICLE XI

## CONTINUING GUARANTY

**11.01 Guaranty.**

The Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Obligations (for the Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that (a) the Guaranteed Obligations of the Guarantor shall exclude any Excluded Swap Obligations with respect to the Guarantor and (b) the liability of the Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable Law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon the Guarantor, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of the Guarantor, or any of them, under this Guaranty, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than a defense as to the payment in full of the Guaranteed Obligations).

**11.02 Rights of Lenders.**

The Guarantor consents and agrees that the Administrative Agent, the L/C Issuer and each the other Lenders may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer or any of the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, the Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of the Guarantor.

**11.03 Certain Waivers.**

The Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower, or the cessation from any cause whatsoever (including any act or omission of the Administrative Agent, the L/C Issuer or any other Lender) of the liability of the Borrower (other than as to the payment in full of the Guaranteed Obligations); (b) any defense based on any claim that the Guarantor's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting the Guarantor's liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of the Administrative Agent, the L/C Issuer or any other Lender whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by the Administrative Agent, the L/C Issuer or any other Lender; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties (other than as to the payment in full of the Guaranteed Obligations). The Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

**11.04 Obligations Independent.**

The obligations of the Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against the Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

**11.05 Subrogation.**

The Guarantor shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations have been paid in full in cash (other than contingent Obligations that are not then due and payable) and the Revolving Commitments are terminated. If any amounts are paid to the Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Administrative Agent, the L/C Issuer and the other Lenders and shall forthwith be paid to the Administrative Agent, the L/C Issuer and the other Lenders to reduce the amount of the Obligations, whether matured or unmatured.

**11.06 Termination; Reinstatement.**

This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the earlier of (i) the Maturity Date and (ii) the release of the Guarantor pursuant to Section 10.01(f). Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or the Guarantor is made, or any of the Administrative Agent, the L/C Issuer or the other Lenders exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Administrative Agent, the L/C Issuer or the other Lenders in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Administrative Agent,

the L/C Issuer or the other Lenders are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Guarantor under this Section 11.06 shall survive termination of this Guaranty.

**11.07 Stay of Acceleration**.

If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against the Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by the Guarantor immediately upon demand by the Administrative Agent or the Lenders.

**11.08 Condition of Borrower.**

The Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower such information concerning the financial condition, business and operations of the Borrower as the Guarantor requires, and that none of the Administrative Agent, the L/C Issuer or any other Lender has any duty, and the Guarantor is not relying on the Administrative Agent, the L/C Issuer or any other Lender at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower (the Guarantor waiving any duty on the part of the Administrative Agent, the L/C Issuer or any other Lender to disclose such information and any defense relating to the failure to provide the same).

**11.09 Appointment of Borrower**.

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Borrower shall be deemed delivered to each Loan Party.

**11.10 [Reserved].**

**11.11 Keepwell**.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Loan Party with respect to such Swap Obligation as may be needed by such Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article XI voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 11.11 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 11.11 to constitute, and this Section 11.11 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

**[Remainder of Page Intentionally Left Blank]**

**SCHEDULE 10.02**

**ADMINISTRATIVE AGENT'S OFFICE;**
**CERTAIN ADDRESSES FOR NOTICES**

**BORROWER:**

Healthpeak OP, LLC
c/o Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Legal Department
Telephone No.: (720) 428-5050
Electronic Mail: legaldept@healthpeak.com
Website Address: www.healthpeak.com
U.S. Taxpayer Identification Number: 33-0091377

*With a copy to*:
Healthpeak OP, LLC
c/o Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Treasurer
Telephone No.: (720) 428-5050
Electronic Mail: treasury@healthpeak.com

**PARENT GUARANTOR:**

Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Legal Department
Telephone No.: (720) 428-5050
Electronic Mail: legaldept@healthpeak.com
Website Address: www.healthpeak.com
U.S. Taxpayer Identification Number: N/A

*With a copy to*:
Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Treasurer
Telephone No.: (720) 428-5050
Electronic Mail: treasury@healthpeak.com

**ADMINISTRATIVE AGENT:**

*Administrative Agent's Office*
*(for payments and Requests for Credit Extensions):*
Bank of America, N.A.
900 W. Trade Street, Gateway Village, 900 Building
Mail Code: NC1-026-06-04
Charlotte, NC 28255
Attention: Melanie Brichant
Telephone No.: 980-386-4828
Facsimile No.: 704-409-0550
Electronic Mail: melanie.brichant@bofa.com

Bank of America, N.A.
New York, NY
Account No. (for Dollars): 1366072250600
ABA# 026009593
Attn: Credit Services
Ref: Healthpeak OP, LLC

Bank of America Canada
Account No. (for Canadian Dollars): 711465090227
Swift Address: BOFACATT
Attn: Bank of America, N.A.
Ref: Healthpeak OP, LLC

Bank of America Australia
Account No. (for Australian Dollars): 520195687018
Swift Address: BOFAAUSX
Attn: Bank of America, N.A.
Ref: Healthpeak OP, LLC

Bank of America, N.A.
Account No. (for Swiss Francs): CH6308726000095687013
Swift Address: BOFACH2X
Attn: Bank of America, N.A.
Ref: Healthpeak OP, LLC

Bank of America London
Account No. (for Euro): GB89BOFA16505095687029
Swift Address: BOFA GB22
Attn: Bank of America, N.A.
Ref: Healthpeak OP, LLC

Bank of America London
Account No. (for Sterling): GB90BOFA16505095687011
Swift Address: BOFA GB22
Attn: Bank of America, N.A.
Ref: Healthpeak OP, LLC

Bank of America Tokyo
Account No. (for Yen): 606495687013
Swift Address: BOFAJPJX
Attn: Bank of America, N.A.
Ref: Healthpeak OP, LLC

*Other Notices as Administrative Agent:*
Bank of America, N.A.
555 California Street
Mail Code: CA5-705-06-35
San Francisco, CA 94104
Attention: Liliana Claar
Telephone No.: 415-436-2770
Facsimile No.: 415-503-5003
Electronic Mail: liliana.claar@bofa.com

*With a copy to:*

Bank of America, N.A.
620 South Tryon Street
Mail Code: NC1-030-24-02
Charlotte, NC 28255
Attention: Darren Merten
Telephone No.: 980-683-6722
Electronic Mail: darren.merten@bofa.com

**L/C ISSUER:**

Bank of America, N.A.
Trade Operations
1 Fleet Way
PA6-580-02-30
Scranton, PA 18507
Telephone No.: 570-496-9621
Facsimile No.: 800-755-8743
Electronic Mail: Scranton_standby_lc@bankofamerica.com

JPMorgan Chase Bank, N.A.
10420 Highland Manor Dr. 4th Floor
Tampa, FL 33610
Attention: Standby LC Unit
Telephone No.: 800-364-1969
Facsimile No.: 856-294-5267
Electronic Mail: gts.ib.standby@jpmchase.com; NA.CPG@jpmorgan.com;
josemon.varghese@jpmorgan.com

*With a copy to:*

JPMorgan Chase Bank N.A.
Chiara Carter

383 Madison Avenue, Floor 24
New York, NY, 10179
Electronic Mail: chiara.w.carter@jpmorgan.com

Wells Fargo Bank, N.A.
US Trade Services - Standby Letters of Credit
401 N. Research Pkwy
Floor 01
MAC D4004-017
Winston-Salem, NC 27101-4157
Attention: Sharon Peace
Telephone No.: 336-735-3245
Electronic mail: sharon.peace@wellsfargo.com

**ALTERNATIVE CURRENCY FRONTING LENDER:**

Bank of America, N.A.
900 W. Trade Street, Gateway Village, 900 Building
Mail Code: NC1-026-06-04
Charlotte, NC 28255
Attention: Melanie Brichant
Telephone No.: 980-386-4828
Facsimile No.: 704-409-0550
Electronic Mail: melanie.brichant@bofa.com

**EXHIBIT A**

**FORM OF COMMITTED LOAN NOTICE**

Date:_____, ___

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The undersigned hereby requests (select one):

- A Borrowing of Committed Revolving Loans
- A conversion or continuation of Committed Revolving Loans

1. On _____ (a Business Day).

2. In a principal amount the Dollar Equivalent of which is $_____.

3. Comprised of the following Type of Loans: [Base Rate Loans][1][Daily SOFR Loan][Term SOFR Loans][Alternative Currency Term Rate Loans] [Alternative Currency Daily Rate Loans].

4. For Term SOFR Loans: with an Interest Period of [one] [three] [six] month(s).

5. For Alternative Currency Term Rates Loan (other than Loans denominated in Canadian Dollars): with an Interest Period of [one] [three] [six] month(s).

6. For Alternative Currency Term Rate Loans denominated in Canadian Dollars: with an Interest Period of [one] [two] [three] month(s).

7. In the following currency: _____.

[1] Base Rate Loans are only available for Committed Revolving Loans in Dollars.

The Committed Borrowing, if any, requested herein complies with the provisos to the third sentence of Section 2.01 of the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Committed Loan Notice as of the date first written above.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By:_____
Name:
Title:

**EXHIBIT B**

**[RESERVED]**

**EXHIBIT C**

**FORM OF NEGOTIATED RATE LOAN NOTICE**

Date:_____, ___

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The undersigned hereby provides notice of a Negotiated Rate Loan:

1. On _____ (a Business Day).

2. In the amount the Dollar Equivalent of which is $_____.

3. In the following currency: _____.

4. From _____ (Lender(s)).[1]

5. Maturing on _____.[2]

6. Interest Rate: _____.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By:_____
Name:
Title:

[1] Specify the principal amount of Negotiated Rate Loans for each Lender.

[2] Such maturity date may not occur after the Revolving Maturity Date.

**[LENDER(S)]**

By:_____
Name:
Title:

**EXHIBIT D**

**FORM OF REVOLVING NOTE**

Date:_____, ___

FOR VALUE RECEIVED, the undersigned, HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), hereby promises to pay to [____] or its registered assigns (the "Lender"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Revolving Loan from time to time made by the Lender to the Borrower under that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among the Borrower, HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The Borrower promises to pay interest on the unpaid principal amount of each Revolving Loan owed to the Lender from the date of such Revolving Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. All such payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in the currency in which such Committed Revolving Loan was denominated and in Same Day Funds at the Administrative Agent's Office for such currency. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand in accordance with the terms of the Credit Agreement, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement.

This Revolving Note is one of the Revolving Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Revolving Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement. Revolving Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Revolving Note and endorse thereon the date, amount, currency and maturity of its Revolving Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Revolving Note.

[Signature Page Follows]

THIS REVOLVING NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By:_____
Name:
Title:

**REVOLVING LOANS AND PAYMENTS WITH RESPECT THERETO**

| Date | Type of Revolving Loan Made | Currency and Amount of Revolving Loan Made | End of Interest Period | Amount of Principal or Interest Paid This Date | Outstanding Principal Balance This Date | Notation Made By |
|---|---|---|---|---|---|---|
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**EXHIBIT E**

**FORM OF COMPLIANCE CERTIFICATE**

For the Fiscal Quarter/Fiscal Year ended:_____ (the "Statement Date")

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ("Parent Guarantor"), the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The Borrower hereby certifies as of the date hereof that the Responsible Officer executing this Compliance Certificate is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to the Administrative Agent on behalf of the Borrower, and not in an individual capacity, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. The Borrower has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of the Parent Guarantor ended as of the above referenced Statement Date, together with the report and opinion of an independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. The Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of the Parent Guarantor ended as of the above referenced Statement Date. Such financial statements fairly present the consolidated financial condition of the Group as at such Statement Date and their results of operations for such period in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

2. A review of the activities of the Loan Parties during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period covered by such financial statements the Loan Parties performed and observed all their respective Obligations under the Loan Documents, and

***[select one:]***

[to the best knowledge of the undersigned during such fiscal period, no Default has occurred and is continuing as of the date hereof.]

***-or-***

[the following is a list of each such Default and its nature and status:]

3. The financial covenant analyses and information set forth on Schedule 1 and Annex 1 attached hereto are true and accurate on and as of the Statement Date referred to thereon.

[4. As of December 31 of the calendar year of the Parent Guarantor most recently ended prior to the delivery of this Compliance Certificate to the Administrative Agent (such year, the "Specified Test Year"), the Sustainability Metric for the Specified Test Year [satisfied the Level [1][2] Sustainability Metric Election Threshold][did not satisfy either level of the Sustainability Metric Election Threshold].

5. The analyses and information set forth on Schedule 2 attached hereto are true and accurate as of December 31 of the Specified Test Year (using the Rolling Base Year Methodology).

6. The Borrower hereby elects that the Applicable Rate be based on the Sustainability Metric Pricing Grid, to be effective commencing on the date that is five (5) Business Days following the date this Compliance Certificate has been delivered to the Administrative Agent.

7. [Attached hereto is a copy of the Sustainability Metric Report for the Specified Test Year.][The Sustainability Metric Report for the Specified Test Year has been published at the following Internet or intranet website to which each Revolving Lender and the Administrative Agent has or has been granted access free of charge: _____.]][3]

[Signature Page Follows]

[3] Certifications with respect to the Sustainability Metric to be included at the Borrower's election.

*IN WITNESS WHEREOF,* the undersigned has executed this Compliance Certificate as of _____, 202__.

_____
Name:
Title:

**SCHEDULE 1**
to the Compliance Certificate
($ in 000's)

For the Fiscal Quarter/Fiscal Year ended_____ ("Statement Date")

**I. Section 7.10(a) — Leverage Ratio.**

A. Enterprise Total Indebtedness on the Statement Date:

1. Indebtedness of the Group on a consolidated basis outstanding on the Statement Date: $_____

2. Borrower's Pro Rata Share of Indebtedness of each Material Joint Venture outstanding on the Statement Date: $_____

3. Enterprise Total Indebtedness (Line I.A.1 plus Line I.A.2 (without duplication))[4]: $_____

B. Enterprise Gross Asset Value on the Statement Date:

1. Gross Asset Value of the Group on a consolidated basis: $_____

2. Borrower's Pro Rata Share of Gross Asset Value of each Material Joint Venture: $_____

3. Enterprise Gross Asset Value on the Statement Date (Line I.B.1 + Line I.B.2 (without duplication)):[5] $_____

C. Leverage Ratio (Line I.A.3 ÷ Line I.B.3): ____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.60 to 1.00

Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the Parent Guarantor shall be permitted to increase the maximum Leverage Ratio to 0.65 to

[4] For purposes of calculating the Leverage Ratio, (x) Line I.A.1. shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of the Group and (ii) escrow and other deposits to the extent available on the Statement Date for the repayment of any of the Indebtedness included in the calculation of Line I.A.1. up to an amount in the aggregate for this clause (x) not to exceed the aggregate amount of Indebtedness reflected in Line I.A.1. maturing in the immediately succeeding 24 months and (y) Line 1.A.2. shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of each such applicable Material Joint Venture and (ii) escrow and other deposits to the extent available on the Statement Date for the repayment of any of the Indebtedness included in the calculation of Line 1.A.2. up to an amount in the aggregate for this clause (y) not to exceed the aggregate amount of Indebtedness reflected in Line 1.A.2. maturing in the immediately succeeding 24 months. Enterprise Total Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

[5] Enterprise Gross Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents deducted in the calculation of Enterprise Total Indebtedness pursuant to the immediately preceding footnote.

1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

**II. Section 7.10(b) — Secured Debt Ratio.**

A. Enterprise Secured Debt outstanding on the Statement Date:[6] $_____

B. Enterprise Gross Asset Value on the Statement Date (Line I.B.3): $_____

C. Secured Debt Ratio (Line II.A ÷Line II.B): [7] ____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.40 to 1.00

**III. Section 7.10(c) — Fixed Charge Coverage Ratio.**

A. Enterprise EBITDA for the twelve-month period ended on the Statement Date (See Annex 1):

1. EBITDA of the Group on a consolidated basis (From Annex 1): $_____

2. Borrower's Pro Rata Share of EBITDA of each Material Joint Venture (From Annex 1): $_____

3. Enterprise EBITDA (Line III.A.1 + Line III.A.2 (without duplication)): $_____

B. Enterprise Fixed Charges for the twelve-month period ended on the Statement Date:

1. Enterprise Interest Expense paid in cash during such period:

a. Interest Expense of the Group on a consolidated basis: $_____

b. Borrower's Pro Rata Share of Interest Expense of each Material Joint Venture: $_____

[6] Enterprise Secured Debt shall not include the Obligations under the Agreement and under the other Loan Documents solely as a result of any security interest granted to the Administrative Agent or any L/C Issuer, solely in any Cash Collateral or any account or other property, including proceeds thereof, established for the purpose of securing obligations in respect of Letters of Credit, exchange rate fluctuations or otherwise to the extent required pursuant to any of the cash collateralization provisions thereof.

[7] For purposes of calculating the Secured Debt Ratio, the aggregate amount of all unrestricted cash and cash equivalents on the Statement Date deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Unsecured Leverage Ratio as of the Statement Date.

c. Enterprise Interest Expense (Line III.B.1.a + Line III.B.1.b (without duplication)): $_____

2. Scheduled Principal Payments during such period: $_____

a. Regularly scheduled principal payments by the Parent Guarantor and its Subsidiaries with respect to Indebtedness of the Parent Guarantor and its Subsidiaries (other than payments due at final maturity of any tranche of Indebtedness):$_____

b. Borrower's Pro Rata Share of all regularly scheduled principal payments with respect to the Indebtedness (other than payments due at final maturity of any tranche of Indebtedness) of each Material Joint Venture: $_____

c. Scheduled Principal Payments (Line III.B.2.a + Line III.B.2.b (without duplication)):[8] $_____

3. Cash dividends and distributions during such period in respect of preferred stock of the Group (excluding (i) redemption payments or charges in connection with the redemption of preferred stock and (ii) amounts paid to the Parent Guarantor, the Borrower or any of their respective Subsidiaries): $_____

4. Enterprise Fixed Charges (Line III.B.1.c + Line III.B.2.c + Line III.B.3 (without duplication))[9]: $_____

C. Fixed Charge Coverage Ratio (Line III.A.3 ÷ Line III.B.4): ____ to 1.00

*Minimum requirement as of the end of any fiscal quarter:* 1.50 to 1.00

**IV. Section 7.10(d) — Unsecured Leverage Ratio.**

A. Enterprise Unsecured Debt outstanding on the Statement Date: $_____

B. Enterprise Unencumbered Asset Value on the Statement Date:

1. Unencumbered Asset Value of the Group on a consolidated basis: $_____

[8] For purposes of determining Scheduled Principal Payments, Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

[9] Enterprise Fixed Charges shall not include (i) any amounts with respect to any Intercompany Indebtedness, (ii) gains and losses from unwinding or break-funding of Swap Contracts, (iii) write-offs of unamortized deferred financing fees, (iv) prepayment fees, premiums and penalties, and (v) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

2. The Borrower's Pro Rata Share of Unencumbered Asset Value of each Material Joint Venture: $_____

3. Enterprise Unencumbered Asset Value (Line IV.B.1 + Line IV.B.2 (without duplication)): $_____

C. Unsecured Leverage Ratio (Line IV.A ÷ Line IV.B.3): [10] ____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.60 to 1.00

Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the Parent Guarantor shall be permitted to increase the maximum Unsecured Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Unsecured Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

**V. Section 7.10(e) — Consolidated Tangible Net Worth.**

A. Consolidated Tangible Net Worth on the Statement Date

1. Consolidated Shareholders' Equity: $_____

2. Accumulated depreciation and amortization, determined on a consolidated basis in accordance with GAAP: $_____

3. Consolidated Intangible Assets: $_____

4. Consolidated Tangible Net Worth (Line V.A.1 plus Line V.A.2 minus Line V.A.3): $_____

*Minimum required as of the end of any fiscal quarter:* $7,700,000,000

[10] For purposes of calculating the Unsecured Leverage Ratio, the aggregate amount of all unrestricted cash and cash equivalents on the Statement Date deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Secured Debt Ratio as of the Statement Date.

**ANNEX 1**
to the Compliance Certificate

For the Fiscal Quarter/Fiscal Year ended_____, _____

**EBITDA of the Group on a consolidated basis**

| **EBITDA of the Group** | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended | Year Ended |
|---|---|---|---|---|---|
| Net Income (without duplication) | | | | | |
| + Interest Expense of the Group | | | | | |
| + provision for taxes on or measured by income (whether or not payable during such period) | | | | | |
| + depreciation and amortization expense | | | | | |
| + non-cash expenses | | | | | |
| - items increasing Net Income which do not represent a cash receipt | | | | | |
| - any addition to EBITDA under "provision for taxes on or measured by income" above taken or payable during such period to the extent added to EBITDA in any prior or future period | | | | | |
| = EBITDA of the Group on a consolidated basis | | | | | |

**Borrower's Pro Rata Share of EBITDA of Material Joint Ventures**

| **Borrower's Pro Rata Share of EBITDA of Material Joint Ventures** | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended | Year Ended |
|---|---|---|---|---|---|
| Net Income (without duplication) | | | | | |
| + Borrower's Pro Rata Share of Interest Expense of Material Joint Ventures | | | | | |
| + provision for taxes on or measured by income | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| (whether or not payable during such period) | | | | | |
| + depreciation and amortization expense | | | | | |
| + non-cash expenses | | | | | |
| - items increasing Net Income which do not represent a cash receipt | | | | | |
| - any addition to EBITDA under "provision for taxes on or measured by income" above taken or payable during such period to the extent added to EBITDA in any prior or future period | | | | | |
| = Borrower's Pro Rata Share of EBITDA of Material Joint Ventures | | | | | |

**Schedule 2**
to the Compliance Certificate

For the calendar year ended: December 31, _____[11] (such year, the "Specified Test Year")

**I. Rolling Base Year Percentage* for (x) the Specified Test Year and (y) in the case of a Specified Test Year ended after December 31, 2021, each preceding calendar year ended on or after December 31, 2021.**[12]

**A. Rolling Base Year Percentage for calendar year ended December 31, 2021 (percentage change** of Line I.A.1. relative to Line I.A.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2020: _____ $tCO_2e$

**B. Rolling Base Year Percentage for calendar year ended December 31, 2022 (percentage change** of Line I.B.1. relative to Line I.B.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

**C. Rolling Base Year Percentage for calendar year ended December 31, 2023 (percentage change** of Line I.C.1. relative to Line I.C.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

**D. Rolling Base Year Percentage for calendar year ended December 31, 2024 (percentage change** of Line I.D.1. relative to Line I.D.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

[11] To be the calendar year most recently ended.

[12] Delete the rows for any calendar year ending after the Specified Test Year or leave such rows blank.

**E. Rolling Base Year Percentage for calendar year ended December 31, 2025 (percentage change** of Line I.E.1. relative to Line I.E.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

**F. Rolling Base Year Percentage for calendar year ended December 31, 2026 (percentage change** of Line I.F.1. relative to Line I.F.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

*The Rolling Base Year Percentage for a particular calendar year has been determined and calculated using the Rolling Base Year Methodology, which means that the Sustainability Metric Components for that particular calendar year have been compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of that particular calendar year.

**For the avoidance of doubt, such percentage change for a particular calendar year is expressed as a negative percentage in the event the Sustainability Metric Components for such calendar year are less than the Sustainability Metric Components for the immediately preceding calendar year.

## II. Sustainability Metric & Sustainability Metric Election Threshold for the Specified Test Year.

**A.** Sustainability Metric for the Specified Test Year (which shall equal either: (i) in the case of the Specified Test Year ended December 31, 2021, the Rolling Base Year Percentage for such Specified Test Year (Line I.A.) or (ii) in the case of a Specified Test Year ending after December 31, 2021, the sum of (x) the Rolling Base Year Percentage for such Specified Test Year (see Part I above) and (y) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021 (see Part I above)): _____%

**B.** Level 2 Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement):

_____%[13]

**C.** Level 1 Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement):

_____%[14]

**D.** Does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Level 2 Sustainability Metric Election Threshold (Line II.B.)? _____ (*Yes/No*)

**E.** If Line II.D. is "No", does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Level 1 Sustainability Metric Election Threshold (Line II.C.)? _____ (*Yes/No*)

[13] For the Specified Test Year ended: (a) December 31, 2021, insert -2.50%; (b) December 31, 2022, insert -5.00%; (c) December 31, 2023, insert -7.50%; (d) December 31, 2024, insert -10.00%; and (e) December 31, 2025 or thereafter, insert -12.50%.

[14] For the Specified Test Year ended: (a) December 31, 2021, insert -1.00%; (b) December 31, 2022, insert -2.00%; (c) December 31, 2023, insert -3.00%; (d) December 31, 2024, insert -4.00%; and (e) December 31, 2025 or thereafter, insert -5.00%.

**EXHIBIT F**

## FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each][1] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each][2] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors] [and] [the Assignees][3] hereunder are several and not joint.][4] Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below (including, without limitation, the Letters of Credit and the Negotiated Rate Loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

---

[1] For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

[2] For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

[3] Select as appropriate.

[4] Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: _____

_____

2. Assignee[s]: _____

_____
[for each Assignee, indicate [Affiliate] [Approved Fund] of *[identify Lender]]*, which is a Lender

3. Borrower: Healthpeak OP, LLC

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the Lenders party thereto from time to time, the L/C Issuers party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

6. Assigned Interest:

| Assignor[s] | Assignee[s] | Class/facility Assigned[5] | Aggregate Amount of Revolving Commitment / Loans for all Lenders under relevant Class/facility[6] | Amount of Revolving Commitment / Loans Assigned under relevant Class/facility | Percentage Assigned of Revolving Commitment/ Loans under relevant Class/facility[7] | CUSIP Number |
|---|---|---|---|---|---|---|
| | | | $ | $ | % | |
| | | | $ | $ | % | |
| | | | $ | $ | % | |

[5] Fill in the appropriate terminology for the types of facilities (or, if applicable, Class of Loans) under the Credit Agreement that are being assigned under this Assignment and Assumption (i.e., "Revolving Facility" or a specific tranche of Incremental Term Loans).

[6] Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[7] Set forth, to at least 9 decimals, as a percentage of the Revolving Commitment/Loans of all Lenders under relevant Class or facility.

7. Alternative Currency: Assignee **[can fund the following Alternative Currencies [Euro, Sterling, Yen, Canadian Dollars, Swiss Francs and Australian Dollars]] [cannot fund any Alternative Currency].**

8. Trade Date: _____][8]

Effective Date:_____, 20___[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[8] To be completed if the relevant Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By:__
Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By:__
Name:
Title:

[Consented to and][9] Accepted:

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

By:_____
Name:
Title:

[Consented to:][10]

[HEALTHPEAK OP, LLC, as the Borrower

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member]

By:_____
Name:
Title:

[9] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

[10] To be added only if the consent of the Borrower and/or other parties (e.g., L/C Issuer or Alternative Currency Fronting Lender) is required by the terms of the Credit Agreement.

[BANK OF AMERICA, N.A., as an L/C Issuer

By:_____
Name:
Title:

JPMORGAN CHASE BANK, N.A., as an L/C Issuer

By:_____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as an L/C Issuer]

By:_____
Name:
Title:

[BANK OF AMERICA, N.A., as the Lead Alternative Currency Fronting Lender]

By:_____
Name:
Title:

**ANNEX 1 TO ASSIGNMENT AND ASSUMPTION**

**STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1. Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Sections 10.06(b)(iii), (v), (vi), (vii) and (viii) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 5.05 thereof or delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of

interest, fees or other amounts paid or payable in kind with respect to [the][the relevant] Assigned Interest from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption.

THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**EXHIBIT G**

**FORM OF SUSTAINABILITY METRIC ANNUAL CERTIFICATE**

For the calendar year ended: December 31, _____[11] (such year, the "Specified Test Year")

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain $3,000,000,000 Second Amended and Restated Credit Agreement, dated as of September 20, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent, L/C Issuer and an Alternative Currency Fronting Lender.

The Borrower hereby certifies as of the date hereof that the Responsible Officer executing this Sustainability Metric Annual Certificate is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Sustainability Metric Annual Certificate to the Administrative Agent on behalf of the Borrower, and not in an individual capacity, and that:

1. As of December 31 of the Specified Test Year, the Sustainability Metric for the Specified Test Year [satisfied the Level [1][2] Sustainability Metric Election Threshold][did not satisfy either level of the Sustainability Metric Election Threshold].

2. The analyses and information set forth on Schedule 1 attached hereto are true and accurate as of December 31 of the Specified Test Year (using the Rolling Base Year Methodology).

3. The Borrower hereby elects that the Applicable Rate be based on the Sustainability Metric Pricing Grid, to be effective commencing on the date that is five (5) Business Days following the date this Sustainability Metric Annual Certificate has been delivered to the Administrative Agent.

4. [Attached hereto is a copy of the Sustainability Metric Report for the Specified Test Year.][The Sustainability Metric Report for the Specified Test Year has been published at the following Internet or intranet website to which each Revolving Lender and the Administrative Agent has or has been granted access free of charge: _____.]

[Signature Page Follows]

[11] To be the calendar year most recently ended.

*IN WITNESS WHEREOF,* the undersigned has executed this Sustainability Metric Annual Certificate as of _____, 202__.

_____
Name:
Title:

**SCHEDULE 1**
to the Sustainability Metric Annual Certificate

For the calendar year ended: December 31, _____[12] (such year, the "Specified Test Year")

**I. Rolling Base Year Percentage* for (x) the Specified Test Year and (y) in the case of a Specified Test Year ended after December 31, 2021, each preceding calendar year ended on or after December 31, 2021.[13]**

**A. Rolling Base Year Percentage for calendar year ended December 31, 2021 (percentage change** of Line I.A.1. relative to Line I.A.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2020: _____ $tCO_2e$

**B. Rolling Base Year Percentage for calendar year ended December 31, 2022 (percentage change** of Line I.B.1. relative to Line I.B.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

**C. Rolling Base Year Percentage for calendar year ended December 31, 2023 (percentage change** of Line I.C.1. relative to Line I.C.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

**D. Rolling Base Year Percentage for calendar year ended December 31, 2024 (percentage change** of Line I.D.1. relative to Line I.D.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

[12] To be the calendar year most recently ended.

[13] Delete the rows for any calendar year ending after the Specified Test Year or leave such rows blank.

**E. Rolling Base Year Percentage for calendar year ended December 31, 2025 (percentage change** of Line I.E.1. relative to Line I.E.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

**F. Rolling Base Year Percentage for calendar year ended December 31, 2026 (percentage change** of Line I.F.1. relative to Line I.F.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

*The Rolling Base Year Percentage for a particular calendar year has been determined and calculated using the Rolling Base Year Methodology, which means that the Sustainability Metric Components for that particular calendar year have been compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of that particular calendar year.

**For the avoidance of doubt, such percentage change for a particular calendar year is expressed as a negative percentage in the event the Sustainability Metric Components for such calendar year are less than the Sustainability Metric Components for the immediately preceding calendar year.

## II. Sustainability Metric & Sustainability Metric Election Threshold for the Specified Test Year.

**A.** Sustainability Metric for the Specified Test Year (which shall equal either: (i) in the case of the Specified Test Year ended December 31, 2021, the Rolling Base Year Percentage for such Specified Test Year (Line I.A.) or (ii) in the case of a Specified Test Year ending after December 31, 2021, the sum of (x) the Rolling Base Year Percentage for such Specified Test Year (see Part I above) and (y) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021 (see Part I above)): _____%

**B.** Level 2 Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement):

_____%[14]

**C.** Level 1 Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement):

_____%[15]

**D.** Does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Level 2 Sustainability Metric Election Threshold (Line II.B.)? _____ (*Yes/No*)

**E.** If Line II.D. is "No", does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Level 1 Sustainability Metric Election Threshold (Line II.C.)? _____ (*Yes/No*)

[14] For the Specified Test Year ended: (a) December 31, 2021, insert -2.50%; (b) December 31, 2022, insert -5.00%; (c) December 31, 2023, insert -7.50%; (d) December 31, 2024, insert -10.00%; and (e) December 31, 2025 or thereafter, insert -12.50%.

[15] For the Specified Test Year ended: (a) December 31, 2021, insert -1.00%; (b) December 31, 2022, insert -2.00%; (c) December 31, 2023, insert -3.00%; (d) December 31, 2024, insert -4.00%; and (e) December 31, 2025 or thereafter, insert -5.00%.

**Exhibit 10.3**

**EXECUTION VERSION**

CONSENT AND AMENDMENT NO. 1

Dated as of February 10, 2023

to

TERM LOAN AGREEMENT

Dated as of August 22, 2022

THIS CONSENT AND AMENDMENT NO. 1 (this "Amendment") is made as of February 10, 2023 by and among HEALTHPEAK OP, LLC, a Maryland limited liability company (formerly known as Healthpeak Properties, Inc., a Maryland corporation, and Healthpeak Properties Interim, Inc., a Maryland corporation, the "Borrower" or "Old Healthpeak"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation (formerly known as New Healthpeak, Inc., the "Parent Guarantor" or "New Healthpeak"), the financial institutions listed on the signature pages hereof (the "Lenders") and BANK OF AMERICA, N.A., as Administrative Agent (in such capacity, the "Administrative Agent').

WHEREAS, the Borrower, the Lenders party thereto, the Administrative Agent and the other parties thereto entered into that certain Term Loan Agreement dated as of August 22, 2022 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the "Credit Agreement"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Amended Credit Agreement (as defined below).

WHEREAS, the Borrower has informed the Administrative Agent that the Borrower plans to convert the Borrower's current organizational structure into an Umbrella Partnership Real Estate Investment Trust (the "Reorganization"). In connection with the Reorganization on or about February 10, 2023, Old Healthpeak, by means of a holding company reorganization (the "Merger") pursuant to that certain Agreement and Plan of Merger, dated as of February 10, 2023 (the "Merger Agreement"), by and among Healthpeak Properties, Inc., New Healthpeak, Inc. and Healthpeak Merger Sub, Inc., a Maryland corporation, shall be re-named "Healthpeak Properties Interim, Inc." and become a subsidiary (the "Merger Change of Control") controlled by the Parent Guarantor (New Healthpeak, Inc., a newly-formed Maryland corporation, to be re-named "Healthpeak Properties, Inc."), which shall replace Old Healthpeak as the public company listed on the New York Stock Exchange. On or about February 10, 2023, the Borrower shall convert from a Maryland corporation to a Maryland limited liability company and be renamed to "Healthpeak OP, LLC" (the "Conversion") and shall continue to be the Borrower under the Amended Credit Agreement. Following consummation of the Merger, New Healthpeak shall guaranty the obligations of the Borrower under the Amended Credit Agreement on an unsecured basis. The Borrower has requested that the Administrative Agent and the Lenders consent to the Merger, the Merger Change of Control and the Conversion. The Administrative Agent and the Lenders have agreed to consent to the Merger, the Merger Change of Control and the Conversion, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties, set forth below.

WHEREAS, the Loan Parties, Administrative Agent and the Lenders have agreed to amend the Credit Agreement in connection with the Reorganization, and to make additional amendments to the Credit Agreement, in each case, on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Loan Parties, Administrative Agent and Lenders hereby agree to enter into this Amendment.

1. Amendments to the Credit Agreement. Effective as of the Amendment No. 1 Effective Date (as defined below), the parties hereto agree that the Credit Agreement (including the Exhibits and Schedule 10.02 thereto) is hereby amended as set forth in the marked terms on Exhibit A-1 attached hereto (the Exhibits, Schedule 10.02 and Credit Agreement as so amended being collectively referred to as the "Amended Credit Agreement"). In Exhibit A-1 hereto, deletions of text in the Amended Credit Agreement are indicated by struck-through text, and insertions of text are indicated by bold, double-underlined text. Exhibit A-2 attached hereto sets forth a clean copy of the Amended Credit Agreement, after giving effect to such amendments. As so amended, the Amended Credit Agreement shall continue in full force and effect.

2. Consent. Effective as of the Amendment No. 1 Effective Date, each of the Administrative Agent and the Lenders hereby consent to the Merger, the Merger Change of Control and the Conversion; provided that this consent is limited to the matters set forth herein and shall not be deemed to be a consent to any other violation of the Credit Agreement or any other Loan Document.

3. Conditions of Effectiveness. The effectiveness of this Amendment is subject to the satisfaction or waiver of the following conditions precedent (the date of such satisfaction or waiver being the "Amendment No. 1 Effective Date"):

(a) the Administrative Agent shall have received copies of counterparts of this Amendment duly executed by the Borrower, the Parent Guarantor, the Administrative Agent and each of the Lenders;

(b) the Administrative Agent shall have received (i) a favorable opinion of Latham & Watkins LLP, New York counsel to the Borrower and the Parent Guarantor and (ii) a favorable opinion of Ballard Spahr LLP, Maryland counsel to the Borrower and the Parent Guarantor, each addressed to the Administrative Agent and the Lenders;

(c) the Administrative Agent shall have received such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer authorized to act as a Responsible Officer in connection with this Amendment and the other Loan Documents;

(d) the Administrative Agent shall have received the certificate or articles of incorporation or formation, articles of organization, or other comparable organizational instrument of the Parent Guarantor and the Borrower to be filed with the State Department of Assessments and Taxation of Maryland;

(e) the Administrative Agent shall have received copies certified by a Responsible Officer of each such Person of (i) the by-laws or operating agreement (or the equivalent governing documents) of the Parent Guarantor and the Borrower and (ii) all necessary resolutions or other action taken by the board of directors of the Parent Guarantor to authorize the execution, delivery and performance of this Amendment by the Parent Guarantor and the Borrower;

(f) the Administrative Agent shall have received such documents and certifications as the Administrative Agent may reasonably require to evidence that each of the Borrower and the Parent Guarantor is validly existing, in good standing and qualified to engage in business in its state of organization and in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(g) the Administrative Agent shall have received a certificate, duly executed by a Responsible Officer, certifying that (i) the Merger and the Conversion has occurred or shall occur substantially simultaneously with the effectiveness of this Amendment and attaching a fully executed copy of the Merger Agreement; (ii) the Parent Guarantor and the Borrower have received all approvals, consents and waivers, and have made or given all necessary filings and notices as shall be required to consummate the Reorganization, the Merger, the Conversion and the other transactions contemplated hereby, which do not and will not as of the Amendment No. 1 Effective Date after giving effect to the consummation of the Merger and the Conversion (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Loan Party is party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (c) violate any Law; except in each case referred to in subclause (b) or (c), to the extent such conflict, breach, contravention or violation, or creation of any such Lien or required payment, could not reasonably be expected to have a Material Adverse Effect; and (iii) as of the Amendment No. 1 Effective Date, immediately following the Reorganization, the Merger, the Conversion and the other transactions contemplated hereby, the Borrower shall be a Wholly-Owned Subsidiary of the Parent Guarantor;

(h) the Borrower and the Parent Guarantor shall have provided to the Administrative Agent and the applicable Lender the documentation and other information reasonably requested in writing by the Administrative Agent or such Lender at least ten Business Days prior to the Amendment No. 1 Effective Date that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five Business Days prior to the Amendment No. 1 Effective Date;

(i) to the extent that the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, such Person shall have delivered to the Administrative Agent, and any Lender reasonably requesting, in writing at least ten (10) Business Days prior to the Amendment No. 1 Effective Date, the same, a Beneficial Ownership Certification in relation to the Borrower, in each case at least five Business Days prior to the Amendment No. 1 Effective Date; and

(j) the Administrative Agent shall have received payment of all fees and expenses (including fees and expenses of counsel for the Administrative Agent) due and payable in connection with this Amendment; provided that invoices for such fees and expenses have been presented to the Loan Parties a reasonable period of time (and in any event not less than one (1) Business Day) prior to the Amendment No. 1 Effective Date.

4. Representations and Warranties of the Borrower. Each of the Borrower and, if applicable, the Parent Guarantor hereby represents and warrants as follows:

(a) Each of the Borrower and the Parent Guarantor (a) is duly organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under this Amendment, the Amended and Restated Credit Agreement and the other Loan Documents to which it is a party and (c) is duly qualified to do business and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a) (other than with respect to any Loan Party or any Material Subsidiary), clause (b)(i) or clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. This Amendment has been duly executed and delivered by the duly authorized officers of the Borrower and the Parent Guarantor, and this Amendment and the Amended Credit Agreement constitute legal, valid and binding obligations of the Borrower and the Parent Guarantor and are enforceable against the Borrower and the Parent Guarantor in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) As of the date hereof and after giving effect to the terms of this Amendment, (i) no Default has occurred and is continuing, and (ii) the representations and warranties of the Loan Parties contained in the Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty is true and correct in all respects) on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty is true and correct in all respects) as of such earlier date.

(c) The Borrower:

(i) reaffirms and admits the validity and enforceability of the Amended Credit Agreement and the other Loan Documents and all of its Obligations thereunder;

(ii) agrees and admits that it has no valid defenses to or offsets against any of its Obligations to the Administrative Agent and the Lenders under the Amended Credit Agreement and the Notes; and

(iii) agrees and acknowledges that all references to the "Obligations" contained in the Loan Documents include the Obligations under the Amended Credit Agreement.

5. Joinder. The Parent Guarantor hereby acknowledges, confirms and agrees that, by its execution of this Amendment, the Parent Guarantor will be deemed to be a "Loan Party" and a "Guarantor" under the Amended Credit Agreement, and shall have all of the obligations of a Loan Party and a Guarantor thereunder with the same force and effect as if it had originally executed the Credit Agreement. The Parent Guarantor hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Amended Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article V of the Amended Credit Agreement, (b) all of the covenants set forth in Articles VI and VII of the Amended Credit Agreement and (c) all of the guaranty obligations set forth in Article XI of the Amended Credit Agreement. The Parent Guarantor hereby represents and warrants that each of the representations and warranties in respect of itself as a Loan Party and a Guarantor contained in the Amended Credit Agreement, is true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) on and as the date hereof as if made on and as of the date hereof.

6. Post-Closing Covenants. In consideration for the consents and amendments set forth herein, the Borrower agrees to deliver to the Administrative Agent the following:

(a) within five (5) Business Days following the Amendment No. 1 Effective Date (or such longer period as approved by the Administrative Agent), an updated Schedule 10.02 to the Amended Credit Agreement in form and substance satisfactory to the Administrative Agent;

(b) within ten (10) calendar days following the Amendment No. 1 Effective Date (or such longer period as approved by the Administrative Agent), certified copies of the material documents evidencing that the Merger has been consummated; and

(c) within ten (10) calendar days following the Conversion (or such longer period as approved by the Administrative Agent), certified copies of the material documents evidencing that the Conversion has been consummated.

The parties hereto agree that failure of the Borrower to satisfy the foregoing covenants in the time periods set forth herein (as the same may be extended by the Administrative Agent as set forth herein) shall result in an immediate Event of Default under the Amended Credit Agreement.

7. Reference to and Effect on the Credit Agreement.

(a) Upon the effectiveness hereof, each reference to the Credit Agreement in the Amended Credit Agreement or any other Loan Document shall mean and be a reference to the Amended Credit Agreement.

(b) Each Loan Document and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed. Upon the effectiveness hereof, this Amendment shall for all purposes constitute a Loan Document.

(c) Except with respect to the subject matter hereof, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Amended Credit Agreement, the other Loan Documents or any other documents, instruments and agreements executed and/or delivered in connection therewith.

8. Governing Law. This Amendment shall be construed in accordance with and governed by the law of the State of New York.

9. SUBMISSION TO JURISDICTION, WAIVER OF VENUE, SERVICE OF PROCESS, WAIVER OF JURY TRIAL. The jurisdiction, venue, service of process and waiver of jury trial provisions set forth in Sections 10.14 and 10.15 of the Amended Credit Agreement are hereby incorporated by reference, *mutatis mutandis*.

10. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

11. Counterparts; Electronic Execution. This Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Signatures delivered by facsimile or PDF shall have the same force and effect as manual signatures delivered in person. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

HEALTHPEAK OP, LLC,
as the Borrower

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By: /s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

HEALTHPEAK PROPERTIES, INC.,
as the Parent Guarantor

By: /s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

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

By: /s/ Liliana Claar
Name: Liliana Claar
Title: Vice President

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

**BANK OF AMERICA, N.A.**, as a Lender

By: /s/ Darren Merten
Name: Darren Merten
Title: Director

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

**Wells Fargo Bank, National Association**, as a Lender

By: /s/ Andrea Chen
Name: Andrea Chen
Title: Managing Director

THE BANK OF NOVA SCOTIA, as a Lender

By: /s/ Arjun Talwalkar
Name: Arjun Talwalkar
Title: Director

**PNC BANK, NATIONAL ASSOCIATION,** as a Lender

By: /s/ James A. Harmann
Name: James A. Harmann
Title: Senior Vice President

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

**TRUIST BANK**, as a Lender

By: /s/ Tim Conway
Name: Tim Conway
Title: Vice President

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

**MIZUHO BANK, LTD.**, as a Lender

By: /s/ Donna DeMagistris
Name: Donna DeMagistris
Title: Executive Director

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

Regions Bank, as a Lender

By: /s/ Mark Hardison
Name: Mark Hardison
Title: Managing Director

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

**THE TORONTO-DOMINION BANK, NEW YORK BRANCH**,
as a Lender

By: /s/ Victoria Roberts
Name: Victoria Roberts
Title: Managing Director

BARCLAYS BANK PLC, as a Lender

By: /s/ Warren Veech III
Name: Warren Veech III
Title: Vice President

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

Credit Agricole Corporate and Investment Bank, as a Lender

By: /s/ Jill Wong
Name: Jill Wong
Title: Director

By: /s/ Gordon Yip
Name: Gordon Yip
Title: Director

CREDIT SUISSE AG, NEW YORK BRANCH, as a Lender

By: /s/ Doreen Barr
Name: Doreen Barr
Title: Authorized Signatory

By: /s/ Michael Dieffenbacher
Name: Michael Dieffenbacher
Title: Authorized Signatory

**GOLDMAN SACHS BANK USA**, as a Lender

By: /s/ Keshia Leday
Name: Keshia Leday
Title: Authorized Signatory

**Huntington National Bank**, as a Lender

By: /s/ Michael J. Kinnick
Name: Michael J. Kinnick
Title: Managing Director

M&T Bank, as a Lender

By: /s/ Andrew Ripple
Name: Andrew Ripple
Title: Assistant Vice President

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

**ROYAL BANK OF CANADA**, as a Lender

By: /s/ Brian Gross
Name: Brian Gross
Title: Authorized Signatory

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

SUMITOMO MITSUI BANKING CORPORATION,
as a Lender

By: /s/ Cindy Hwee
Name: Cindy Hwee
Title: Director

Signature Page to Consent and Amendment No. 1 to
Term Loan Agreement

EXHIBIT A-1

Marked Amended Credit Agreement

See attached.

**Exhibit A to Consent and Amendment No. 1 to Term Loan Agreement**

**~~EXECUTION~~FINAL VERSION**
~~Published CUSIP Number: 42250UAC6~~
~~Term A-1 Facility CUSIP Number: 42250UAD4~~
~~Term A-2 Facility CUSIP Number: 42250UAE2~~

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**TERM LOAN AGREEMENT**
(as amended, restated, supplemented and otherwise modified through and including that certain Consent and Amendment No. 1 dated as of February 10, 2023)

Dated as of August 22, 2022

among

**HEALTHPEAK ~~PROPERTIES~~OP, ~~INC.~~LLC,**
as Borrower,

**HEALTHPEAK PROPERTIES, INC.,**
as Parent Guarantor,

**THE LENDERS PARTY HERETO FROM TIME TO TIME**,

**BANK OF AMERICA, N.A.,**
as Administrative Agent,

**WELLS FARGO BANK, NATIONAL ASSOCIATION**,
**PNC BANK, NATIONAL ASSOCIATION,**
**THE BANK OF NOVA SCOTIA,** and
**TRUIST BANK**,
as Co-Syndication Agents,

and

**MIZUHO BANK, LTD,**
**REGIONS BANK,** and
**TORONTO-DOMINION BANK,**
as Co-Documentation Agents

---

**BOFA SECURITIES, INC.**, and
**WELLS FARGO SECURITIES, LLC**,
as Joint Bookrunners,

and

**BOFA SECURITIES, INC.**,
**WELLS FARGO SECURITIES, LLC**,
**PNC CAPITAL MARKETS LLC,**
**THE BANK OF NOVA SCOTIA**, and
**TRUIST SECURITIES, INC.**,
as Joint Lead Arrangers

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603

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***Form of***


A Committed Loan Notice
B [Reserved]
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D-1 Term A-1 Note
D-2 Term A-2 Note
E Compliance Certificate
F Assignment and Assumption
G Sustainability Metric Annual Certificate

**TERM LOAN AGREEMENT**

This TERM LOAN AGREEMENT, dated as of August 22, 2022 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), among HEALTHPEAK OP, LLC, a Maryland limited liability company, HEALTHPEAK PROPERTIES, INC., a Maryland corporation ~~(the "Borrower"),~~ the lending institutions party hereto from time to time (each, a "Lender" and collectively, the "Lenders"), BANK OF AMERICA, N.A., as Administrative Agent, WELLS FARGO BANK, NATIONAL ASSOCIATION, PNC BANK, NATIONAL ASSOCIATION, THE BANK OF NOVA SCOTIA, and TRUIST BANK, as Co-Syndication Agents, and MIZUHO BANK, LTD, REGIONS BANK AND TORONTO-DOMINION BANK, as Co-Documentation Agents.

WHEREAS, the Borrower has requested that the Lenders provide two delayed-draw term loan facilities pursuant to the terms of this Agreement, and the Lenders are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS AND ACCOUNTING TERMS**

**1.01 Defined Terms.**

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

"2021 Credit Agreement" means that certain Second Amended and Restated Credit Agreement, dated as of September 20, 2021, among the Borrower, Bank of America, N.A., as administrative agent, L/C issuer and alternative currency fronting lender, and the lenders and other agents party thereto.

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

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

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

"Affected Financial Institution" means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent Parties" has the meaning specified in Section 10.02(c).

"Agents" means the Administrative Agent, the Arrangers, the Co-Syndication Agents and the Co-Documentation Agents.

"Aggregate Commitments" means, at any date of determination, the sum of the Aggregate Term A-1 Commitments and the Aggregate Term A-2 Commitments on such date.

"Aggregate Term A-1 Commitments" means the Term A-1 Commitments of all Term A-1 Lenders, which as of the Closing Date are $250,000,000, which may be increased pursuant to Section 2.16 or decreased pursuant to Section 2.07.

"Aggregate Term A-2 Commitments" means the Term A-2 Commitments of all Term A-2 Lenders, which as of the Closing Date are $250,000,000, which may be increased pursuant to Section 2.16 or decreased pursuant to Section 2.07.

"Agreement" has the meaning specified in the introductory paragraph hereto.

"Agreement Currency" has the meaning specified in Section 10.19.

"Anti-Corruption Laws" has the meaning specified in Section 5.21.

"Applicable Percentage" means (a) with respect to the Term A-1 Facility for each Term A-1 Lender at any time, subject to adjustment as provided in Section 2.18, a fraction (expressed as a percentage, carried out to the ninth decimal place) of the Term A-1 Facility represented by (i) at any time during the Availability Period in respect of such Term A-1 Facility, the aggregate amount of such Term A-1 Lender's unused Term A-1 Commitment at such time plus the aggregate outstanding principal amount of such Term A-1 Lender's Term A-1 Loans at such time, and (ii) thereafter, the aggregate outstanding principal amount of such Term A-1 Lender's Term A-1 Loans at such time; (b) with respect to the Term A-2 Facility for each Term A-2 Lender at any time, subject to adjustment as provided in Section 2.18, a fraction (expressed as a percentage, carried out to the ninth decimal place) of the Term A-2 Facility represented by (i) at any time during the Availability Period in respect of such Term A-2 Facility, the aggregate amount of such Term A-2 Lender's unused Term A-2 Commitment at such time plus the aggregate outstanding principal amount of such Term A-2 Lender's Term A-2 Loans at such time, and (ii) thereafter, the aggregate outstanding principal amount of such Term A-2 Lender's Term A-2 Loans at such time; and (c) with respect to any Incremental Term Loan Facility for each Lender thereunder at any time, subject to adjustment as provided in Section 2.18, a fraction (expressed as a percentage, carried out to the ninth decimal place) of such Incremental Term Loan Facility represented by (i) on or prior to the applicable Increase Effective Date, such Lender's allocated portion of such Incremental Term Loan Facility, and (ii) thereafter, the aggregate outstanding principal amount of such Lender's Incremental Term Loans under such Incremental Term Loan Facility at such time. The Applicable Percentages of each Lender under the applicable Term Facility or Term Facilities as of the Closing Date are set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, for any Term Loan, from time to time, the number of basis points per annum set forth in the relevant columns of the following table based upon the Debt Rating as set forth immediately below:

| Pricing Level | Debt Ratings (S&P/Moody's/Fitch) | Applicable Rate for Term SOFR Loans | Applicable Rate for Base Rate Loans |
|---|---|---|---|
| 1 | • A / • A2 / • A | 75.0 bps | 0 bps |
| 2 | A- / A3 / A- | 80.0 bps | 0 bps |
| 3 | BBB+ / Baa1 / BBB+ | 85.0 bps | 0 bps |
| 4 | BBB / Baa2 / BBB | 95.0 bps | 0 bps |
| 5 | BBB- / Baa3 / BBB- | 120.0 bps | 20.0 bps |
| 6 | <BBB- / <Baa3 / <BBB- or non-rated | 160.0 bps | 60.0 bps |

For purposes hereof, the term "Debt Rating" means, as of any date of determination, the rating by S&P, Moody's or Fitch of the Borrower's non-credit enhanced, senior unsecured long-term debt; provided that, if at any time when the Borrower has only two (2) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used, and (B) if the difference between such Debt Ratings is two or more ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the median of the applicable Debt Ratings were used. If at any time when the Borrower has three (3) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the highest of the Debt Ratings were used, and (B) if the difference between such Debt Ratings is two or more ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the average of the two (2) highest Debt Ratings were used; provided that, if such average is not a recognized rating category, then the Applicable Rate shall be the rate per annum that would be applicable if the second highest Debt Rating of the three were used.

Initially, the Applicable Rate shall be determined based upon the Debt Rating specified in the certificate delivered pursuant to Section 4.01(a)(vi). Thereafter, each change in the Applicable Rate shall occur on the first Business Day following the effective change in the Debt Rating.

Notwithstanding the foregoing, with respect to any calendar year ending on or after December 31, 2022, if the Borrower delivers a Sustainability Metric Annual Certificate to the Administrative Agent, certifying that the Sustainability Metric as of December 31 of the most recently ended calendar year (the "Specified Test Year") satisfies the Sustainability Metric Election Threshold for such Specified Test Year, and electing that the Applicable Rate instead be based on the table set forth below (the "Sustainability Metric Pricing Grid"), then the Applicable Rate with respect to each Facility shall be determined based on the relevant columns of the Sustainability Metric Pricing Grid for the period commencing on the fifth (5th) Business Day following the date such Sustainability Metric Annual Certificate is delivered to the Administrative Agent by the Borrower until the earlier to occur of (i) the date that is one (1) year after the date the Sustainability Metric Pricing Grid became effective for such period in connection with the delivery of such Sustainability Metric Annual Certificate and (ii) the date that is the fifth (5th) Business Day following the date of delivery by the Borrower of the Sustainability Metric Annual Certificate for the calendar year ending immediately after such Specified Test Year, which subsequent Sustainability Metric Annual Certificate indicates that (A) the Sustainability Metric for the calendar year ending immediately after such Specified Test Year did not satisfy the Sustainability Metric Election Threshold or (B) the Borrower does not elect to apply the Sustainability Metric Pricing Grid for the calendar year ending immediately after such Specified Test Year; provided that it is understood and agreed that (x) if the Sustainability Metric for any calendar year does not satisfy the Sustainability Metric Election Threshold, the Borrower shall not be restricted from making any subsequent election to apply the Sustainability Metric Pricing Grid pursuant to this paragraph if the Sustainability Metric for the calendar year most recently ended prior to such election satisfies the Sustainability Metric Election Threshold, and (y) a Sustainability Metric Annual Certificate electing to apply the Sustainability Metric Pricing Grid pursuant to this paragraph may be delivered at any time by the Borrower so long as the Sustainability Metric for the calendar year most recently ended prior to such election satisfies the Sustainability Metric Election Threshold.

If, as a result of (A) the agreement by the Borrower, the Administrative Agent and the Lenders that the Sustainability Metric for any calendar year as reported on any Sustainability Metric Annual Certificate was inaccurate or (B) the Borrower, the Administrative Agent or the Lenders becoming aware of any material inaccuracy in the Sustainability Metric for any calendar year as reported on any Sustainability Metric Annual Certificate (and, in the case of the Administrative Agent or the Lenders becoming aware thereof, written notice thereof has been delivered to the Borrower setting forth in reasonable detail the basis for such determination) (any such event referred to in clause (A) or (B) above, a "Sustainability Metric Annual Certificate Inaccuracy") and, in each case, the Borrower made an election to apply the Sustainability Metric Pricing Grid pursuant to such Sustainability Metric Annual Certificate and a proper calculation of the Sustainability Metric for such calendar year would not have resulted in any adjustment, or would have resulted in a smaller adjustment, to the Applicable Rate pursuant to the Sustainability Metric Pricing Grid for the relevant period covered by such election, then the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders promptly (and in any event, within five (5) Business Days) following written demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, immediately, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest that should have been paid for such period (or relevant portion thereof then elapsed in respect of which payments of interest were previously made) over the amount of interest actually paid for such period (or relevant portion thereof). Notwithstanding anything to the contrary herein, unless such amounts shall be due upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, (i) any additional amounts required to be paid pursuant to the immediately preceding sentence shall not be due and payable until a written demand is made for such payment by the Administrative Agent, (ii) any nonpayment of such additional amounts prior to or upon such demand for payment by Administrative Agent shall not, whether retroactively or otherwise, (x) constitute a Default or Event of Default or (y) otherwise result in the failure to satisfy any condition precedent to any Credit Extension, a Maturity Date extension pursuant to Section 2.15, or an Increase Effective Date pursuant to Section 2.16, and (iii) none of such additional amounts shall be deemed overdue prior to such a demand or shall accrue interest at the Default Rate prior to such a demand. It is understood and agreed that no Sustainability Metric Annual Certificate Inaccuracy shall, whether retroactively or otherwise, (x) constitute a Default or Event of Default or (y) otherwise result in the failure to satisfy any condition precedent to any Credit Extension, a Maturity Date extension pursuant to Section 2.15, or an Increase Effective Date pursuant to Section 2.16; provided that the Borrower complies with the terms of this paragraph with respect to such Sustainability Metric Annual Certificate Inaccuracy.

***Sustainability Metric Pricing Grid***

| Pricing Level | Debt Ratings (S&P/Moody's/Fitch ) | Applicable Rate for Term SOFR Loans | Applicable Rate for Base Rate Loans |
|---|---|---|---|
| 1 | • A / • A2 / • A | 74.0 bps | 0 bps |
| 2 | A- / A3 / A- | 79.0 bps | 0 bps |
| 3 | BBB+ / Baa1 / BBB+ | 84.0 bps | 0 bps |
| 4 | BBB / Baa2 / BBB | 94.0 bps | 0 bps |
| 5 | BBB- / Baa3 / BBB- | 119.0 bps | 19.0 bps |
| 6 | <BBB- / <Baa3 / <BBB- or non-rated | 159.0 bps | 59.0 bps |

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

"Arrangers" means BofA Securities, Inc., Wells Fargo Securities, LLC, PNC Capital Markets LLC, The Bank of Nova Scotia and Truist Securities, Inc., each in its capacity as a joint lead arranger.

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

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

"Attributable Indebtedness" means, on any date, (a) in respect of any Financing Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Financing Lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2021, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Availability Period" means (a) in respect of the Term A-1 Facility, the period from and including the Closing Date to and including the earlier of (i) February 17, 2023, and (ii) the date of termination of the Aggregate Commitments pursuant to Section 8.02 and (b) in respect of the Term A-2 Facility, the period from and including the Closing Date to and including the earlier of (i) February 17, 2023, and (ii) the date of termination of the Aggregate Commitments pursuant to Section 8.02.

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

"Bail-In Legislation" means, (a) 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, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, as codified at 11 U.S.C. § 101 et seq., and the rules and regulations promulgated thereunder, or any successor provision thereto.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus ½ of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate" and (c) Term SOFR plus 1%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If at any time of determination the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate at such time shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. If the Base Rate determined in accordance with the above is below 1.0%, such rate shall be deemed to be 1.0% for purposes of this Agreement.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the 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 Code) the assets of any such "employee benefit plan" or "plan."

"Borrower" ~~has the meaning specified in the introductory paragraph hereto.~~means (i) prior to the consummation of the First Amendment Merger and First Amendment Conversion, Healthpeak Properties, Inc., a Maryland corporation, (ii) following the First Amendment Merger, Healthpeak Properties Interim, Inc., a Maryland corporation, and (iii) following the First Amendment Conversion, Healthpeak OP, LLC, a Maryland limited liability company.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means (a) a Committed Borrowing or (b) a borrowing consisting of simultaneous Incremental Term Loans of a specific tranche of the same Type, of the same Class, and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Lenders of such Class pursuant to Section 2.16, as the context may require.

"Borrowing Date" means, with respect to any Term Loan, any date on or after the Closing Date on which the applicable conditions set forth in Article IV are satisfied or waived and any Term Loans are made to the Borrower pursuant to Section 2.01, which day shall be a Business Day occurring during the Availability Period for the applicable Term Facility.

"Boundary Property" means any building that is part of the Borrower's portfolio of assets under management and that the Borrower identifies internally as under the Borrower's operational control. For purposes of this definition, such operational control shall mean that the Borrower or any of its Controlled Subsidiaries maintains, provides service to, and/or has the authority to implement operating policies with respect to energy usage, water usage and/or waste disposal, in any such case, for all or any portion of such building. Any reference herein to the square footage of a Boundary Property shall be a reference to the proportional percentage of total square footage of such Boundary Property that is under the Borrower's operational control with respect to such Boundary Property.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of California or the State of New York or the state where the Administrative Agent's Office is located.

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

"Change of Control" means an event or series of events by which, after the date of the First Amendment Merger:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 35% or more of the equity securities of the ~~Borrower~~Parent Guarantor having ordinary voting powers to elect a majority of the members of the board of directors or equivalent governing body of the ~~Borrower~~Parent Guarantor (irrespective of whether at such time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency) on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) and the Borrower shall not have repaid all of the outstanding Obligations in full in cash (other than contingent Obligations that are not then due and payable) and terminated the Aggregate Commitments within forty-five (45) days after such "person" or "group" shall have become the "beneficial owner" of such percentage of such stock; ~~or~~

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the ~~Borrower~~Parent Guarantor cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved or recommended by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved or recommended by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body.; or

(c) the Parent Guarantor shall, at any time, cease to Control the Borrower.

"Class" (a) when used with respect to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Committed Term A-1 Loans, Committed Term A-2 Loans or a specific tranche of Incremental Term Loans, (b) when used with respect to any Lender, refers to whether such Lender has any (i) Term A-1 Commitment or Term A-1 Loan, (ii) Term A-2 Commitment or Term A-2 Loan, or (iii) Incremental Term Loan of a specific tranche or commitment to make an Incremental Term Loan of a specific tranche, and (c) when used with respect to any Commitment, refers to whether such Commitment is a Term A-1 Commitment, a Term A-2 Commitment or a commitment to make an Incremental Term Loan of a specific tranche.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"CME" means CME Group Benchmark Administration Limited.

"Co-Documentation Agent" means each of Mizuho Bank, Ltd., Regions Bank and Toronto-Dominion Bank, in their capacities as Co-Documentation Agents.

"Co-Syndication Agent" means each of Wells Fargo, PNC Bank, National Association, The Bank of Nova Scotia, and Truist Bank, in their capacities as Co-Syndication Agents.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commitment" means a Term A-1 Commitment or a Term A-2 Commitment, as the context may require.

"Committed Borrowing" means a borrowing consisting of simultaneous Committed Loans of the same Type, of the same Class, and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Lenders of such Class pursuant to Section 2.01.

"Committed Loan" means a Committed Term A-1 Loan or a Committed Term A-2 Loan, as the context may require.

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

"Committed Term A-1 Loan" has the meaning specified in Section 2.01(a).

"Committed Term A-2 Loan" has the meaning specified in Section 2.01(b).

"Compliance Certificate" means a certificate substantially in the form of Exhibit E.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of "Base Rate," "Daily Simple SOFR," "SOFR," "Term SOFR," "Term SOFR Screen Rate," and "Interest Period," timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day," timing of borrowing requests or prepayment, conversion or continuation notices, and the applicability and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent (after consultation in good faith with the Borrower), to reflect the adoption and implementation of such applicable rate(s) and to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent (after consultation in good faith with the Borrower) determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

"Consolidated Intangible Assets" means, as of any date of determination, an amount equal to the Intangible Assets of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis.

"Consolidated Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the ~~Borrower and its Subsidiaries~~Group, as determined in accordance with GAAP.

"Consolidated Tangible Net Worth" means, as of any date of determination, for the ~~Borrower and its Subsidiaries~~Group on a consolidated basis, an amount equal to (a) Consolidated Shareholders' Equity on such date plus (b) accumulated depreciation and amortization, determined on a consolidated basis in accordance with GAAP, on such date, minus (c) Consolidated Intangible Assets on such date.

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

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

"Covered Party" has the meaning specified in Section 10.24.

"Credit Extension" means a Borrowing.

"Daily Simple SOFR" means, with respect to any applicable determination date, the SOFR published on such date on the Federal Reserve Bank of New York's website (or any successor source).

"Debt Rating" has the meaning specified in the definition of "Applicable Rate."

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

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

"Default Rate" means an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that, with respect to a Term SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

"Defaulting Lender" means, subject to Section 2.18(b), any Lender that, as reasonably determined by the Administrative Agent, (a) has failed to (i) perform any of its funding obligations hereunder, including in respect of its Loans, within two (2) Business Days of the date required to be funded by it hereunder, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that a condition 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 or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such notice or public statement states that such position is based on such Lender's good faith determination that a condition precedent (each of which conditions precedent, together with any applicable default, shall be specifically identified in such notice or public statement) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent or the Borrower, to confirm in writing in a manner satisfactory to the Administrative Agent and the Borrower that it will comply with its funding obligations hereunder, 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 a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) 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 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 one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.18(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

"Delaware Divided LLC" means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

"Delaware LLC Division" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"Designated Jurisdiction" means any country, region or territory to the extent that such country, region or territory itself is the subject of comprehensive Sanctions (as of the date of the First Amendment, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic).

"Development Property" means any real property in which the development and construction with respect thereto are not complete.

"Disclosed Matters" means any event, circumstance, condition or other matter expressly disclosed in the reports and other documents furnished to or filed with the SEC by the Borrower and that are publicly available prior to the Closing Date.

"Disposition" or "Dispose" means the sale, transfer or assignment (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division, in any case other than sales or other dispositions of assets in the ordinary course of business.

"Dollar" and "$" mean lawful money of the United States.

"EBITDA" means, for any period, for a Person and its Subsidiaries on a consolidated basis, an amount equal to, without duplication, the Net Income of such Person and its Subsidiaries for such period plus (a) the following to the extent deducted in calculating such Net Income: (i) Interest Expense of such Person and its Subsidiaries for such period, (ii) the provision for Federal, state, local and foreign taxes on or measured by income of such Person and its Subsidiaries for such period (whether or not payable during that period), (iii) depreciation and amortization expense for such period and (iv) expenses of such Person and its Subsidiaries reducing such Net Income during such period which do not represent a cash expenditure in such period or any prior or future period and minus (b) (i) all items of such Person and its Subsidiaries increasing Net Income for such period which do not represent a cash receipt in such period or any prior or future period and (ii) any addition to EBITDA pursuant to clause (a)(ii) above taken or payable during such period to the extent added to EBITDA in any prior or future period.

"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 clause (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.

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

"Enterprise EBITDA" means, for any period, the sum of (a) EBITDA of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis for such period plus (b) without duplication, the Borrower's Pro Rata Share of EBITDA of each Material Joint Venture for such period.

"Enterprise Fixed Charges" means, for any period, with respect to the ~~Borrower and its Subsidiaries~~Group on a consolidated basis, the sum of, without duplication, (a) Enterprise Interest Expense paid in cash during such period plus (b) Scheduled Principal Payments during such period plus (c) cash dividends and distributions in respect of preferred stock of the ~~Borrower and its Subsidiaries~~Group during such period (but excluding (i) redemption payments or charges in connection with the redemption of preferred stock and (ii) amounts paid to the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries); provided that Enterprise Fixed Charges shall not include (i) any amounts with respect to any Intercompany Indebtedness, (ii) gains and losses from unwinding or break-funding of Swap Contracts, (iii) write-offs of unamortized deferred financing fees, (iv) prepayment fees, premiums and penalties, and (v) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

"Enterprise Gross Asset Value" means, as of any date of determination, the sum of (a) Gross Asset Value of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis plus (b) without duplication, the Borrower's Pro Rata Share of Gross Asset Value of each Material Joint Venture; provided that, without duplication, for purposes of calculating the Leverage Ratio, Enterprise Gross Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents deducted in the calculation of Enterprise Total Indebtedness pursuant to the first proviso of the definition of "Enterprise Total Indebtedness."

"Enterprise Interest Expense" means, for any period, the sum of (a) Interest Expense of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis for such period plus (b) without duplication, the Borrower's Pro Rata Share of Interest Expense of each Material Joint Venture for such period.

"Enterprise Secured Debt" means, as of any date of determination, that portion of Enterprise Total Indebtedness that is subject to a Lien (other than Permitted Specified Liens).

"Enterprise Total Indebtedness" means, as of any date of determination, an amount equal to, without duplication, (a) Indebtedness of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis outstanding on such date, plus (b) without duplication, the Borrower's Pro Rata Share of Indebtedness of each Material Joint Venture outstanding on such date; provided that for purposes of calculating the Leverage Ratio, (x) clause (a) shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of the ~~Borrower and its Subsidiaries~~Group and (ii) escrow and other deposits to the extent available on such date for the repayment of any of the Indebtedness included in the calculation of clause (a) above up to an amount in the aggregate for this clause (x) not to exceed the aggregate amount of Indebtedness reflected in clause (a) above maturing in the immediately succeeding 24 months and (y) clause (b) shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of each such applicable Material Joint Venture and (ii) escrow and other deposits to the extent available on such date for the repayment of any of the Indebtedness included in the calculation of clause (b) above up to an amount in the aggregate for this clause (y) not to exceed the aggregate amount of Indebtedness reflected in clause (b) above maturing in the immediately succeeding 24 months; provided, further, that Enterprise Total Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

"Enterprise Unencumbered Asset Value" means, as of any date of determination, the sum of (a) Unencumbered Asset Value of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis plus (b) without duplication, the Borrower's Pro Rata Share of Unencumbered Asset Value of each Material Joint Venture.

"Enterprise Unsecured Debt" means, as of any date of determination, that portion of Enterprise Total Indebtedness that is not Enterprise Secured Debt or a Guarantee of Enterprise Secured Debt.

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

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

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person and all of the warrants or options for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person (but excluding any debt security that is convertible into or exchangeable for capital stock).

"ERISA" means the Employee Retirement Income Security Act of 1974.

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

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by ~~the Borrower~~any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001 (a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by ~~the Borrower~~any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) 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 ~~the Borrower~~a Loan Party or any ERISA Affiliate in excess of the Threshold Amount.

"ESG Report" means the annual non-financial disclosure substantially similar to the GRI Standards as publicly reported by the Parent Guarantor or the Borrower and published on an Internet or intranet website to which each Lender and the Administrative Agent has or has been granted access free of charge.

"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.

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Swap Obligations" means, with respect to the Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of the Guarantor of, or the grant by the Guarantor of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of the Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 11.11 and any other "keepwell", support or other agreement for the benefit of the Guarantor and any and all guarantees of the Guarantor's Swap Obligations by other guarantors (if any)) at the time the Guaranty of the Guarantor, or grant by the Guarantor of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of ~~the Borrower~~any Loan Party hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes in each case (i) imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which ~~the Borrower is~~any Loan Party is located, (c) any backup withholding tax that is required to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any U.S. withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the ~~Borrower~~Loan Parties with respect to such withholding tax pursuant to Section 3.01(a) and (e) United States federal withholding Taxes imposed under FATCA.

"Facility" means the Term A-1 Facility, the Term A-2 Facility, or an Incremental Term Loan Facility, as the context may require.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the Closing Date (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, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that, if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Financing Lease" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a financing lease on the balance sheet of that Person.

"First Amendment" means that certain Consent and Amendment No. 1 to Second Amended and Restated Credit Agreement dated as of February 10, 2023, by and among the Parent Guarantor, the Borrower, the Lenders party thereto and the Administrative Agent.

"First Amendment Conversion" means the "Conversion" (as defined in the First Amendment).

"First Amendment Merger" means the "Merger" (as defined in the First Amendment).

"Fitch" means Fitch Ratings, Inc. and any successor thereto.

"Fixed Charge Coverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise EBITDA for the twelve-month period ending on such date to (b) Enterprise Fixed Charges for the twelve-month period ending on such date.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

"Fund" means any Person (other than a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

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

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

"GRI Standards" means the Global Reporting Initiative Sustainability Reporting Standards (2016) (or successor standards) published by the Global Reporting Initiative.

"Gross Asset Value" means, as of any date of determination, an amount equal to (a) all assets of a Person and its Subsidiaries as determined in accordance with GAAP plus (b) all accumulated depreciation and accumulated amortization associated with such assets minus (c) Intangible Assets of such Person and its Subsidiaries.

"Group" means the Parent Guarantor, the Borrower and their respective Subsidiaries.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any payment obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified in Section 11.01.

"Guarantor" means the Parent Guarantor.

"Guaranty" means the Guarantee made by the Parent Guarantor under Article XI in favor of the Administrative Agent and the Lenders.

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

"HMT" has the meaning specified in the definition of "Sanction(s)."

"Increase Effective Date" has the meaning specified in Section 2.16(d).

"Incremental Term Loan" has the meaning specified in Section 2.16(a).

"Incremental Term Loan Amendment" has the meaning specified in Section 2.16(e)(iii).

"Incremental Term Loan Facility" means, at any time, any new tranche of term loans established pursuant to Section 2.16 and the aggregate Outstanding Amount of the Incremental Term Loans under such tranche of all Lenders at such time.

"Indebtedness" means, at any time and with respect to any Person, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money, whether secured or unsecured, and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, including, without limitation, recourse and non-recourse mortgage debt;

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

(c) aggregate net obligations of such Person under Swap Contracts;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable and other accrued obligations in the ordinary course of business and (ii) liabilities with respect to earnouts, reimbursements, true-ups and other similar obligations incurred in connection with the purchase or sale of assets except to the extent such liabilities are required to appear on the balance sheet of such Person prepared in accordance with GAAP);

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

(f) Financing Leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person (other than OP units or LTIP units issued by such Person) at any time prior to the date that is six (6) months after the latest Maturity Date then in effect (other than obligations that can solely be satisfied by delivery of Equity Interests of such Person), valued, in the case of a redeemable preferred interest, at the liquidation preference thereof; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, (i) the amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date (which shall be a positive number if such amount would be owed by the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries and a negative number if such amount would be owed to the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries) and the net obligations under Swap Contracts shall not be less than zero and (ii) the amount of any Financing Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. Any liability will be excluded so long as it is (1) secured by a letter of credit issued for the benefit of the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries in form and substance and from a financial institution reasonably acceptable to the Administrative Agent, but only to the extent neither the Parent Guarantor, the Borrower nor any ~~Subsidiary~~of their respective Subsidiaries has liability therefor, (2) any obligation (including obligations under so called "sandwich leases") against which a third party indemnifies the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries, or guarantees all loss suffered by the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries on account thereof, to the extent the indemnitor or guarantor has the financial wherewithal to satisfy its obligation, or (3) otherwise acceptable as a "Covered Liability" in the reasonable discretion of the Administrative Agent and the Required Lenders.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitee" has the meaning specified in Section 10.04(b).

"Initial Term A-2 Maturity Date" has the meaning specified in Section 2.15(a).

"Intangible Assets" means, as of any date of determination, assets of a Person and its Subsidiaries that are classified as intangible assets under GAAP, but excluding interests in real estate that are classified as intangible assets in accordance with GAAP.

"Intercompany Indebtedness" means, as of any date, Indebtedness to which the only parties are the Parent Guarantor, the Borrower and/or any of ~~its~~their respective Subsidiaries as of such date and which, if the Parent Guarantor or the Borrower is the borrower with respect to such Indebtedness, is subordinated to the obligations under this Agreement and the other Loan Documents.

"Interest Expense" means, for any period, for a Person and its Subsidiaries on a consolidated basis, the sum, without duplication, of all (a) interest expense for such period determined in accordance with GAAP (but excluding, to the extent included in Interest Expense, (i) any charges resulting from settlement of options to repurchase remarketable bonds, (ii) remaining unamortized fees paid pursuant to the 2021 Credit Agreement, and (iii) amortization of deferred financing fees, amortization of debt discounts and swap breakage costs) and (b) interest that is capitalized in such period in accordance with GAAP.

"Interest Payment Date" means, (a) as to any Term SOFR Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date; provided, however, that, if any Interest Period for a Term SOFR Loan exceeds three (3) months, then the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each calendar quarter and the applicable Maturity Date.

"Interest Period" means, as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Committed Loan Notice; provided that:

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

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

(c) no Interest Period shall extend beyond the applicable Maturity Date.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IP Rights" has the meaning specified in Section 5.16.

"IRS" means the United States Internal Revenue Service.

"Joint Venture" means any Person in which the Borrower, directly or indirectly, has an ownership interest but does not consolidate the assets or income of such Person in preparing its consolidated financial statements.

"Judgment Currency" has the meaning specified in Section 10.19.

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

"Lender" has the meaning specified in the introductory paragraph hereto. The term "Lender" may also be used to refer to a Term A-1 Lender, a Term A-2 Lender, or a Lender of an Incremental Term Loan, as the context may require.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Leverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Total Indebtedness outstanding on such date to (b) Enterprise Gross Asset Value as of such date.

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

"Loan" means an extension of credit by a Lender to the Borrower under Article II in the form of a Committed Loan or an Incremental Term Loan of any tranche.

"Loan Documents" means this Agreement, each Note and any Sustainability Metric Annual Certificate.

"Loan Parties" means, collectively, the Borrower and the Guarantor.

"Master Agreement" has the meaning specified in the definition of "Swap Contract."

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, properties or financial condition of the ~~Borrower and its Subsidiaries~~Group, taken as a whole, (b) the ability of the ~~Borrower~~Loan Parties to perform any of ~~its~~their material obligations under the Loan Documents, or (c) the rights of or remedies available to the Administrative Agent and the Lenders under the Loan Documents.

"Material Group" has the meaning specified in the definition of "Material Subsidiary."

"Material Joint Venture" means a Joint Venture in which the Borrower has made a net equity investment of $15,000,000 or greater. For purposes of this definition, the Borrower's aggregate Investment in a Joint Venture will be valued at book value as shown on the consolidated balance sheet of the Borrower, as determined in accordance with GAAP.

"Material Recourse Indebtedness" means any Indebtedness of the Parent Guarantor, the Borrower and/or any ~~Subsidiary~~of their respective Subsidiaries (other than Indebtedness under the Loan Documents and Indebtedness under Swap Contracts) that (a) does not constitute Non-Recourse Indebtedness, and (b) individually or in the aggregate, has a principal amount (including, without duplication, undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount.

"Material Subsidiary" means each Subsidiary or any group of Subsidiaries (i) which, as of the most recent fiscal quarter of the Parent Guarantor or the Borrower, as applicable, for the period of four consecutive fiscal quarters then ended, for which financial statements have been delivered pursuant to Section 6.01 (or, prior to the delivery of such financial statements for the fiscal quarter ending September 30, 2022, for the period of four consecutive fiscal quarters ended June 30, 2022), contributed greater than $100,000,000 of Enterprise EBITDA for such period or (ii) which contributed greater than $300,000,000 of Enterprise Gross Asset Value as of such date. A group of Subsidiaries (a "Material Group") each of which is not otherwise a Material Subsidiary (defined in the foregoing sentence) shall constitute a Material Subsidiary if the group taken as a single entity satisfies the requirements of the foregoing sentence.

"Maturity Date" means (a) with respect to the Term A-1 Facility, the Term A-1 Maturity Date, (b) with respect to the Term A-2 Facility, the Term A-2 Maturity Date, and/or (c) with respect to any tranche of Incremental Term Loans, subject to Section 2.16(e)(iii), the date set forth in the applicable Incremental Term Loan Amendment as the "Maturity Date" for such tranche of Incremental Term Loans, in each case, as the context may require.

"Maximum Rate" has the meaning specified in Section 10.09.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage Lien" means any Lien that encumbers a real property owned by a Person other than Permitted Specified Liens.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which ~~the Borrower~~a Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Negative Pledge" means any provision of a document, instrument or agreement (other than this Agreement or any other Loan Document) that is binding on ~~the Borrower~~a Loan Party or any Wholly-Owned Subsidiary and prohibits the creation or assumption of any Lien on any assets of such Person to secure the Obligations; provided, however, that a provision conditioning a Person's ability to encumber its assets upon the maintenance of one or more specified ratios shall not constitute a Negative Pledge so long as such provision does not generally prohibit the encumbrance of such Person's assets or the encumbrance of specific assets.

"Net Income" means, for any period, for a Person and its Subsidiaries on a consolidated basis, the net income of such Person and its Subsidiaries for such period as determined in accordance with GAAP (without giving effect to (i) any net after tax gains or losses attributable to sales of non-current assets out of the ordinary course of business and write-downs of non-current assets in anticipation of losses to the extent they have decreased net income, and (ii) gains and losses from dispositions of depreciable real estate investments, impairment charges, the early extinguishment of debt and transaction costs of acquisitions not permitted to be capitalized pursuant to GAAP and other non-recurring items, including, without limitation, charges resulting from settlement of options to repurchase remarketable bonds and other similar charges).

"New Lender Joinder Agreement" has the meaning specified in Section 2.16(c).

"Non-Recourse Indebtedness" of a Person means any Indebtedness of such Person, the recourse for which is limited to the asset or assets securing such Indebtedness (and, if applicable, in the event such Person owns no assets other than real estate that secures such Indebtedness and assets incident to ownership of such real estate (e.g., personal property) and has no other Indebtedness, to such Person and/or such Person's Equity Interests), other than in respect of environmental liabilities, fraud, misrepresentation and other similar matters.

"Notes" means, collectively, the Term Notes and any promissory notes made by the Borrower evidencing any Incremental Term Loans in a form agreed between the Borrower and the Administrative Agent, as the context may require, and "Note" means any of them individually.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of ~~the Borrower~~any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against ~~the Borrower~~any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that, without limiting the foregoing, the Obligations of the Guarantor shall exclude any Excluded Swap Obligations with respect to the Guarantor.

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

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

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

"Other Taxes" means all present or future stamp, court, documentary intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other 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 3.06 or Section 10.13).

"Outstanding Amount" means, with respect to Loans of one or more Class(es) on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans of such Class(es) occurring on such date.

"Overnight Rate" means, for any day, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"Parent Guarantor" means, upon completion of the First Amendment Merger, Healthpeak Properties, Inc., a Maryland corporation.

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

"Participant Register" has the meaning specified in Section 10.06(d).

"Patriot Act" has the meaning specified in Section 10.17.

"PBGC" means the Pension Benefit Guaranty Corporation.

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

"Permitted Specified Liens" means Liens permitted under Section 7.01(c) – (m) and (o) – (q).

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

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by ~~the Borrower~~a Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Platform" has the meaning specified in Section 6.02.

"Pro Forma Basis" means, for purposes of determining any financial covenant hereunder, that the subject transaction shall be deemed to have occurred as of the first day of the period of four (4) consecutive fiscal quarters ending as of the end of the most recent fiscal quarter for which annual or quarterly financial statements shall have been delivered in accordance with the provisions of this Agreement. Further, for purposes of making calculations on a "Pro Forma Basis" hereunder, (a) in the case of a Disposition, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such Disposition shall be excluded to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness paid or retired in connection with the subject transaction shall be deemed to have been paid and retired as of the first day of the applicable period; (b) in the case of an acquisition, development or redevelopment, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such acquisition, development or redevelopment shall be included to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness incurred in connection with the subject transaction shall be deemed to have been incurred as of the first day of the applicable period (and interest expense shall be imputed for the applicable period utilizing the actual interest rates thereunder or, if actual rates are not ascertainable, assuming prevailing interest rates hereunder) and (c) in the case of the issuance or exercise of Equity Interests, Indebtedness paid or retired in connection therewith shall be deemed to have been paid and retired as of the first day of the applicable period.

"Pro Rata Share" means (a) with respect to the EBITDA, Net Income, Interest Expense, Gross Asset Value and Unencumbered Asset Value of each Joint Venture, the Borrower's direct or indirect percentage ownership interest in such Joint Venture and (b) with respect to the Indebtedness of each Joint Venture (i) if the Indebtedness is recourse to the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries, the amount of such Indebtedness that is recourse to the Parent Guarantor, the Borrower or such Subsidiary and (ii) if the Indebtedness is not recourse to the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries, the Borrower's percentage ownership interest in such Joint Venture.

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

"Public Lender" has the meaning specified in Section 6.02.

"QFC Credit Support" has the meaning specified in Section 10.24.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Recipient" means the Administrative Agent and any Lender, as applicable.

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

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

"Related Indemnified Party" of an Indemnitee means (a) any trustees, members, administrators, managers, partners, Controlling Person or Controlled Affiliate of such Indemnitee, (b) the respective directors, officers or employees of such Indemnitee or any of its Controlling Persons or Controlled Affiliates and (c) the respective advisors, attorneys, accountants, agents and representatives of such Indemnitee or any of its Controlling Persons or Controlled Affiliates, in the case of this clause (c), acting on behalf of, or at the express instructions of, such Indemnitee, Controlling Person or such Controlled Affiliate.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

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

"Request for Credit Extension" means, with respect to a Borrowing or a conversion or continuation of any Loan, a Committed Loan Notice.

"Required Class Lenders" means, at any time with respect to any Class of Loans (or any Class of commitments to make Loans), Lenders having Total Loan Exposures with respect to such Class representing more than 50% of the Total Loan Exposures of all Lenders of such Class. The Total Loan Exposure of any Defaulting Lender with respect to such Class shall be disregarded in determining Required Class Lenders at any time.

"Required Lenders" means, as of any date of determination, Lenders having Total Loan Exposures representing more than 50% of the Total Loan Exposures of all Lenders. The Total Loan Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Required Term A-1 Lenders" means, as of any date of determination, Term A-1 Lenders having Total Term A-1 Loan Exposures representing more than 50% of the Total Term A-1 Loan Exposures of all Term A-1 Lenders. The Total Term A-1 Loan Exposure of any Defaulting Lender shall be disregarded in determining Required Term A-1 Lenders at any time.

"Required Term A-2 Lenders" means, as of any date of determination, Term A-2 Lenders having Total Term A-2 Loan Exposures representing more than 50% of the Total Term A-2 Loan Exposures of all Term A-2 Lenders. The Total Term A-2 Loan Exposure of any Defaulting Lender shall be disregarded in determining Required Term A-2 Lenders at any time.

"Rescindable Amount" has the meaning specified in Section 2.13(b)(ii).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, president, chief financial officer, each executive vice president and senior vice president, and the treasurer of ~~the Borrower~~any Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of ~~the Borrower~~a Loan Party or any entity authorized to act on behalf of ~~the Borrower~~such Loan Party, and, solely for purposes of notices given pursuant to Article II, any other officer or employee of ~~the Borrower~~a Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of ~~the Borrower~~such Loan Party designated in or pursuant to an agreement between ~~the Borrower~~such Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the ~~Borrower~~applicable Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of ~~the Borrower~~such Loan Party.

"Restricted Payment" means any payment (whether in cash, securities or other property) by the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any of the Parent Guarantor's or Borrower's capital stock or other Equity Interest, or on account of any return of capital to the Parent Guarantor's or the Borrower's stockholders, partners or members (or the equivalent Person thereof); provided that dividends to the extent in the form of Equity Interests shall not constitute Restricted Payments.

"Rolling Base Year Methodology" has the meaning specified in the definition of "Sustainability Metric."

"Rolling Base Year Percentage" has the meaning specified in the definition of "Sustainability Metric."

"S&P" means Standard & Poor's ~~Ratings~~Financial Services LLC, a ~~division of The McGraw-Hill Companies,~~subsidiary of S&P Global Inc., and any successor thereto.

"Same Day Funds" means immediately available funds.

"Sanction(s)" means any international economic ~~sanction~~sanctions administered or enforced by the United States federal government (including, without limitation, OFAC), the United Nations Security Council, the European Union, ~~Her~~His Majesty's Treasury of the United Kingdom ("HMT") or other relevant sanctions authority.

"Scheduled Principal Payment" means, for any period, (a) all regularly scheduled principal payments during such period by the ~~Borrower~~Parent Guarantor and its Subsidiaries with respect to Indebtedness of the ~~Borrower~~Parent Guarantor and its Subsidiaries (other than payments due at final maturity of any tranche of Indebtedness) and (b) without duplication, the Borrower's Pro Rata Share of all regularly scheduled principal payments during such period with respect to the Indebtedness (other than payments due at final maturity of any tranche of Indebtedness) of each Material Joint Venture. For purposes of determining Scheduled Principal Payments, Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

"Scheduled Unavailability Date" has the meaning specified in Section 3.03(b).

"Scope 1" means direct greenhouse gas emissions relating to natural gas, transport fuel and refrigerants (or other similar categories) as disclosed in the applicable annual Sustainability Metric Report.

"Scope 2" means indirect greenhouse gas emissions relating to purchased electricity and purchased chilled water refrigerants (or other similar categories) as disclosed in the applicable annual Sustainability Metric Report.

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

"Secured Debt Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Secured Debt outstanding on such date to (b) Enterprise Gross Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Unsecured Leverage Ratio as of such date.

"Significant Acquisition" means the acquisition (in one or a series of related transactions) of all or substantially all of the assets or Equity Interests of a Person or any division, line of business or business unit of a Person for an aggregate consideration in excess of $450,000,000.

"SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator of such rate).

*"*SOFR Adjustment*"* with respect to Daily Simple SOFR means 0.10% (10 basis points); and with respect to Term SOFR means 0.10% (10 basis points).

"Specified Arrangers" means BofA Securities, Inc. and Wells Fargo Securities, LLC, each in its capacity as a joint lead arranger.

"Specified Default" means an Event of Default arising under Section 8.01(a) or 8.01(f).

"Specified Representations" means the representations and warranties set forth in the Loan Documents (or otherwise mutually agreed between the Borrower and the applicable Lenders providing any applicable Incremental Term Loans) relating to: corporate existence of ~~the Borrower~~each Loan Party and good standing of ~~the Borrower~~such Loan Party in its jurisdiction of organization; power and authority, due authorization, execution and delivery and enforceability, in each case, relating to ~~the Borrower~~such Loan Party entering into and performance of the Loan Documents; no conflicts with or consents under ~~the Borrower's~~such Loan Party's Organization Documents, applicable Law or material contractual obligations (in each case, as they relate to the entering into and performance of the Loan Documents); use of proceeds of the Incremental Term Loans on the relevant Increase Effective Date; solvency of the ~~Borrower and its~~Loan Parties and their Subsidiaries on a consolidated basis; Federal Reserve margin regulations; the Investment Company Act of 1940; the Patriot Act; OFAC; and Sanctions and Anti-Corruption Laws.

"Specified Test Year" has the meaning specified in the definition of "Applicable Rate."

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity the accounts of which are consolidated with the accounts of such Person in such Person's consolidated financial statements prepared in accordance with GAAP. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of ~~the Borrower~~a Loan Party.

"Successor Rate" has the meaning specified in Section 3.03(b).

"Supported QFC" has the meaning specified in Section 10.24.

"Sustainability Assurance Provider" means Cventure LLC, or any replacement sustainability assurance provider thereof as designated from time to time by the Borrower; provided that any such replacement Sustainability Assurance Provider (a) shall be (i) a qualified external reviewer, independent of the ~~Borrower and its~~Loan Parties and their Subsidiaries, believed in good faith by the Borrower to have relevant expertise, such as an auditor, environmental consultant and/or independent ratings agency or (ii) another firm designated by the Borrower and identified in writing to the Administrative Agent and the Lenders, so long as Lenders constituting the Required Lenders do not object to such designation pursuant to this clause (a)(ii) within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection), and (b) to the extent relevant to the Sustainability Metric Components, shall apply auditing standards and methodology that are the same as or substantially consistent with the auditing standards and methodology used in the Borrower's ESG Report for the calendar year ended December 31, 2020, except for any changes to such standards and/or methodology that (x) are not material, (y) are consistent with then generally accepted industry standards or (z) if not so consistent, are proposed by the Borrower and notified in writing to the Administrative Agent and the Lenders, so long as, in the case of this subclause (z), Lenders constituting Required Lenders do not object to such changes within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection).

"Sustainability Metric" means, for any given calendar year (for purposes of this definition, the "subject year"), the percentage change of the Sustainability Metric Components relative to the Sustainability Metric Baseline, which percentage change for any subject year shall be determined and calculated based on the following methodology: (a) the Sustainability Metric Components for such subject year shall be compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of such subject year (such methodology described in this clause (a), the "Rolling Base Year Methodology," and the percentage change of such Sustainability Metric Components for a subject year relative to such Sustainability Metric Components for the immediately preceding calendar year being referred to as the "Rolling Base Year Percentage", which, for the avoidance of doubt, shall be expressed as a negative percentage in the event such Sustainability Metric Components for such subject year are less than such Sustainability Metric Components for the immediately preceding calendar year); (b) in the case of the Specified Test Year ending December 31, 2022, the Sustainability Metric for such Specified Test Year shall be the percentage equal to the sum of (i) the Rolling Base Year Percentage for such Specified Test Year and (ii) the Rolling Base Year Percentage for the calendar year ended December 31, 2021; and (c) in the case of a Specified Test Year ending after December 31, 2022, the Sustainability Metric for such Specified Test Year shall be the percentage equal to the sum of (i) the Rolling Base Year Percentage for such Specified Test Year and (ii) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021.

"Sustainability Metric Annual Certificate" means a certificate substantially in the form of Exhibit G (or such other form as may be approved by the Administrative Agent), signed by a Responsible Officer, and attaching a copy of the Sustainability Metric Report for the most recently ended calendar year (provided that such a copy shall not be required to be so attached if such Sustainability Metric Report has been published on an Internet or intranet website to which each Lender and the Administrative Agent has or has been granted access free of charge); provided that the Borrower may, but shall not be required to, include a certification regarding whether or not the Sustainability Metric Election Threshold has been satisfied as of December 31 of the then most recently ended calendar year (commencing with the calendar year ending December 31, 2022) in any Compliance Certificate delivered by the Borrower from time to time pursuant to Section 6.02(a), and any Compliance Certificate containing such a certification (and attaching a copy of the applicable Sustainability Metric Report, except to the extent such attachment is not required as described above) shall be deemed to be the Sustainability Metric Annual Certificate for the calendar year most recently ended prior to the delivery of such Compliance Certificate.

"Sustainability Metric Annual Certificate Inaccuracy" has the meaning specified in the definition of "Applicable Rate."

"Sustainability Metric Baseline" means the Borrower's Sustainability Metric Components for the calendar year ended December 31, 2020, as set forth in the applicable Sustainability Metric Report (for the avoidance of doubt, subject to the Rolling Base Year Methodology).

"Sustainability Metric Components" means, for any calendar year of the Borrower, the combined Scope 1 and Scope 2 greenhouse gas emissions of the Parent Guarantor, the Borrower and ~~its~~their respective Controlled Subsidiaries for such calendar year (determined in all material respects in conformity with the GRI Standards), less any qualified emissions offsets (including, but not limited to, renewable energy certificates) of the Parent Guarantor, the Borrower and ~~its~~their respective Controlled Subsidiaries during such calendar year, in each case, with respect to the Boundary Properties (subject to the Rolling Base Year Methodology). Qualified emissions offsets include any offsets used to calculate Scope 1 and Scope 2 emissions for reporting emissions in the applicable annual Sustainability Metric Report, including any offsets in which Parent Guarantor, Borrower and/or any of ~~its~~their respective Controlled Subsidiaries has an interest as a result of purchasing environmental attributes of projects other than those owned directly by the Parent Guarantor, the Borrower and/or any of their respective Controlled ~~Subsidiary~~Subsidiaries.

"Sustainability Metric Election Threshold" means, with respect to any Specified Test Year of the Borrower listed in the first column of the table set forth below, the percentage change specified opposite such Specified Test Year in the second column of the table below (such change specified in such column, the "Sustainability Metric Election Threshold").

| Specified Test Year ending December 31 of | Required Sustainability Metric Reduction |
|---|---|
| 2022 | -2.00% |
| 2023 | -3.00% |
| 2024 | -4.00% |
| 2025 and thereafter | -5.00% |

For purposes hereof, the Sustainability Metric Election Threshold for any Specified Test Year shall be satisfied if the Sustainability Metric for such Specified Test Year is a negative number the absolute value of which is equal to or greater than the absolute value of such Sustainability Metric Election Threshold.

"Sustainability Metric Pricing Grid" has the meaning specified in the definition of "Applicable Rate."

"Sustainability Metric Report" means an annual report by the Parent Guarantor or the Borrower (it being understood that such annual report for any year may take the form of the annual ESG Report) that sets forth the Sustainability Metric Components for a specific calendar year and with respect to which a verification review of the Scope 1 and Scope 2 emissions reported therein for such calendar year has been conducted by the Sustainability Assurance Provider; provided that, to the extent relevant to such Sustainability Metric Components, the qualified or limited statement of assurance from the Sustainability Assurance Provider that is set forth in, or attached to, such report shall be the same as or substantially similar in all material respects to the statement of the Sustainability Assurance Provider set forth on page 54 of the ESG Report for the calendar year ended December 31, 2020, except for any changes that (x) are with respect to any additional or increased level of assurance or any expanded scope of review, (y) are with respect to accounting standards or methodology, so long as, in the case of this subclause (y), such changes are consistent with the requirements of clause (b) of the definition of "Sustainability Assurance Provider" (without regard to whether such Sustainability Assurance Provider is a replacement Sustainability Assurance Provider) or (z) are proposed by the Borrower and notified in writing to the Administrative Agent and the Lenders, so long as, in the case of this subclause (z), Lenders constituting Required Lenders do not object to such changes within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection).

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

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

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

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) any similar off-balance sheet financing product that is considered borrowed money indebtedness for tax purposes but classified as an operating lease under GAAP.

"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 A-1 Borrowing" means a borrowing consisting of simultaneous Term A-1 Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Term A-1 Lenders pursuant to Section 2.01(a).

"Term A-1 Commitment" means, as to each Term A-1 Lender, its obligation to make Committed Term A-1 Loans to the Borrower pursuant to Section 2.01(a), in an aggregate principal amount which does not exceed the Dollar amount set forth opposite such Lender's name in the column entitled "Term A-1 Commitment" on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Term A-1 Facility" means, at any time, (a) during the Availability Period in respect of such Facility, the sum of (i) the aggregate amount of the unused Term A-1 Commitments of all Term A-1 Lenders at such time and (ii) the aggregate Outstanding Amount of the Term A-1 Loans of all Term A-1 Lenders at such time and (b) thereafter, the aggregate Outstanding Amount of the Term A-1 Loans of all Term A-1 Lenders at such time.

"Term A-1 Lender" means a Lender with a Term A-1 Commitment or an outstanding Committed Term A-1 Loan.

"Term A-1 Loan" means any extension of credit under the Term A-1 Facility in the form of a loan by a Term A-1 Lender to the Borrower under Article II.

"Term A-1 Loan Exposure" means, as to any Lender at any time, the aggregate Outstanding Amount at such time of its Term A-1 Loans; provided that at any time prior to the end of the Availability Period with respect to the Term A-1 Facility, the Term A-1 Loan Exposure of any Lender shall also include such Lender's unused Term A-1 Commitment at such time.

"Term A-1 Maturity Date" means August 22, 2027 (or, if such date is not a Business Day, the immediately preceding Business Day).

"Term A-1 Note" means a promissory note made by the Borrower in favor of a Term A-1 Lender evidencing Term A-1 Loans made by such Lender, substantially in the form of Exhibit D-1.

"Term A-2 Borrowing" means a borrowing consisting of simultaneous Term A-2 Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Term A-2 Lenders pursuant to Section 2.01(b).

"Term A-2 Commitment" means, as to each Term A-2 Lender, its obligation to make Committed Term A-2 Loans to the Borrower pursuant to Section 2.01(b), in an aggregate principal amount which does not exceed the Dollar amount set forth opposite such Lender's name in the column entitled "Term A-2 Commitment" on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Term A-2 Facility" means, at any time, (a) during the Availability Period in respect of such Facility, the sum of (i) the aggregate amount of the unused Term A-2 Commitments of all Term A-2 Lenders at such time and (ii) the aggregate Outstanding Amount of the Term A-2 Loans of all Term A-2 Lenders at such time and (b) thereafter, the aggregate Outstanding Amount of the Term A-2 Loans of all Term A-2 Lenders at such time.

"Term A-2 Lender" means a Lender with a Term A-2 Commitment or an outstanding Committed Term A-2 Loan.

"Term A-2 Loan" means any extension of credit under the Term A-2 Facility in the form of a loan by a Term A-2 Lender to the Borrower under Article II.

"Term A-2 Loan Exposure" means, as to any Lender at any time, the aggregate Outstanding Amount at such time of its Term A-2 Loans; provided that at any time prior to the end of the Availability Period with respect to the Term A-2 Facility, the Term A-2 Loan Exposure of any Lender shall also include such Lender's unused Term A-2 Commitment at such time.

"Term A-2 Maturity Date" means February 22, 2027 (or, if such date is not a Business Day, the immediately preceding Business Day), subject to extension in accordance with Section 2.15.

"Term A-2 Note" means a promissory note made by the Borrower in favor of a Term A-2 Lender evidencing Term A-2 Loans made by such Lender, substantially in the form of Exhibit D-2.

"Term Facility" means the Term A-1 Facility or the Term A-2 Facility, as the context may require.

"Term Loan" means a Term A-1 Loan or a Term A-2 Loan, as the context may require.

"Term Note" means a Term A-1 Note or a Term A-2 Note, as the context may require.

"Term SOFR" means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that, if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto for which such rate was published, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day; provided that, if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto for which such rate was published;

provided that, if Term SOFR determined in accordance with the provisions of either clause (a) or (b) above would otherwise be less than 0.00%, then Term SOFR shall be deemed 0.00% for purposes of this Agreement.

"Term SOFR Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of ""Term SOFR.""

"Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

"Threshold Amount" means $150,000,000.

"Ticking Fee" has the meaning specified in Section 2.10(c).

"Total Loan Exposure" means, as to any Lender at any time, (a) in respect of the Term A-1 Facility, the Term A-1 Loan Exposure of such Lender at such time, (b) in respect of the Term A-2 Facility, the Term A-2 Loan Exposure of such Lender at such time, and (c) in respect of any Incremental Term Loan Facility, the aggregate Outstanding Amount at such time of its Incremental Term Loans under such Incremental Term Loan Facility; provided that at any time prior to the termination of all commitments to make Incremental Term Loans under such Incremental Term Loan Facility, the Total Loan Exposure in respect of such Incremental Term Loan Facility of any Lender shall also include such Lender's unused commitment, if any, at such time to make Incremental Term Loans under such Incremental Term Loan Facility.

"Treasury Management Agreement" means any treasury, depository or cash management arrangements, services or products, including, without limitation, overdraft services and automated clearinghouse transfers of funds.

"Treasury Management Lender" means any Person that, at the time it enters into a Treasury Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Treasury Management Agreement.

"Type" means, with respect to a Loan, its character as a Base Rate Loan or a Term SOFR Loan.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unencumbered Asset Value" means, for a Person and its Subsidiaries on a consolidated basis, as of any date of determination, the sum of (a) the aggregate net book value, as determined in accordance with GAAP, of all real property of a Person that is not subject to a Mortgage Lien plus (b) all accumulated depreciation and amortization with respect to such real properties plus (c) unrestricted cash and cash equivalents of such Person plus (d) the sum of (i) unencumbered mezzanine and mortgage loan receivables (at the value reflected in the consolidated financial statements of the ~~Borrower~~Parent Guarantor, in accordance with GAAP, as of such date, including the effect of any impairment charges) and (ii) unencumbered marketable securities (at the value reflected in the consolidated financial statements of the ~~Borrower~~Parent Guarantor, in accordance with GAAP, as of such date, including the effect of any impairment charges); provided that the items described in this clause (ii) and in the preceding clause (i) shall not be taken into account to the extent that the amounts of such items exceed, in the aggregate, 20% of Unencumbered Asset Value. For purposes of this definition, (1) "Mortgage Lien" shall not include any lien securing Intercompany Indebtedness and (2) for the avoidance of doubt, the value of any asset or property subject to Liens on assets of the Parent Guarantor, the Borrower or any ~~Subsidiary~~of their respective Subsidiaries securing obligations under Swap Contracts shall not be included in the calculation of Unencumbered Asset Value.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"United States" and "U.S." mean the United States of America.

"Unsecured Leverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Unsecured Debt outstanding on such date to (b) Enterprise Unencumbered Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Secured Debt Ratio as of such date.

"U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

"U.S. Special Resolution Regimes" has the meaning specified in Section 10.24.

"Wells Fargo" means Wells Fargo Bank, National Association and its successors.

"Wholly-Owned Subsidiary" means any wholly-owned Subsidiary of the Parent Guarantor or the Borrower, as applicable, in each case, that is not a special purpose entity.

"Write-Down and Conversion Powers" means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**1.02 Other Interpretive Provisions.**

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

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

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

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

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

(e) For the avoidance of doubt, the parties intend that the term "Enterprise" refer to financial calculations that cover (i) the ~~Borrower and its consolidated Subsidiaries~~Group and (ii) the Borrower's Pro Rata Share of Material Joint Ventures.

**1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the ~~Borrower~~Parent Guarantor and its Subsidiaries shall be deemed to be carried in accordance with GAAP, excluding the effects of FASB ASC 825 on financial liabilities.

(b) Changes in GAAP. 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 Required 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 Required Lenders and the Borrower); provided 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) the Borrower shall provide to the Administrative Agent financial statements and other documents required under this Agreement or as reasonably requested in writing hereunder by the Administrative Agent setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.04 Rounding.**

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

**1.05 [Reserved].**

**1.06 [Reserved].**

**1.07 Interest Rates.** ~~The~~Except as specifically set forth herein, the Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any such rate (or component thereof) provided by any such information source or service.

**1.08 Times of Day.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

## ARTICLE II

## THE COMMITMENTS AND CREDIT EXTENSIONS

**2.01 Committed Loans**.

(a) Term A-1 Borrowings. Subject to the terms and conditions set forth herein, each Term A-1 Lender severally agrees to make term loans (each such loan, a "Committed Term A-1 Loan") to the Borrower in Dollars from time to time, on any Business Day during the Availability Period for the Term A-1 Facility, in an aggregate amount not to exceed such Term A-1 Lender's Applicable Percentage of the Term A-1 Facility; provided that, there shall be no more than five (5) separate Borrowing Dates on which any Term Loans made pursuant to Section 2.01(a) and/or Section 2.01(b) during the Availability Period. Each Term A-1 Borrowing shall consist of Term A-1 Loans made simultaneously by the Term A-1 Lenders in accordance with their respective Applicable Percentage of the Term A-1 Facility. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term A-1 Loans may be Base Rate Loans or Term SOFR Loans, as further provided herein.

(b) Term A-2 Borrowings. Subject to the terms and conditions set forth herein, each Term A-2 Lender severally agrees to make term loans (each such loan, a "Committed Term A-2 Loan") to the Borrower in Dollars from time to time, on any Business Day during the Availability Period for the Term A-2 Facility, in an aggregate amount not to exceed such Term A-2 Lender's Applicable Percentage of the Term A-2 Facility; provided that, there shall be no more than five (5) separate Borrowing Dates on which any Term Loans made pursuant to Section 2.01(a) and/or Section 2.01(b) during the Availability Period. Each Term A-2 Borrowing shall consist of Term A-2 Loans made simultaneously by the Term A-2 Lenders in accordance with their respective Applicable Percentage of the Term A-2 Facility. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Term A-2 Loans may be Base Rate Loans or Term SOFR Loans, as further provided herein.

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

(a) Each Borrowing, each conversion of Loans from one Type to another Type, and each continuation of Term SOFR Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such Committed Loan Notice must be received by the Administrative Agent not later than 12:00 Noon (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans (or, with respect to such a Borrowing of any Incremental Term Loan, such other notice period as may be agreed to in the relevant Incremental Term Loan Amendment), (ii) [reserved], and (iii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of or conversion to Term SOFR Loans, or continuation of Term SOFR Loans, shall be in a principal amount equal to $1,000,000 or a whole multiple of $100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount equal to $500,000 or a whole multiple of $100,000 in excess thereof.

Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing of Committed Term A-1 Loans, a Borrowing of Committed Term A-2 Loans, a Borrowing of Incremental Term Loans of a specific tranche, a conversion of Loans from one Type to another Type, or a continuation of Term SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type and Class of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; provided, however, that, in the case of a failure to timely request a continuation of Term SOFR Loans, such Loans shall be continued as Term SOFR Loans with an Interest Period of one month (unless an Event of Default exists and is continuing at such time and the Administrative Agent has notified the Borrower that the Required Lenders have determined that such a continuation as Term SOFR Loans is not appropriate in accordance with Section 2.02(c)). Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice requesting a Committed Borrowing, the Administrative Agent shall promptly notify each applicable Lender of the amount of its Applicable Percentage of the Committed Loans under the applicable Facility.

In the case of a Borrowing, each applicable Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. In any event, a Lender may cause any domestic branch or Affiliate to fund or make the amount of its Loan available in accordance with the foregoing provisions. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.02 (or in the case of (x) a Borrowing requested by the Borrower to be made on the Closing Date, the conditions set forth in Section 4.01, or (y) a Borrowing of Incremental Term Loans, the applicable conditions set forth in Section 2.16(e)), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) Except as otherwise provided herein, a Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Loan. During the existence of an Event of Default that is continuing, no Loans may be requested as, converted to or continued as Term SOFR Loans if the Administrative Agent has notified the Borrower that the Required Lenders have determined that such a continuation or conversion is not appropriate.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to another Type, and all continuations of Committed Loans as the same Type, there shall not be more than (i) six (6) Interest Periods in effect with respect to all Committed Term A-1 Loans and (ii) six (6) Interest Periods in effect with respect to all Committed Term A-2 Loans.

(f) With respect to SOFR or Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

**2.03 [Reserved].**

**2.04 [Reserved].**

**2.05 [Reserved].**

**2.06** **Prepayments**. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time, voluntarily prepay any Loans of any Class in whole or in part without premium or penalty pursuant to this Section 2.06; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days (or such shorter period as the Administrative Agent shall agree) prior to any date of prepayment of Term SOFR Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Term SOFR Loans shall be in a principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) and Class(es) of Loans to be prepaid and, if Term SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment of the applicable Class(es) of Loans. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, however, that a notice of voluntary prepayment may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice of prepayment may be revoked by the Borrower if such condition is not satisfied. Any prepayment of a Term SOFR Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.18, each prepayment of Loans of any Class made pursuant to this Section 2.06 shall be made ratably among the Lenders of such Class in accordance with their respective Applicable Percentages of such Class of Loans.

**2.07 Termination or Reduction of Commitments.**

(a) Concurrently with the Borrowing of any Term A-1 Loans on any Borrowing Date, the Term A-1 Commitment of each Term A-1 Lender will be permanently reduced on a dollar-for-dollar basis by the principal amount of Term A-1 Loans made by such Term A-1 Lender on such Borrowing Date. Concurrently with the Borrowing of any Term A-2 Loans on any Borrowing Date, the Term A-2 Commitment of each Term A-2 Lender will be permanently reduced on a dollar-for-dollar basis by the principal amount of Term A-2 Loans made by such Term A-2 Lender on such Borrowing Date.

(b) Unless previously terminated, (i) the Aggregate Term A-1 Commitments will terminate in full at 5:00 p.m. on the last day of the Availability Period with respect to the Term A-1 Facility and (ii) the Aggregate Term A-2 Commitments will terminate in full at 5:00 p.m. on the last day of the Availability Period with respect to the Term A-2 Facility.

(c) The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Term A-1 Commitments or the Aggregate Term A-2 Commitments, or from time to time permanently reduce the Aggregate Term A-1 Commitments or the Aggregate Term A-2 Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 12:00 Noon five (5) Business Days prior to the date of termination or reduction, and (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof. Each such notice of termination shall specify such election to terminate, the relevant Class(es) of Commitments to be terminated, and the effective date thereof. The Administrative Agent will promptly notify the Lenders of the relevant Class(es) of any such notice of termination or reduction of Commitments of such Class(es). A notice delivered by the Borrower pursuant to this Section 2.07(c) may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(d) Any reduction of the Aggregate Term A-1 Commitments pursuant to Section 2.07(b) or (c) shall be applied to the Term A-1 Commitment of each Lender according to its Applicable Percentage of the Term A-1 Facility. Any reduction of the Aggregate Term A-2 Commitments pursuant to Section 2.07(b) or (c) shall be applied to the Term A-2 Commitment of each Lender according to its Applicable Percentage of the Term A-2 Facility.

**2.08 Repayment.**

(a) The Borrower shall repay to the Term A-1 Lenders on the Term A-1 Maturity Date, unless accelerated sooner pursuant to Section 8.02, the entire outstanding principal balance of all Committed Term A-1 Loans, together with accrued but unpaid interest, fees and all other sums with respect thereto.

(b) The Borrower shall repay to the Term A-2 Lenders on the Term A-2 Maturity Date, unless accelerated sooner pursuant to Section 8.02, the entire outstanding principal balance of all Committed Term A-2 Loans, together with accrued but unpaid interest, fees and all other sums with respect thereto.

**2.09 Interest**.

(a) Applicable Interest. Subject to the provisions of Section 2.09(b), (i) each Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period applicable thereto at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) Default Interest.

(i) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

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

(iii) Upon the request of the Required Lenders, while any Event of Default exists, (x) the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws and (y) any adjustment to the Applicable Rate pursuant to the Sustainability Metric Pricing Grid shall cease to apply.

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

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

**2.10 Fees**.

(a) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times as separately agreed upon in writing between the Borrower, the applicable Arrangers and the Administrative Agent, as applicable. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, absent manifest error.

(b) The Borrower shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, absent manifest error.

(c) Ticking Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Lender with respect to each Term Facility a ticking fee (the "Ticking Fee") in Dollars, which, subject to adjustment as provided in Section 2.18, shall accrue at a rate of 0.15% (15.0 basis points) per annum on the actual daily amount of the undrawn Commitments of such Lender under such Term Facility during the period commencing on October 21, 2022 to but not including the earlier of (x) the final day of the Availability Period with respect to such Term Facility and (y) the date on which all Commitments under such Term Facility shall have been terminated. Accrued and unpaid Ticking Fees with respect to a Term Facility shall be due and payable in arrears upon the earliest of (i) the date that is the final day of the Availability Period with respect to such Term Facility, (ii) the date on which any Committed Borrowing under such Term Facility occurs and (iii) the date on which any Commitments under such Term Facility are terminated. All Ticking Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

**2.11 Computation of Interest and Fees**.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.13(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

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

**2.13 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, such due date shall be extended to the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Term SOFR Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to the Loans constituting such Borrowing. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. In the event the Borrower pays such amount to the Administrative Agent, then such amount shall reduce the principal amount of such Borrowing (subject to the last sentence of this paragraph and any applicable provisions of Section 2.18). If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by the Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders of any Class 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, in reliance upon such assumption, distribute to the Lenders of such Class the amount due. With respect to any payment that the Administrative Agent makes for the account of any of the Lenders hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13(b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Section 4.02 (or in the case of (x) a Borrowing requested by the Borrower to be made on the Closing Date, the conditions set forth in Section 4.01, or (y) a Borrowing of Incremental Term Loans, the applicable conditions set forth in Section 2.16(e)) are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Term A-1 Loans and Committed Term A-2 Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under Section 10.04(c).

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

**2.14 Sharing of Payments by Lenders.**

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 the Loans of any Class made by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans of such Class and accrued interest thereon greater than its pro rata share thereof as provided herein, 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 of the relevant Class(es), or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the relevant Lenders of the relevant Class(es) ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of the relevant Class(es) or such other amounts owing them under the relevant Facilities, 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 2.14 shall not be construed to apply to (x) any payment made by or on behalf of 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) [reserved] or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Commitments or Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section 2.14 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.

**2.15 Extension of Term A-2 Maturity Date.**

(a) Requests for Extension. The Borrower may, by written notice to the Administrative Agent (who shall promptly notify the Term A-2 Lenders) not earlier than ninety (90) days and not later than thirty (30) days prior to the Term A-2 Maturity Date then in effect (such date, the "Initial Term A-2 Maturity Date"), elect that the Term A-2 Lenders extend the Term A-2 Maturity Date for an additional twelve (12) months after such Initial Term A-2 Maturity Date; provided that the Borrower may not make more than one (1) such election pursuant to this Section 2.15 during the term of this Agreement.

(b) Confirmation by Administrative Agent. The Administrative Agent shall confirm receipt of the Borrower's notice delivered pursuant to Section 2.15(a) no later than the date that is fifteen (15) days prior to the Initial Term A-2 Maturity Date (or, if such date is not a Business Day, on the next preceding Business Day).

(c) Extension of Term A-2 Maturity Date. If (and only if) the conditions precedent set forth in Section 2.15(d) have been met, then, effective as of the Initial Term A-2 Maturity Date, the Term A-2 Maturity Date shall be extended to the date falling twelve (12) months after the Initial Term A-2 Maturity Date (except that, if such date is not a Business Day, such Term A-2 Maturity Date as so extended shall be the next preceding Business Day). Upon satisfaction of the conditions precedent set forth in Section 2.15(d), as certified by the Borrower to the Administrative Agent in writing, the Administrative Agent shall deliver a copy of such certification to each Term A-2 Lender.

(d) Conditions to Effectiveness of Extensions. As a condition precedent to such extension, (i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Initial Term A-2 Maturity Date signed by a Responsible Officer (x) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension and (y) certifying that (1) the representations and warranties contained in Article V and in the other Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Initial Term A-2 Maturity Date (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty was true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01 and (2) as of the Initial Term A-2 Maturity Date, and immediately after giving effect to such extension, no Default exists and (ii) the Borrower shall pay to the Term A-2 Lenders on or prior to the Initial Term A-2 Maturity Date a fee (to be shared among the Term A-2 Lenders based upon their Applicable Percentages of the Outstanding Amount of the Term A-2 Loans) equal to the product of (x) 0.125% multiplied by (y) the then Outstanding Amount of the Term A-2 Loans.

(e) Conflicting Provisions. This Section 2.15 shall supersede any provisions in Section 2.02(b), 2.14 or 10.01 to the contrary.

**2.16 Incremental Term Loans.**

(a) Request for Incremental Term Loans. From time to time, the Borrower shall have the right to enter into one or more new tranches (or increase an existing tranche) of term loans under this Agreement (each, an "Incremental Term Loan"); provided that (i) subject to the last proviso to clause (e)(i) below, no Default has occurred and is continuing, (ii) each increase or tranche of Incremental Term Loans must be in a minimum amount of $10,000,000 and in integral multiples of $5,000,000 in excess thereof (or such other amounts as are agreed to by the Borrower and the Administrative Agent), and (iii) after giving effect to all such Incremental Term Loans, the sum, without duplication, of the aggregate principal amounts of the Term A-1 Loans, the Term A-2 Loans and all such Incremental Term Loans shall not exceed $1,000,000,000. At the time of sending such notice to the Administrative Agent of the exercise of such right, the Borrower (in consultation with the Administrative Agent) shall specify the Lenders to be approached to provide all or a portion of such Incremental Term Loan (subject in each case to any requisite consents required under Section 10.06) and the time period within which each such Lender is requested to respond (which time period shall be as mutually agreed between the Borrower and the Administrative Agent).

(b) Lender Elections to Participate. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to participate in such new tranche or increase, as the case may be, and, if so, the maximum aggregate principal amount of the proposed Incremental Term Loans that such Lender is offering to provide. Any Lender not responding within such time period shall be deemed to have declined to participate in such new tranche or increase, as the case may be. Any such new tranche or increase shall be syndicated on a best efforts basis and no Lender shall be required to participate in any tranche of Incremental Term Loans to facilitate such tranche or increase.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. Subject to the approval of the Administrative Agent (which approval shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel (a "New Lender Joinder Agreement").

(d) Effective Date and Allocations. If any Incremental Term Loan is extended in accordance with this Section 2.16, the Administrative Agent and the Borrower shall determine the effective date (the "Increase Effective Date") and the final allocation thereof. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such Incremental Term Loan and the Increase Effective Date.

(e) Conditions to Effectiveness of Incremental Term Loans. As a condition precedent to any Incremental Term Loan:

(i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Increase Effective Date signed by a Responsible Officer (A) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such Incremental Term Loan, and (B) certifying that (1) the representations and warranties contained in Article V and in the other Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Increase Effective Date (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty was true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.16, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01; provided that, in the case of any Incremental Term Loan the proceeds of which are to be used to finance an acquisition (including by means of a merger, amalgamation or consolidation) or other Investment not prohibited by this Agreement (and related transaction costs) the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing or that is otherwise subject to customary "funds certain provisions," to the extent agreed by the applicable Lenders providing such Incremental Term Loan, the representations and warranties the accuracy of which in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be accurate in all respects) are a condition to the funding of such Incremental Term Loan shall be limited to (x) the Specified Representations (or such other formulation thereof as may be agreed by the applicable Lenders providing such Incremental Term Loan) and (y) those representations of the acquired company in the applicable acquisition agreement that are material to the interests of the applicable Lenders providing such Incremental Term Loan and which, if breached or inaccurate, would give the Parent Guarantor, the Borrower or any Subsidiary the right to terminate or refuse to close under the applicable acquisition agreement, and (2) as of the Increase Effective Date, and immediately after giving effect to such Incremental Term Loan, no Default or Event of Default exists; provided that, in the case of any Incremental Term Loan the proceeds of which are to be used to finance an acquisition or other Investment not prohibited by this Agreement (and related transaction costs) the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing or that is otherwise subject to customary "funds certain provisions," to the extent agreed by the applicable Lenders providing such Incremental Term Loan, this condition shall be limited to (x) at the time of the execution and delivery of the applicable acquisition agreement related to such acquisition, no Default shall have occurred and be continuing or shall occur as a result thereof and (y) upon the effectiveness and making of any Incremental Term Loan on the applicable Increase Effective Date, no Specified Default shall have occurred and be continuing or shall occur as a result thereof;

(ii) (A) upon the reasonable request of any Lender made at least five (5) days prior to the applicable Increase Effective Date, the Borrower shall have provided to such Lender the documentation and other information so requested by such Lender that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and (B) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation it shall have delivered, to each Lender that so requests at least five (5) days prior to the applicable Increase Effective Date, a Beneficial Ownership Certification in relation to the Borrower;

(iii) in the case of any tranche of Incremental Term Loans, such Incremental Term Loans (A) shall rank pari passu in right of payment with the Term Loans and any other outstanding Incremental Term Loans, (B) shall not mature earlier than the latest Maturity Date then in effect (but may have amortization prior to such date so long as the weighted average life to maturity of any Incremental Term Loans shall be no shorter than the remaining weighted average life to maturity of any previously funded and then outstanding Incremental Term Loans (if any) at such time); provided that, notwithstanding the foregoing, any increase pursuant to this Section 2.16 to a then existing tranche of Loans under this Agreement shall have the same Maturity Date as such then existing tranche that is being so increased, and (C) shall be treated substantially the same as (and in any event no more favorably than) the Term Loans and any other outstanding Incremental Term Loans; provided that (1) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the latest Maturity Date then in effect may provide for material additional or different financial or other covenants or requirements applicable only during periods after such Maturity Date then in effect, (2) the Incremental Term Loans may be priced differently than the Term Loans and any other outstanding Incremental Term Loans and (3) other terms and conditions applicable to Incremental Term Loans may be materially different from those of the Term Loans and any other outstanding Incremental Term Loans to the extent such differences are solely administrative in nature or are terms and conditions reasonably acceptable to the Administrative Agent or that customarily apply to syndicated term loan facilities (as determined in good faith by the board of directors or other equivalent governing body of the Borrower). Incremental Term Loans may be made hereunder pursuant to an amendment or 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 or increase 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 2.16;

(iv) the Administrative Agent shall have received a Request for Credit Extension in accordance with the terms hereof; and

(v) the Borrower shall provide a Note to any Lender joining on the Increase Effective Date, if requested.

(f) Conflicting Provisions. This Section 2.16 shall supersede any provisions in Sections 2.14 or 10.01 to the contrary.

(g) Fees. In connection with any Incremental Term Loans pursuant to this Section 2.16, the Borrower shall pay such fees to the Administrative Agent, for its own account and for the benefit of the Lenders participating in such Incremental Term Loans, determined at the time of such funding of such Incremental Term Loans (or such other time specified in the relevant Incremental Term Loan Amendment) and agreed to by the Borrower in writing.

(h) Lenders. In connection with any Incremental Term Loans pursuant to this Section 2.16, any new Lender party hereto shall (i) execute such documents and agreements as the Administrative Agent may reasonably request and (ii) in the case of any new 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 rules and regulations, including, without limitation, the Patriot Act.

**2.17 [Reserved].**

**2.18 Defaulting Lenders.**

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

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01 and in the definitions of "Required Class Lenders," "Required Lenders," "Required Term A-1 Lenders" and "Required Term A-2 Lenders."

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no 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; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the other Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no 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 sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, with respect to this clause sixth, if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans were to be made at a time when the conditions set forth in Section 4.02 (or in the case of (A) Loans requested by the Borrower to be made on the Closing Date, the conditions set forth in Section 4.01, or (B) Incremental Term Loans, the applicable conditions set forth in Section 2.16(e)) were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.18(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. Such Defaulting Lender shall not be entitled to receive any Ticking Fee on unfunded amounts pursuant to Section 2.10(c) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any Ticking Fee on any unfunded amounts pursuant to Section 2.10(c) that otherwise would have been required to have been paid to such Defaulting Lender during such period).

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, such Lender will, to the extent applicable, take such actions as the Administrative Agent may determine to be necessary to cause the Loans under each applicable Facility to be held on a pro rata basis by the Lenders of such Facility in accordance with their respective Applicable Percentages of such Facility, 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 such Lender was a Defaulting Lender; and provided, further, that subject to Section 10.20 and 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 such Lender's having been a Defaulting Lender.

## ARTICLE III

## TAXES, YIELD PROTECTION AND ILLEGALITY

**3.01 Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of ~~the Borrower~~any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes; provided that, if the ~~Borrower~~applicable Loan Party or the Administrative Agent shall be required by applicable Law to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to Section 3.01(e), (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the ~~Borrower~~applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the Administrative Agent or the applicable Lender, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the ~~Borrower~~Loan Parties. Without limiting the provisions of Section 3.01(a), the ~~Borrower~~Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnification. (i) Without limiting the provisions of Section 3.01(a) or 3.01(b), each of the ~~Borrower~~Loan Parties shall, and does hereby, jointly and severally, indemnify the Administrative Agent and each Lender, and shall make payment in respect thereof, within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by the Administrative Agent or such Lender, as the case may be, or required to be withheld or deducted from a payment to the Administrative Agent or such Lender as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, to the extent such Indemnified Taxes or Other Taxes are payable in respect of any payments by or on account of any obligation of the ~~Borrower~~Loan Parties hereunder or under any other Loan Document or otherwise with respect to any Loan Document or activities related thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any 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.

(ii) Without limiting the provisions of Section 3.01(a) or 3.01(b), each Lender shall, and do hereby, indemnify the ~~Borrower~~Loan Parties and the Administrative Agent, and shall make payment in respect thereof, within ten (10) days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the ~~Borrower~~Loan Parties and the Administrative Agent) incurred by or asserted against the Administrative Agent by any Governmental Authority as a result of the failure by such Lender to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender to the Borrower or the Administrative Agent pursuant to Section 3.01(e). Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by ~~the Borrower~~any Loan Party to a Governmental Authority, the Borrower 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.

(e) Status of Lenders. (i) Each Lender shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made by the Borrower hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdictions. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), Section 3.01(e)(ii)(B) and Section 3.01(e)(ii)(C)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States:

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed copies of IRS Form W-9 or such other documentation or information prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine that such Lender is not subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall 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 request of Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed executed copies of IRS Form W-8ECI,

(iii) duly completed executed copies of IRS Form W-8IMY and all required supporting documentation,

(iv) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, or

(v) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States 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

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by 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 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 (C), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Law of any jurisdiction that any Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

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

(f) Treatment of Certain Refunds. Unless required by applicable Law, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by ~~the Borrower~~any Loan Party or with respect to which ~~the Borrower~~any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to ~~the Borrower~~such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by ~~the Borrower~~such Loan Party under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that ~~the Borrower~~each Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to ~~the Borrower~~such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.01(f) shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to ~~the Borrower~~any Loan Party or any other Person. Notwithstanding anything to the contrary in this Section 3.02(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.02(f) if 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.

**3.02 Illegality.**

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of such Lender to make or continue Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, if necessary to avoid such illegality, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loan to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loan to such day and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

**3.03 Inability to Determine Rates**.

(a) Subject to Section 3.03(b), if in connection with any request for a Term SOFR Loan or a conversion of Base Rate Loans to Term SOFR Loans or a continuation of any of such Loans, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan or in connection with an existing or proposed Base Rate Loan, or (ii) the Administrative Agent or the Required Lenders determine that for any reason that Term SOFR for any requested Interest Period with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender.

Thereafter, (x) the obligation of the Lenders to make or maintain Term SOFR Loans, or to convert Base Rate Loans to Term SOFR Loans, shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, or conversion to, or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of or conversion to, as applicable, Base Rate Loans in the amount specified therein and (ii) any outstanding affected Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Replacement of Term SOFR or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease; provided that, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Administrative Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the "Scheduled Unavailability Date");

then, on a date and time determined by the Administrative Agent (any such date, the "Term SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR *plus* the SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "Successor Rate").

If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark~~, which adjustment or method for calculating such adjustment~~ shall be ~~published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated~~. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a "Successor Rate". Any such amendment executed by the Administrative Agent and the Borrower shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than 0.00%, the Successor Rate will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

This Section 3.03 shall supersede any provisions in Section 10.01 to the contrary.

**3.04 Increased Costs**.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Administrative Agent or any Lender;

(ii) subject the Administrative Agent or any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Term SOFR Loan made by it, or change the basis of taxation of payments to the Administrative Agent or such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Administrative Agent or such Lender); or

(iii) impose on the Administrative Agent or any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Term SOFR Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to the Administrative Agent or such Lender of making, maintaining, converting to or continuing any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by the Administrative Agent or such Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Administrative Agent or such Lender, the Borrower will pay to the Administrative Agent or such Lender, as the case may be, such additional amount or amounts as will compensate the Administrative Agent or such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's 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 such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then 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. The Borrower shall not be required to pay such additional amounts unless such amounts are the result of requirements imposed generally on lenders similar to such Lender and not the result of some specific reserve or similar requirement imposed on such Lender as a result of such Lender's special circumstances.

(c) Certificates for Reimbursement. A certificate of the Administrative Agent or a Lender setting forth in reasonable detail the basis for and calculation of the amount or amounts necessary to compensate the Administrative Agent or such Lender or its holding company, as the case may be, as specified in Section 3.04(a) or 3.04(b) and delivered to the Borrower, in detail sufficient to enable the Borrower to verify the computation thereof, shall be conclusive absent manifest error. The Borrower shall pay the Administrative Agent or such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof. Any amounts requested to be payable pursuant to this Section 3.04 shall be requested in good faith (and not on an arbitrary and capricious basis) and consistent with similarly situated customers of the Administrative Agent or the applicable Lender after consideration of factors as the Administrative Agent or such Lender, as the case may be, then reasonably determines to be relevant.

(d) Delay in Requests. Failure or delay on the part of the Administrative Agent or any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of the Administrative Agent or such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate the Administrative Agent or a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that the Administrative Agent or such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Administrative Agent's or such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) [Reserved].

(f) The provisions set forth in Sections 3.04(a) and (b) above shall not apply to the extent any increased cost is already compensated for by payment made by or on behalf of the Borrower pursuant to Section 3.01.

**3.05 Compensation for Losses**.

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 (other than loss of anticipated profits) incurred by it as a result of:

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

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

(c) [reserved]; or

(d) any assignment of a Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13.

The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

**3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.**

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender.

## ARTICLE IV

## CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**4.01 Conditions to Effectiveness of this Agreement.**

The effectiveness of this Agreement and, if the Borrower shall have requested any Credit Extension be made on the Closing Date, the obligation of each Lender to make its initial Credit Extension hereunder on the Closing Date, if any, are subject to satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or facsimile or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement, executed and delivered by the Administrative Agent, the Borrower and each Lender listed on Schedule 2.01;

(ii) a Term Note executed by the Borrower in favor of each Lender requesting a Term Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower is duly organized or formed, and that the Borrower is validly existing, in good standing and qualified to engage in business in its state of organization and in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) favorable opinions of Skadden, Arps, Slate Meagher & Flom LLP and Ballard Spahr LLP, counsels to the Borrower, addressed to the Administrative Agent and each Lender; and

(vi) a certificate signed by a Responsible Officer certifying (A) that the conditions specified in Sections 4.01(e) and (f) have been satisfied; (B) the current Debt Ratings; and (C) that, as of the date of the last financial statements of the Borrower delivered pursuant to the 2021 Credit Agreement, the Borrower was in pro forma compliance (giving pro forma effect to the Term Loans, if any, made on the Closing Date) with the financial covenants contained in Section 7.10.

(b) Any fees required to be paid by the Borrower on or prior to the Closing Date pursuant to the Loan Documents and all expenses required to be reimbursed by the Borrower on or prior to the Closing Date pursuant to the Loan Documents shall have been paid; provided that invoices for such expenses have been presented to the Borrower a reasonable period of time (and in any event not less than one (1) Business Day) prior to the Closing Date (including, unless waived by the Administrative Agent, all reasonable, documented, out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent)).

(c) (i) Upon the reasonable request of any Lender made in writing at least ten (10) Business Days prior to the Closing Date, the Borrower shall have provided to such Lender the documentation and other information so requested by such Lender that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five (5) Business Days prior to the Closing Date and (ii) at least five (5) Business Days prior to the Closing Date, if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation it shall have delivered, to each Lender that so requests at least ten (10) Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower.

(d) The Administrative Agent's receipt of an executed copy of a certificate signed by a Responsible Officer certifying the Borrower's Sustainability Metric Components for the calendar year ended December 31, 2020 (solely for purposes of this Section 4.01(d), reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ended December 31, 2020).

(e) The representations and warranties of the Borrower contained in Article V shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Closing Date, except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) as of such earlier date.

(f) No Default shall exist on the Closing Date, and, if the Borrower shall have requested any Credit Extension be made on such date, no Default would result from such proposed Credit Extension or from the application of the proceeds thereof.

(g) If any Credit Extension is to be made on the Closing Date, the Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, (i) this Agreement and each other document to which it is a party or which it has reviewed and (ii) any other matter required hereunder or thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received a written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions to All Credit Extensions after the Closing Date.**

The obligation of each Lender to honor any Request for Credit Extension (other than (x) the extensions of credit, if any, requested by the Borrower to be made on the Closing Date, (y) a Committed Loan Notice requesting only a conversion of Loans to another Type, or a continuation of Term SOFR Loans, and (z) a Borrowing of Incremental Term Loans on the relevant Increase Effective Date) is subject to the following conditions precedent:

(a) The representations and warranties of the ~~Borrower~~Loan Parties contained in Article V or any other Loan Document shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Credit Extension (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist on the date of such Credit Extension, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each such Request for Credit Extension (other than (x) the extensions of credit, if any, requested by the Borrower to be made on the Closing Date, (y) a Committed Loan Notice requesting only a conversion of Loans to another Type, or a continuation of Term SOFR Loans, and (z) a Borrowing of Incremental Term Loans on the relevant Increase Effective Date) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V

## REPRESENTATIONS AND WARRANTIES

~~The Borrower~~Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

**5.01 Existence, Qualification and Power.**

Each ~~of the Borrower~~Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and (c) is duly qualified to do business and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a) (other than with respect to ~~the Borrower~~any Loan Party or any Material Subsidiary), clause (b)(i) or clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02 Authorization; No Contravention**.

The execution, delivery and performance by ~~the Borrower~~each Loan Party of each Loan Document to which it is party has been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of ~~the Borrower's~~such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which ~~the Borrower~~such Loan Party is party or affecting ~~the Borrower~~such Loan Party or the properties of ~~the Borrower~~such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which ~~the Borrower~~such Loan Party or its property is subject; or (c) violate any Law; except in each case referred to in clause (b) or (c), to the extent such conflict, breach, contravention or violation, or creation of any such Lien or required payment, could not reasonably be expected to have a Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents**.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, ~~the Borrower~~any Loan Party of this Agreement or any other Loan Document, except for such approvals, consents, exemptions, authorizations or other actions or notices or filings which have already been completed or obtained.

**5.04 Binding Effect**.

This Agreement has been, and each other Loan Document to which each Loan Party is a party, when delivered hereunder, will have been, duly executed and delivered by ~~the Borrower~~such Loan Party. This Agreement constitutes, and each other Loan Document to which each Loan Party is a party when so delivered will constitute, a legal, valid and binding obligation of ~~the Borrower~~such Loan Party, enforceable against ~~the Borrower~~such Loan Party in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws, now or hereafter in effect, relating to or affecting the enforcement of creditors' rights generally and except that the remedy of specific performance and other equitable remedies are subject to judicial discretion.

**5.05 Financial Statements; No Material Adverse Effect**.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and material Indebtedness, in each case, to the extent required by GAAP.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal quarter ended June 30, 2022, and the related unaudited consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on such date, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein or as otherwise permitted pursuant to Section 1.03, (ii) fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and material Indebtedness, in each case, to the extent required by GAAP.

(c) Since the date of the Audited Financial Statements, there has been no event or condition, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

**5.06 Litigation.**

There are no actions, suits, proceedings, claims, investigations or disputes pending or, to the knowledge of ~~the Borrower~~any Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against ~~the Borrower~~any Loan Party or any of ~~its~~their respective Subsidiaries or against any of their properties or revenues that (a) affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.**

No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property and Valid Leasehold Interests; Liens.**

(a) Each of the ~~Borrower~~Loan Parties and each ~~Subsidiary~~of their respective Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title or valid leasehold interests as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of ~~the Borrower~~each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

**5.09 Environmental Compliance.**

There are no existing violations of Environmental Laws by ~~the Borrower~~any Loan Party or any Subsidiary or claims against ~~the Borrower~~any Loan Party or any Subsidiary alleging potential liability under, or responsibility for the violation of, any Environmental Law that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10 Insurance.**

~~The Borrower~~Each Loan Party and each of its Subsidiaries maintain or require the tenants or managers of their owned properties to maintain insurance that complies with the requirements set forth in Section 6.07.

**5.11 Taxes**.

~~The Borrower~~Each Loan Party and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which 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, or (b) where the failure to take any of the foregoing actions could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect. To the knowledge of ~~the Borrower~~any Loan Party, there is no proposed tax assessment against ~~the Borrower~~such Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. As of the Closing Date, neither the Borrower nor any Subsidiary thereof is party to any tax sharing agreement.

**5.12 ERISA Compliance.**

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws, except for any such failures to comply as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of ~~the Borrower~~any Loan Party, nothing has occurred that could reasonably be expected to prevent, or cause the loss of, such qualification. ~~The Borrower~~Each Loan Party and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of ~~the Borrower~~any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) ~~neither the Borrower~~no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) ~~neither the Borrower~~no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) ~~neither the Borrower~~no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA; except in each case referred to in clauses (i) through (v), to the extent that any such event, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) As of the Closing Date, the Borrower is not and will not be (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to Section 4975 of the Code, (iii) 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 or (iv) a "governmental plan" within the meaning of ERISA.

**5.13 Margin Regulations; Investment Company Act; REIT Status.**

(a) ~~The Borrower is not~~No Loan Party is engaged and no Loan Party will ~~not~~ engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) ~~The Borrower~~No Loan Party is ~~not~~, and no Loan Party is ~~not~~ required to be, registered as an "investment company" under the Investment Company Act of 1940.

(c) The ~~Borrower~~Parent Guarantor meets all requirements to qualify as a REIT.

**5.14 Disclosure**.

(a) No report, financial statement, certificate or other information furnished in writing by or on behalf of ~~the Borrower~~any Loan Party or any of its Subsidiaries to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as and when furnished and as modified or supplemented by other information so furnished), together with all such information previously provided and when taken as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made (together with all such information previously provided and when taken as a whole), not materially misleading; provided, however, that it is understood that ~~the Borrower~~no Loan Party makes ~~no~~any representation or warranty with respect to any general economic or specific industry information, any projections, pro forma financial information, financial estimates, forecasts and forward-looking information, except that, with respect to projected financial information concerning the ~~Borrower and its~~Loan Parties and their respective Subsidiaries furnished in writing by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, ~~the Borrower~~each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information was prepared. It is further understood that (i) any projected financial information furnished to the Administrative Agent or any Lender is not to be viewed as facts, is not a guarantee of future performance and is subject to significant uncertainties and contingencies, many of which are beyond ~~the Borrower's~~a Loan Party's control, (ii) no assurance is given by ~~the Borrower~~such Loan Party that such projections will be realized and (iii) the actual results may differ from such projections and such differences may be material.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification delivered to the Administrative Agent and/or any Lender pursuant to Section 4.01(c), if applicable, is true and correct in all respects.

**5.15 Compliance with Laws.**

Each of the ~~Borrower~~Loan Parties and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**5.16 Intellectual Property; Licenses, Etc.**

~~The Borrower~~Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing is not a representation or warranty with respect to infringement or other violation of the IP Rights of any other Person (which is addressed in the following sentence of this Section 5.16). To the knowledge of ~~the Borrower~~any Loan Party, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by ~~the Borrower~~such Loan Party or any Subsidiary infringes upon any rights held by any other Person to an extent that such infringement could reasonably be expected to result in a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending against ~~the Borrower~~any Loan Party or any of its Subsidiaries or, to the knowledge of ~~the Borrower~~any Loan Party, threatened against ~~the Borrower~~such Loan Party or any of its Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.17 Use of Proceeds.**

The proceeds of the Loans hereunder will be used solely for the purposes specified in Section 6.11. No proceeds of the Loans hereunder will be used for the acquisition of another Person unless the board of directors (or other comparable governing body) or stockholders (or other equity owners), as appropriate, of such other Person has approved such acquisition.

**5.18 Taxpayer Identification Number.**

~~The Borrower's~~Each Loan Party's true and correct U.S. taxpayer identification number is set forth on Schedule 10.02.

**5.19 Sanctions.**

None of the ~~Borrower~~Loan Parties, any Subsidiary of the ~~Borrower~~Loan Parties or, to the knowledge of the chief executive officer, chief financial officer or general counsel of ~~the Borrower~~any Loan Party, any director, officer or employee thereof is an individual or entity that is currently (i) the subject of any Sanctions or in violation of any Sanctions or (ii) located, organized or resident in a Designated Jurisdiction.

**5.20 Affected Financial Institution.**

~~The Borrower~~No Loan Party is ~~not~~ an Affected Financial Institution.

**5.21 Anti-Corruption Laws.**

~~The Borrower~~Each Loan Party and each of its Subsidiaries (a) have conducted their businesses for the past two years (or if any Loan Party or Subsidiary was formed within the past two years, for the duration of such Loan Party's or Subsidiary's existence) and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of ~~the Borrower~~such Loan Party, their respective directors, officers, agents and employees are, in each case, in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar applicable anti-money-laundering and anti-corruption legislation in other applicable jurisdictions, in any such case of the foregoing, to the extent applicable to, and binding on, the ~~Borrower and its~~Loan Parties and their Subsidiaries (collectively, "Anti-Corruption Laws"), and (b) have instituted and maintain policies and procedures reasonably designed to promote and achieve compliance by ~~the Borrower~~each Loan Party, its Subsidiaries and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of ~~the Borrower~~such Loan Party, their respective directors, officers, agents and employees with applicable Anti-Corruption Laws and applicable Sanctions.

**5.22 Solvency.**

As of the Closing Date, immediately after giving effect to the initial Credit Extensions (if any) made on the Closing Date, (a) the fair value of the assets of the Borrower and its Subsidiaries, taken as a whole, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and mature; and (c) the Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

## ARTICLE VI

## AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent Obligations that are not then due and payable), ~~the Borrower~~each Loan Party shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.12) cause each ~~Subsidiary~~of its Subsidiaries to:

**6.01 Financial Statements.**

Deliver to the Administrative Agent (for distribution to each Lender):

(a) as soon as available, but in any event within five (5) Business Days following the date the ~~Borrower~~Parent Guarantor is required to file its Form 10-K with the SEC (without giving effect to any extension of such due date, whether obtained by filing the notification permitted by Rule 12b-25 or any successor provision thereto or otherwise) (commencing with the fiscal year ending December 31, 2022), a consolidated balance sheet of the ~~Borrower and its Subsidiaries~~Group as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable securities laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (provided that, to the extent the components of such consolidated financial statements relating to a prior fiscal period are separately audited by different independent public accounting firms, the audit report of any such accounting firm may contain a qualification or exception as to scope of such consolidated financial statements as they relate to such components); and

(b) as soon as available, but in any event within five (5) Business Days following the date the ~~Borrower~~Parent Guarantor is required to file its Form 10-Q with the SEC (without giving effect to any extension of such due date, whether obtained by filing the notification permitted by Rule 12b-25 or any successor provision thereto or otherwise) (commencing with the fiscal quarter ending September 30, 2022), an unaudited consolidated balance sheet of the ~~Borrower and its Subsidiaries~~Group as at the end of such fiscal quarter, and the related unaudited consolidated statements of income or operations for such fiscal quarter and for the portion of the ~~Borrower's~~Parent Guarantor's fiscal year then ended, and an unaudited statement of cash flow for the portion of the ~~Borrower's~~Parent Guarantor's fiscal year then ended setting forth in each case in comparative form the figures for the corresponding date of the previous fiscal year or the corresponding portion of the previous fiscal year, as applicable, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer as fairly presenting the consolidated financial condition of the ~~Borrower and its Subsidiaries~~Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

**6.02 Certificates; Other Information.**

Deliver to the Administrative Agent (for distribution to each Lender):

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ending September 30, 2022), a duly completed Compliance Certificate signed by a Responsible Officer;

(b) promptly after any request by the Administrative Agent, copies of any management letters submitted to the board of directors (or the audit committee of the board of directors) of ~~the Borrower~~any Loan Party by independent accountants in connection with an audit of the accounts of the ~~Borrower~~Loan Parties and their respective Subsidiaries;

(c) [reserved];

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of ~~the Borrower~~any Loan Party, and copies of all annual, regular, periodic and special reports and registration statements which ~~the Borrower~~such Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) promptly, and in any event within five (5) Business Days after receipt thereof by ~~the Borrower~~any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation by such agency regarding financial or other operational results of ~~the Borrower~~such Loan Party or any Subsidiary thereof, other than ordinary course or routine notices, correspondence, inquiries, examinations or audits;

(f) promptly following any written request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation (to the extent ~~the Borrower~~any Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and has provided a Beneficial Ownership Certification to any Lender or the Administrative Agent in connection with this Agreement as required by the Beneficial Ownership Regulation); and

(g) promptly, such additional information regarding the business, financial or corporate affairs of ~~the Borrower~~any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower or the Parent Guarantor posts such documents, or provides a link thereto on the Borrower's or the Parent Guarantor's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's or the Parent Guarantor's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail), which shall notify each Lender, of the posting of any such documents and, upon request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower or the Parent Guarantor with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

~~The Borrower~~Each Loan Party hereby acknowledges that (a) the Administrative Agent and/or the Specified Arrangers will make available to the Lenders materials and/or information provided by or on behalf of ~~the Borrower~~any Loan Party hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel that do not wish to receive material non-public information with respect to ~~the Borrower~~any Loan Party or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. ~~The Borrower~~Each Loan Party hereby agrees that so long as ~~the Borrower~~such Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (x) by marking Borrower Materials "PUBLIC," ~~the Borrower~~each Loan Party shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to ~~the Borrower~~such Loan Party or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07) (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Arrangers shall treat any Borrower Materials that are not marked "PUBLIC" or that are marked "PRIVATE" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, ~~the Borrower~~no Loan Party shall be under ~~no~~any obligation to mark any Borrower Materials "PUBLIC."

**6.03 Notices.**

Promptly following knowledge thereof by a Responsible Officer, notify the Administrative Agent (which shall notify each Lender) of:

(a) the occurrence of any Default or Event of Default;

(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) the information set forth in Section 6.13 at the times required therein;

(d) any material change in accounting policies or financial reporting practices by ~~the Borrower~~any Loan Party or any Subsidiary; and

(e) any announcement by Moody's, S&P or Fitch of any change or possible adverse change in a Debt Rating.

Each notice pursuant to this Section 6.03 (other than Section 6.03(e)) shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the ~~Borrower~~applicable Loan Party has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Taxes.**

Pay and discharge as the same shall become due and payable, all of its tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person, in each case in this Section 6.04, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.05 Preservation of Existence, Etc.**

(a) Preserve, renew and maintain in full force and effect its legal existence and, where applicable, good standing under the Laws of the jurisdiction of its organization except in a transaction not prohibited by Section 7.04 or 7.05, or to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.**

(a) Maintain, preserve and protect, or make contractual or other provisions to cause to maintain, preserve or protect, all of its properties and equipment necessary in the operation of its business in good working order and condition, 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; and (b) make, or make contractual or other provisions to cause to be made, all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.**

Maintain, or use reasonable efforts to cause the tenants under all leases to which it is a party as landlord or the manager of its facilities to maintain, insurance with respect to its owned properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and owning similar properties in localities where the ~~Borrower~~applicable Loan Party or the applicable Subsidiary operates, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons (including with respect to any captive insurance subsidiary or self-insurance, a system or systems of self-insurance and reinsurance which accords with the practices of similar businesses).

**6.08 Compliance with Laws.**

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.**

Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of ~~the Borrower or such~~any Loan Party or its Subsidiary, as the case may be.

**6.10 Inspection Rights.**

Subject to (x) rights of tenants, (y) applicable health and safety laws, and (z) except to the extent disclosure could reasonably be expected to contravene attorney client privilege or similar protection or violate any confidentiality or privacy obligation or otherwise contravene applicable law, permit representatives and independent contractors of the Administrative Agent and each Lender (in each case of a Lender, coordinated through the Administrative Agent) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (provided that the ~~Borrower~~Loan Parties shall have the right to participate in any such discussions), all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the ~~Borrower~~Loan Parties; provided, however, that, excluding any such visits and inspections during the continuation of an Event of Default, only one (1) such visit and inspection by the Administrative Agent during any calendar year shall be at the reasonable expense of the Borrower; provided, further, however, that when an Event of Default exists and is continuing the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

**6.11 Use of Proceeds.**

Use proceeds from the Committed Loans for working capital and general corporate purposes, including Investments not prohibited by Section 7.02, dividends and distributions, and acquisitions and developments and, in each case, not in contravention of any applicable Law in any material respect or of any Loan Document.

**6.12 REIT Status.**

~~Maintain the Borrower's~~The Parent Guarantor shall maintain its qualification as a real estate investment trust under Sections 856 through 860 of the Code.

**6.13 Employee Benefits.**

(a) Comply with the applicable provisions of ERISA and the Code with respect to each Plan, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect and (b) furnish to the Administrative Agent (x) within five (5) Business Days after any Responsible Officer or any ERISA Affiliate knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of ~~the Borrower~~any Loan Party or any of its ERISA Affiliates in an aggregate amount exceeding the Threshold Amount or the imposition of a Lien, a statement setting forth details as to such ERISA Event and the action, if any, that ~~the Borrower~~such Loan Party or ERISA Affiliate proposes to take with respect thereto, and (y) upon request by the Administrative Agent, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by ~~the Borrower~~any Loan Party or any ERISA Affiliate with the Internal Revenue Service with respect to each Pension Plan; (ii) the most recent actuarial valuation report for each Pension Plan; (iii) all notices received by ~~the Borrower~~any Loan Party or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan as the Administrative Agent shall reasonably request.

**6.14 Anti-Corruption Laws.**

Conduct its businesses in compliance in all material respects with applicable Anti-Corruption Laws and maintain policies and procedures reasonably designed to promote and achieve compliance by ~~the Borrower~~each Loan Party, its Subsidiaries and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of ~~the Borrower~~such Loan Party, their respective directors, officers, agents and employees with applicable Anti-Corruption Laws.

## ARTICLE VII

## NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent Obligations that are not then due and payable), ~~the Borrower~~no Loan Party shall ~~not~~, nor shall it permit any Subsidiary (except Section 7.09 shall apply only to Wholly-Owned Subsidiaries) to, directly or indirectly:

**7.01 Liens**.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens securing Indebtedness of the Parent Guarantor and its Subsidiaries permitted under Section 7.03;

(c) Liens for Taxes not yet due 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;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days 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;

(e) pledges or deposits or other Liens arising in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, or to secure statutory obligations, other than any Lien imposed by ERISA;

(f) Liens and rights of setoff of banks and securities intermediaries in respect of deposit accounts and securities accounts maintained in the ordinary course of business;

(g) the interests of lessees and lessors under leases or subleases of, and the interest of managers or operators with respect to, real or personal property made in the ordinary course of business;

(h) Liens on property where the ~~Borrower or any Subsidiary~~Parent Guarantor or its Subsidiaries is insured against such Liens by title insurance;

(i) Liens on property acquired by the ~~Borrower~~Parent Guarantor or any ~~Subsidiary~~of its Subsidiaries after the date hereof and which are in place at the time such properties are so acquired and not created in contemplation of such acquisition;

(j) Liens securing assessments or charges payable to a property owner association or similar entity, which assessments are not yet due and payable or that 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;

(k) Liens securing assessment bonds, so long as the ~~Borrower~~Parent Guarantor or its Subsidiaries is not in default under the terms thereof;

(l) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(m) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(n) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h) or securing appeal or other surety bonds related to such judgments;

(o) Liens solely on any cash earnest money deposits made by the ~~Borrower~~Parent Guarantor or any of its Subsidiaries in connection with any letter of intent or purchase agreement;

(p) assignments to a reverse Section 1031 exchange trust;

(q) licenses of intellectual property granted in the ordinary course of business;

(r) Liens on assets of the Borrower or any ~~Subsidiary~~of its Subsidiaries securing obligations under Swap Contracts; and

(s) precautionary UCC filings in respect of operating leases.

; provided that, notwithstanding the forgoing, in no event shall any Loan Party create, incur, assume or suffer to exist any Lien on the Equity Interests of Borrower or any other Subsidiary of Parent Guarantor that directly or indirectly owns any Equity Interests of Borrower, in each case, that is owned by a Loan Party.

**7.02 Investments.**

(a) Make or allow Investments in Development Property to exceed, in the aggregate at any one time outstanding, 35% of Enterprise Gross Asset Value.

(b) Make or allow Investments in Joint Ventures to exceed, in the aggregate at any one time outstanding, 25% of Enterprise Gross Asset Value. For purposes of this Section 7.02(b), the ~~Borrower's~~Loan Parties' aggregate Investment in Joint Ventures will be valued at book value as shown on the consolidated balance sheet of the ~~Borrower~~Parent Guarantor, as determined in accordance with GAAP.

**7.03 Indebtedness**.

Create, incur, assume or suffer to exist any Indebtedness of ~~the Borrower~~any Loan Party or any of its Subsidiaries, except:

~~(a)~~(a) Indebtedness under the Loan Documents; and

(b) other Indebtedness; provided that (i) at the time of the incurrence of such Indebtedness and immediately after giving effect thereto (including any Liens associated therewith) no Event of Default has occurred and is continuing or would result therefrom and (ii) with respect to obligations of ~~the Borrower~~a Loan Party in respect of Swap Contracts, such Swap Contracts shall be (x) entered into in order to manage existing or anticipated risk and not for speculative purposes~~.~~ or (y) (i) for the sale of Equity Interests issued by Guarantor at a future date that could be discharged solely by (1) delivery of the Parent Guarantor's Equity Interests, or, (2) solely at Parent Guarantor's option made at any time, payment of the net cash value of such Equity Interests at the time, irrespective of the form or duration of such agreement, commitment or arrangement and (ii) not for speculative purposes.

**7.04 Fundamental Changes.**

Merge, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom, (i) any Person may merge with or into, consolidate with or amalgamate with the Borrower in a transaction in which the Borrower shall be the continuing or surviving Person, (ii) any Person (other than Parent Guarantor) may merge with or into, consolidate with or amalgamate with any Subsidiary (other than the Borrower) in a transaction in which the continuing or surviving Person shall be a Subsidiary of the Borrower, (iii) any Subsidiary of the Borrower may merge with or into, consolidate with or amalgamate with any Person in order to consummate an Investment permitted by Section 7.02 or a Disposition permitted by Section 7.05; (iv) any Subsidiary of the Borrower may merge into, the Parent Guarantor, the Borrower or any other Subsidiary of the Borrower; and (v) any Subsidiary of the Borrower may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders.

**7.05 Dispositions**.

Make any Disposition (other than any Disposition to ~~the Borrower~~any Loan Party or any Subsidiary) of all or substantially all of the assets (whether now owned or hereafter acquired, including pursuant to a Delaware LLC Division) of ~~the Borrower~~any Loan Party and its Subsidiaries, taken as a whole.

**7.06 Restricted Payments.**

Declare or make, directly or indirectly, any Restricted Payment; provided that, (i) ~~the Borrower~~(a) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment required to qualify and maintain ~~the Borrower's~~such Loan Party's qualification as a real estate investment trust under Sections 856 through 860 of the Code, and (~~i~~b) ~~the Borrower~~each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment required to avoid the payment of federal or state income or excise tax; which permitted Restricted Payments under clauses (i)(a) and (i)(b), for the avoidance of doubt, include Restricted Payments from the Borrower to its equity holders in order for the Parent Guarantor to comply with the foregoing, (~~ii~~ii) so long as no Default shall have occurred and be continuing or would result therefrom, ~~the Borrower~~each Loan Party and each Subsidiary may purchase, redeem, retire, acquire, cancel or terminate Equity Interests issued by ~~the Borrower~~such Loan Party or such Subsidiary so long as immediately after giving effect thereto the ~~Borrower~~Parent Guarantor is in compliance on a Pro Forma Basis with the requirements of Section 7.10(e), (~~iv~~iii) so long as no Default shall have occurred and be continuing or would result therefrom, ~~the Borrower~~each Loan Party and each Subsidiary may make any payment on account of any return of capital to the ~~Borrower's~~Parent Guarantor's stockholders, partners or members (or the equivalent Person thereof), (~~v~~iv) ~~the Borrower~~each Loan Party and each Subsidiary may declare and make dividend payments, other distributions or other Restricted Payments payable solely in the ~~common stock or other common~~ Equity Interests in such Person, (~~vi~~v) any Subsidiary may at any time make Restricted Payments to the Parent Guarantor, the Borrower, or any other Subsidiary and, solely to the extent such Restricted Payments to other holders of its Equity Interests are required by its Organization Documents, to such other holders of Equity Interests, and (~~vii) the Borrower~~vi) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment within sixty (60) days after the date of declaration thereof, if on the date of declaration of such payment, such payment would have been permitted pursuant to another clause of this Section 7.06 and, on the date of such payment, no Default under Section 8.01(a), (f) or (g) shall have occurred and be continuing.

**7.07 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by ~~the Borrower~~each Loan Party and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.**

Enter into any transaction of any kind with any Affiliate of ~~the Borrower~~any Loan Party (other than transactions between or among ~~the Borrower~~a Loan Party and a Subsidiary (including any entity that becomes a Subsidiary as a result of such transaction) (or any combination thereof)), whether or not in the ordinary course of business, except (i) transactions on fair and reasonable terms substantially as favorable to ~~the Borrower~~such Loan Party or such Subsidiary as would be obtainable by ~~the Borrower~~such Loan Party or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (ii) payments of compensation, perquisites and fringe benefits arising out of any employment or consulting relationship in the ordinary course of business, (iii) making Restricted Payments permitted by this Agreement, (iv) payments (whether in cash, securities or other property) by any non-Wholly-Owned Subsidiary of the Borrower, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests of such Subsidiary, or on account of any return of capital to such Subsidiary's stockholders, partners or members (or the equivalent Person thereof), in any such case, made to holders of Equity Interests in such Subsidiary (x) to the extent required pursuant to such Subsidiary's Organization Documents or (y) to the extent such payment would have been permitted by Section 7.06 had it constituted a Restricted Payment, (v) other transactions expressly permitted by this Agreement, (vi) transactions with Affiliates that are Disclosed Matters (together with any amendments, restatements, extensions, replacements or other modifications thereto that are not adverse to the interests of the Lenders in their capacities as such) ~~and~~, (vii) transactions in the ordinary course of business that comply with the requirements of the North American Securities Administrators Association's Statement of Policy of Real Estate Investment Trusts and (viii) transactions between a Loan Party or Subsidiary and any "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of any Loan Party or Subsidiary.

**7.09 Burdensome Agreements**.

Enter into, assume or otherwise be bound, or permit any Wholly-Owned Subsidiary to enter into, assume or otherwise be bound, by any Negative Pledge other than (i) any Negative Pledge contained in an agreement entered into in connection with any Indebtedness that is permitted pursuant to Section 7.03, which Indebtedness is of a type that customarily includes a Negative Pledge or with respect to which such Negative Pledge is no more restrictive on ~~the Borrower~~a Loan Party or such Wholly-Owned Subsidiary in any material respect, when taken as a whole, than this Section 7.09 (as determined in good faith by the Borrower); (ii) any Negative Pledge required or imposed by, or arising under or as a result of, any Law; (iii) Negative Pledges contained in (x) the 2021 Credit Agreement, the agreements set forth on Schedule 7.09 or that are Disclosed Matters; (y) any agreement relating to the Disposition of any Subsidiary or any assets pending such Disposition; provided that, in any such case, the Negative Pledge applies only to the Subsidiary or the assets that are the subject of such Disposition; or (z) any agreement in effect at the time any Person becomes a Wholly-Owned Subsidiary so long as such agreement was not entered into in contemplation of such Person becoming a Wholly-Owned Subsidiary and such restriction only applies to such Person and/or its assets, (iv) customary restrictions in leases, licenses and other contracts restricting the assignment thereof, (v) other customary restrictions set forth in agreements relating to assets specified in such agreements and entered into in the ordinary course of business to the extent such restrictions shall solely apply to such specified assets; and (vi) restrictions that apply only to the Equity Interests in, or assets of, any Person other than ~~the Borrower~~a Loan Party or a Wholly-Owned Subsidiary, in each case as such agreements, leases or other contracts may be amended from time to time and including any renewal, extension, refinancing or replacement thereof; provided that, with respect to any agreement described in clause (iii), such amendment, renewal, extension, refinancing or replacement does not contain restrictions of the type prohibited by this Section 7.09 that are, in the aggregate, more onerous in any material respect on ~~the Borrower~~a Loan Party or any Wholly-Owned Subsidiary than the restrictions, in the aggregate, in the original agreement.

**7.10 Financial Covenants.** ~~Commencing with the fiscal quarter of the Borrower ending September 30, 2022:~~

(a) Leverage Ratio. Permit the Leverage Ratio to be greater than 0.60 to 1.00 as of the end of any fiscal quarter. Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the ~~Borrower~~Parent Guarantor shall be permitted to increase the maximum Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

(b) Secured Debt Ratio. Permit the Secured Debt Ratio to be greater than 0.40 to 1.00 as of the end of any fiscal quarter.

(c) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio to be less than 1.50 to 1.00 as of the end of any fiscal quarter.

(d) Unsecured Leverage Ratio. Permit the Unsecured Leverage Ratio to be greater than 0.60 to 1.00 as of the end of any fiscal quarter. Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the ~~Borrower~~Parent Guarantor shall be permitted to increase the maximum Unsecured Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Unsecured Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

(e) Consolidated Tangible Net Worth. Permit the Consolidated Tangible Net Worth to be less than $7,700,000,000 as of the end of any fiscal quarter.

**7.11 Sanctions.**

Directly or, to its knowledge, indirectly, use any part of the proceeds of any Credit Extension or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions (except to the extent permitted for a Person required to comply with such Sanctions), or (ii) in any other manner that will result in a violation by any Person of Sanctions.

**7.12 Anti-Corruption Laws.**

Directly or, to its knowledge, indirectly use the proceeds of any Credit Extension for any purpose which would violate in any material respect any applicable Anti-Corruption Laws.

## ARTICLE VIII

## EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.**

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower, any other Loan Party or any of its their respective Subsidiaries fails to perform or observe any term, covenant or agreement contained in any of (i) Section 6.03(b), 6.05 (solely with respect to the legal existence of the Borrower Loan Parties) or 6.11 or Article VII and such failure continues for five (5) consecutive Business Days, or (ii) Section 6.03(a) or Section 6.03(d) and such failure continues for fifteen (15) consecutive Business Days; or

(c) Other Defaults. The Borrower, any Loan Party or any of its their respective Subsidiaries fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or 8.01(b)) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) consecutive days after the receipt by the Borrower of written notice of such failure from the Administrative Agent; provided that, if such failure is of such a nature that can be cured but cannot with reasonable effort be completely cured within thirty (30) days, then such thirty (30) day period shall be extended for such additional period of time (not exceeding ninety (90) additional days) as may be reasonably necessary to cure such failure so long as the Borrower such Loan Party or its Subsidiaries, as applicable, commence such cure within such thirty (30) day period and diligently prosecute same until completion; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of ~~the Borrower~~any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made (or, in the case of the representations and warranties in Section 5.14(b) or any representation and warranty that is qualified by materiality, shall be incorrect in any respect when made or deemed made) and, with respect to any representation, warranty, certification or statement (other than the representations and warranties in Section 5.14(b)) not known by ~~the Borrower~~such Loan Party at the time made or deemed made to be incorrect, the defect causing such representation or warranty to be incorrect when made or deemed made is not removed within thirty (30) days after the first to occur of (i) the date upon which a Responsible Officer of ~~the Borrower~~any Loan Party obtains knowledge thereof or (ii) receipt by the Borrower of written notice thereof from the Administrative Agent; or

(e) Cross-Default. (i) The Borrower, the Parent Guarantor or any of ~~its~~their respective Subsidiaries (x) fails (after giving effect to any notice or grace periods applicable thereto) to make any required payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Recourse Indebtedness or (y) fails to observe or perform any other agreement or condition relating to any such Material Recourse Indebtedness contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, with the giving of notice if required, such Material Recourse Indebtedness pursuant to the terms thereof to be demanded or to become due or to require the Borrower, the Parent Guarantor or such Subsidiary to repurchase, prepay, defease or redeem (automatically or otherwise) or make an offer to repurchase, prepay, defease or redeem such Material Recourse Indebtedness pursuant to the terms thereof, prior to its stated maturity; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which ~~the Borrower~~any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which ~~the Borrower~~any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by ~~the Borrower~~such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; provided that this clause (e) shall not apply to (1) secured Indebtedness that becomes due and payable (or as to which an offer to repurchase, prepay, defease or redeem is required to be made) as a result of the voluntary Disposition of the property or assets securing such Indebtedness, if such Disposition is permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness that has become so due and payable (including as a result of such offer to repurchase, prepay, defease or redeem such Indebtedness) is assumed or repaid in full when and to the extent required under the document providing for such Indebtedness (after giving effect to any notice or grace periods applicable thereto), (2) any redemption, repurchase, conversion or settlement with respect to any convertible debt security which is consummated in accordance with the terms of such convertible debt security, unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (3) any early payment requirement or unwinding or termination with respect to any Swap Contract (A) not arising out of a default by ~~the Borrower~~any Loan Party or any Subsidiary and (B) to the extent that such Swap Termination Value owed has been paid in full by ~~the Borrower~~any Loan Party or any of its Subsidiaries when due; or

(f) Insolvency Proceedings, Etc. ~~The Borrower~~Any Loan Party or any of its Material Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged, undismissed or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undischarged, undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) ~~The Borrower~~Any Loan Party or any of its Material Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There is entered against ~~the Borrower~~any Loan Party or any of its Material Subsidiaries (i) a final non-appealable judgment or order that has not been discharged, satisfied, dismissed or vacated for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent (x) not paid, fully bonded or covered by independent third-party insurance as to which the insurer has not denied coverage or (y) for which ~~the Borrower~~such Loan Party or applicable Material Subsidiary has not been indemnified), or (ii) any one or more non-monetary final non-appealable judgments that have not been discharged, dismissed or vacated and that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case of clause (i) or (ii), (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of ~~the Borrower~~any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations arising under the Loan Documents, ceases to be in full force and effect; or ~~the Borrower~~any Loan Party or any of its Subsidiaries contests in writing in any manner the validity or enforceability of any material provision of any Loan Document; or ~~the Borrower~~any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports in writing to revoke, terminate or rescind any material provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control.

For purposes of clauses (f), (g), and (h) above, no Event of Default shall be deemed to have occurred with respect to a Material Group unless the type of event specified therein has occurred with respect to each Subsidiary that is a member of such Material Group.

**8.02 Remedies Upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Commitments of each Lender to make Loans to be terminated, whereupon such Commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the ~~Borrower~~Loan Parties;

(c) [reserved]; and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an Event of Default with respect to ~~the Borrower~~any Loan Party pursuant to Section 8.01(f) or (g) or the occurrence of an actual or deemed entry of an order for relief with respect to ~~the Borrower~~any Loan Party under the Bankruptcy Code, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

**8.03 Application of Funds.**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Section 2.18, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and fees, premiums and scheduled periodic payments, and any interest accrued thereon, due under any Swap Contract between ~~the Borrower~~any Loan Party and any Lender, or any Affiliate of a Lender, ratably among the Lenders (and, in the case of such Swap Contracts, Affiliates of Lenders) in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, payment of breakage, termination or other payments, and any interest accrued thereon, due under any Swap Contract between ~~the Borrower~~any Loan Party and any Lender, or any Affiliate of a Lender and amounts owing under Treasury Management Agreements, ratably among the Lenders (and, in the case of such Swap Contracts, Affiliates of Lenders) and the Treasury Management Lenders in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

## ARTICLE IX

## ADMINISTRATIVE AGENT

**9.01 Appointment and Authority.**

Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as otherwise expressly set forth herein and except with respect to Section 9.06, the provisions of this Article IX are solely for the benefit of the Administrative Agent and the Lenders, and ~~the Borrower~~no Loan Party shall ~~not~~ have any rights as a third-party beneficiary of any of such provisions.

**9.02 Rights as a Lender.**

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with ~~the Borrower~~any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**9.03 Exculpatory Provisions.**

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to ~~the Borrower~~any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the ~~Borrower~~Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**9.06 Resignation of Administrative Agent.**

The Administrative Agent may at any time resign as Administrative Agent upon thirty (30) days' notice to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the approval (not to be unreasonably withheld or delayed) of the Borrower (unless an Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States; provided that, if any such potential successor is not classified as a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, then the Borrower shall have the right to prohibit such potential successor from becoming the Administrative Agent in its reasonable discretion. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders (and subject to the approval (not to be unreasonably withheld or delayed) of the Borrower (unless an Event of Default has occurred and is continuing)), appoint a successor Administrative Agent meeting the qualifications set forth above; provided that, if any such potential successor is not classified as a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, then the Borrower shall have the right to prohibit such potential successor from becoming the Administrative Agent in its reasonable discretion; provided, further, that, if the retiring Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

**9.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Syndication Agents, or Co-Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

**9.09 Administrative Agent May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding under any Debtor Relief Law relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.10 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.10 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.10 Recovery of Erroneous Payments.**

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender, whether or not in respect of an Obligation due and owing by Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender in Same Day Funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by 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. Each Lender irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender promptly upon determining that any payment made to such Lender comprised, in whole or in part, a Rescindable Amount.

## ARTICLE X

## MISCELLANEOUS

**10.01 Amendments, Etc.**

Except as set forth in Section 2.02(f) in respect of Conforming Changes made pursuant to such section, Section 2.15 in respect of an extension of a Maturity Date, Section 2.16 in respect of an Incremental Term Loan Amendment, or Section 3.03 in respect of the replacement of Term SOFR and/or Conforming Changes or other amendments or modifications made pursuant to such section, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend the expiration date or increase the amount of any Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 2.07 or Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or Event of Default is not considered an extension or increase in the Commitments of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (other than mandatory prepayments (if any) with respect to any Loan) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided, however, that only the consent of the Required Class Lenders shall be necessary to amend the definition of "Default Rate" with respect to such Class or to waive any obligation of the Borrower to pay interest at the Default Rate with respect to such Class;

(d) change Section 2.14 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(e) change any provision of this Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender (but any change to the definition of "Required Term A-1 Lenders" or "Required Term A-2 Lenders" shall only require the written consent of each Lender under the applicable Term Facility);

(f) ~~[reserved]~~release all or substantially all of the value of the Guaranteed Obligations of the Guarantor under the Guaranty (except as provided herein) without the written consent of each Lender; or

(g) directly and materially adversely affect the rights of Lenders holding Commitments or Loans of one Class differently from the rights of Lenders holding Commitments or Loans of any other Class without the written consent of the applicable Required Class Lenders;

and provided, further, that (i) only the written consent of the Borrower and the Required Term A-1 Lenders shall be required to the extent such amendment, waiver or consent shall (x) amend, waive or otherwise modify any of the conditions precedent set forth in Section 4.02 with respect to any Credit Extension under the Term A-1 Facility or (y) impose any greater restriction on the ability of any Term A-1 Lender to assign any of its rights or obligations hereunder with respect to the Term A-1 Facility (and, for the avoidance of doubt, no other Lenders shall have any right to approve or disapprove any such amendment, waiver or consent described in this clause (i)); (ii) only the written consent of the Borrower and the Required Term A-2 Lenders shall be required to the extent such amendment, waiver or consent shall (x) amend, waive or otherwise modify any of the conditions precedent set forth in Section 4.02 with respect to any Credit Extension under the Term A-2 Facility or (y) impose any greater restriction on the ability of any Term A-2 Lender to assign any of its rights or obligations hereunder with respect to the Term A-2 Facility (and, for the avoidance of doubt, no other Lenders shall have any right to approve or disapprove any such amendment, waiver or consent described in this clause (ii)); (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) any fee letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto (and, for the avoidance of doubt, no other parties shall have any right to approve or disapprove any such amendment, waiver or consent). 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 (or all Lenders of a Class or each affected Lender of a Class) may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such 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 consent of such Defaulting Lender.

Notwithstanding anything to the contrary herein, (A) the Administrative Agent and the Borrower may, with the consent of the other (but without the consent of any other Person), amend, modify or supplement any Loan Document to correct, amend or cure any ambiguity, inconsistency, omission, mistake or defect or correct any obvious error or any error or omission of an administrative or technical nature so long as such amendment, modification or supplement does not impose additional obligations on any Lender; provided that the Administrative Agent shall promptly give the Lenders notice of, and provide to the Lenders a copy of, any such amendment, modification or supplement, and (B) this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, and such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

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

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

In addition, notwithstanding the foregoing, the Borrower may, by written notice to the Administrative Agent from time to time, make one or more offers (each, a "Loan Modification Offer") to all the Lenders of one or more Classes to make one or more amendments or modifications to (A) allow the maturity of the Accepting Lenders' (as defined below) Commitments or Loans of such Class(es) to be extended, (B) modify the Applicable Rate and/or fees payable with respect to the Accepting Lenders' Loans and/or Commitments of such Class(es), (C) modify any covenants or other provisions or add new covenants or provisions with respect to such Class(es) that are agreed between the Borrower, the Administrative Agent and the Accepting Lenders; provided that such modified or new covenants and provisions are applicable only during periods after the applicable Maturity Date that is in effect on the effective date of such Permitted Amendment, and (D) any other amendment to a Loan Document required to give effect to the Permitted Amendments described in clauses (A), (B) and (C) of this paragraph ("Permitted Amendments," and any amendment to this Agreement to implement Permitted Amendments, a "Loan Modification Agreement") pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower. Such notice shall set forth (i) the relevant Class(es) of Lenders to which the Borrower is making the Loan Modification Offer described in such notice, (ii) the terms and conditions of the requested Permitted Amendments and (iii) the date on which such Permitted Amendments are requested to become effective. Permitted Amendments shall become effective only with respect to the Commitments and/or Loans of the relevant Class(es) of the Lenders that accept the applicable Loan Modification Offer (such Lenders, the "Accepting Lenders") and, in the case of any Accepting Lender, only with respect to such Lender's Commitments and/or Loans of the relevant Class(es) as to which such Lender's acceptance has been made. The Borrower and each Accepting Lender shall execute and deliver to the Administrative Agent a Loan Modification Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof, and the Borrower shall also deliver such resolutions, opinions and other documents as reasonably requested by the Administrative Agent. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each of the parties hereto hereby agrees that (1) upon the effectiveness of any Loan Modification Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Permitted Amendments evidenced thereby and only with respect to each Accepting Lender's Commitments and Loans of the relevant Class(es) as to which such Lender's acceptance has been made, (2) any applicable Lender who is not an Accepting Lender may be replaced by the Borrower in accordance with Section 10.13, and (3) the Administrative Agent and the Borrower shall be permitted to make any amendments or modifications to any Loan Documents necessary to allow any borrowings, prepayments and commitment reductions to be ratable across any relevant Class of commitments to make Loans of such Class, the mechanics for which may be implemented through the applicable Loan Modification Agreement and may include technical changes related to the borrowing and repayment procedures of the Lenders; provided that with the consent of the Accepting Lenders such prepayments and commitment reductions may be applied on a non-ratable basis to the non-Accepting Lenders of the relevant Class(es).

Notwithstanding anything herein to the contrary, this Agreement may be amended in connection with Incremental Term Loans, as set forth in Section 2.16(e)(iii).

**10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.02(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the ~~Borrower~~Loan Parties).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in Section 10.02(b) below, shall be effective as provided in such Section 10.02(b).

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

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice, e-mail or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to ~~the Borrower~~any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of ~~the Borrower's~~any Loan Party's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to ~~the Borrower~~any Loan Party, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower and any other Loan Party and the Administrative Agent may change its address, facsimile number, telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number, telephone number or e-mail address for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to ~~the Borrower~~any Loan Party or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in accordance with Section 10.02. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.**

No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against ~~the Borrower~~any Loan Party and its Subsidiaries or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) [reserved], (c) any Lender from enforcing payments of amounts payable to such Lender pursuant to Sections 3.01, 3.04, 3.05 and 10.04 or from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.14), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to ~~the Borrower~~any Loan Party or any Subsidiary under any Debtor Relief Law; and provided, further, that, if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.14, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. ~~The Borrower~~Each Loan Party shall, jointly and severally, pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Arrangers (limited, in the case of legal fees, to the reasonable and documented fees, charges and disbursements of one primary counsel, and, if applicable, one local counsel in each material jurisdiction, for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, due diligence, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) [reserved] and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (limited, in the case of legal fees, to the reasonable and documented fees, charges and disbursements of (x) one primary counsel for the Administrative Agent (and, if reasonably required, one counsel for the Administrative Agent per specialty area and one local counsel for the Administrative Agent per applicable jurisdiction) and (y) one additional counsel for all the Lenders (and, if reasonably required, one additional counsel per specialty area and one local counsel per applicable jurisdiction), plus additional counsel for the Lenders as necessary in the event of an actual or potential conflict of interest among the Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04, or (B) in connection with the Loans made hereunder, including all such reasonable and documented out-of-pocket expenses (subject to the limitations set forth above with respect to legal fees) incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the ~~Borrower. The Borrower shall~~Loan Parties. Each Loan Party shall, jointly and severally, indemnify the Administrative Agent (and any sub-agent thereof), each Lender, the Agents and their Affiliates and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related reasonable and documented out-of-pocket expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of one primary counsel for the Indemnitees; provided that reimbursement for reasonable and documented out-of-pocket fees, charges and disbursements of additional counsel of the Indemnitees will be limited to such specialist counsel as may reasonably be required by the Indemnitees, a single firm of local counsel for the Indemnitees in each material jurisdiction and, in the event of an actual or potential conflict of interest (as reasonably determined by the applicable Indemnitee), one additional firm of counsel to each group of similarly affected Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by ~~the Borrower~~any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby (including, without limitation, each Lender's agreement to make Loans or the use or intended use of the proceeds thereof) or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by ~~the Borrower~~any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to ~~the Borrower~~any Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by ~~the Borrower~~any Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses (A)(x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Indemnified Parties or (y) result from a claim brought by ~~the Borrower~~any Loan Party against an Indemnitee for breach in bad faith or a material breach of the obligations of such Indemnitee or any of its Related Indemnified Parties hereunder or under any other Loan Document, if ~~the Borrower~~any Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (B) arise out of a dispute solely among Indemnitees and not resulting from any act or omission by ~~the Borrower~~any Loan Party or any of its Affiliates (other than any such losses, claims, damages, penalties, liabilities or related reasonable and documented out-of-pocket expenses against an Indemnitee in its capacity or in fulfilling its role as an Agent). Notwithstanding the foregoing, Section 3.01 shall be the sole remedy for any indemnification claim in respect of Taxes. ~~The Borrower~~No Loan Party shall ~~not~~, except as a result of its indemnification obligations hereunder, and nor shall any of its Related Parties have any liability for any special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof.

(c) Reimbursement by Lenders. To the extent that ~~the Borrower~~any Loan Party for any reason fails to indefeasibly pay any amount required under Section 10.04(a) or 10.04(b) to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing and without relieving ~~the Borrower~~such Loan Party of its obligations with respect thereto, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's Applicable Percentage at such time) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 10.04(c) are subject to the provisions of Section 2.13(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, ~~the Borrower~~each Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee or Related Indemnified Party referred to in Section 10.04(b) 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 to the extent of such Indemnitee's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment.

(e) Payments. All amounts due under this Section 10.04 shall be payable not later than ten (10) Business Days after demand therefor (accompanied by backup documentation to the extent available).

(f) Survival. The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.**

To the extent that any payment by or on behalf of ~~the Borrower~~any Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may ~~not~~ assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment or grant of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent 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(s) and the Loans with respect to any Facility at the time owing to it); provided that, in each case with respect to any Facility, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's applicable Commitment(s) and/or the applicable Loans at the time owing to it, in each case with respect to such Facility, 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 subsection (b)(i)(A) of this Section, the aggregate principal amount of the Commitment and/or outstanding Loans of the assigning Lender subject to each such assignment, in each case with respect to such Facility, 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 in respect of such Facility unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments with respect to such Facility to members of an Assignee Group and concurrent assignments with respect to such Facility from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met with respect to such Facility.

(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 applicable Loans or the applicable Commitments assigned. Without limiting the generality of the foregoing, to the extent that any unused Commitments remain under a Facility at a time when any Loans are also outstanding under such Facility, any assignment by a Lender with respect to such Facility shall be a ratable assignment by such Lender of its unused Commitments and outstanding Loans under such Facility.

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Person that is a Lender, an Affiliate of any Lender or an Approved Fund with respect to any Lender; 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 ten (10) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless such assignment is to a Person that is a Lender, an Affiliate of any Lender or an Approved Fund with respect to any Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to the ~~Borrower~~Loan Parties. No such assignment shall be made to ~~the Borrower~~any Loan Party or any of the ~~Borrower's~~Loan Parties' Affiliates or Subsidiaries.

(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) No Assignment to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (vii).

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

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver Note(s) with respect to the applicable Facility or Facilities to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (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, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender (with respect to its own interest only), 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 or the Administrative Agent, sell participations to any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), a Defaulting Lender (or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or any of its Subsidiaries) or ~~the Borrower~~any Loan Party or any of the ~~Borrower's~~Loan Parties' 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 Commitments 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 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 any amendment, waiver or other modification described in clauses (a) through (e) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b); provided that such Participant agrees to be subject to the provisions of Sections 3.01, 3.04, 3.05, 3.06 and 10.13 and any requirements or limitations contained therein as if it were an assignee under subsection (b) of this Section. 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 Sections 3.06 and 10.13 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.14 as though it were a Lender.

Each Lender that sells a participation 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 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 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) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

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

**10.07 Treatment of Certain Information; Confidentiality.**

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need-to-know basis to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors, consultants, service providers and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any governmental agency or regulatory authority purporting to have jurisdiction over it or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section 10.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 10.07 or (y) becomes available to the Administrative Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower that the Administrative Agent or any such Lender reasonably believes is not bound by a duty of confidentiality to the Borrower, (i) to any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder (provided such rating agencies are advised of the confidential nature of such information and agree to keep such information confidential) or (j) to any Person that would qualify as an Eligible Assignee hereunder (without giving effect to the consent required under Section 10.06(b)(iii)) providing financing to the disclosing Lender, to the extent reasonably required by such Person (provided such other Persons are advised of the confidential nature of such information and agree to keep such information confidential). In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and customary information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section 10.07, "Information" means all information received from or on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary; provided that, in the case of information received from the Borrower or any Subsidiary 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 10.07 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 or its other similarly situated customers' confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning ~~the Borrower~~any Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08 Right of Setoff.**

If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the ~~Borrower~~applicable Loan Party against any and all of the Obligations of ~~the Borrower~~such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of ~~the Borrower~~such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.18 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 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. The rights of each Lender and its Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**10.12 Severability.**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.**

If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if any Lender does not consent to any amendment or waiver of any provision hereof or of any other Loan Document for which its consent is required under Section 10.01 after Required Lenders or applicable Required Class Lenders have consented thereto, 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 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the assignment fee specified in Section 10.06(b) shall have been paid to or waived by the Administrative Agent;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

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 party hereto agrees that (i) an assignment required pursuant to this Section 10.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender; provided, further, that any such documents shall be without recourse to or warranty by the parties thereto.

**10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION 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 OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.14(b). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial.**

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.15.**

**10.16 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees**,** and acknowledges its Subsidiaries' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrower and each other Loan Party, on the one hand, and the Administrative Agent, the Lenders and the Arrangers, on the other hand, (B) the Borrower and each other Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) 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 and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any other Loan Party or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Lender nor any Arranger has any obligation to the Borrower or any other Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lenders and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and each other Loan Party and its Affiliates, and neither the Administrative Agent, any Lender nor any Arranger has any obligation to disclose any of such interests to the Borrower or any other Loan Party or its Affiliates. To the fullest extent permitted by law, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Lenders and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 USA Patriot Act and Beneficial Ownership Regulation Notice.**

Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and each other Loan Party that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act") and the Beneficial Ownership Regulation, as applicable, it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act and the Beneficial Ownership Regulation, as applicable.

**10.18 Delivery of Signature Page.**

Each Lender to become a party to this Agreement on the date hereof shall do so by delivering to the Administrative Agent a counterpart of this Agreement duly executed by such Lender.

**10.19 Judgment Currency**.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or such other Loan Party (or to any other Person who may be entitled thereto under applicable law). All of the Borrower's and each other Loan Party's obligations under this Section 10.19 shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

**10.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions**.

Solely to the extent any Lender that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected 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 the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected 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 Affected 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 the applicable Resolution Authority.

**10.21 Electronic Execution of Assignments and Certain Other Documents**.

The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, and waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

**10.22 [Reserved]**.

**10.23 Lender Representations**.

(a) Each Lender (x) represents and warrants, as of the Closing Date or such later date such Person became a Lender party hereto, to, and (y) covenants, from the Closing Date or such later 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 and the Arrangers and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of ~~the Borrower~~any 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 Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(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 subsections (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 either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the Closing Date or such later date such Person became a Lender party hereto, to, and (y) covenants, from the Closing Date or such later 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 and the Arrangers and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of ~~the Borrower~~any Loan Party, that none of the Administrative Agent or the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent or the Arrangers under this Agreement, any Loan Document or any documents related hereto or thereto).

**10.24 Acknowledgement Regarding Any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support," and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.24, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**10.25 Cashless Settlement**. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans of any Class in connection with any refinancing, extension, loan modification or similar transaction with respect to such Class of Loans that is permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

## ARTICLE XI

## CONTINUING GUARANTY

### 11.01 Guaranty.

The Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Obligations (for the Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that (a) the Guaranteed Obligations of the Guarantor shall exclude any Excluded Swap Obligations with respect to the Guarantor and (b) the liability of the Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable Law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon the Guarantor, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of the Guarantor, or any of them, under this Guaranty, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than a defense as to the payment in full of the Guaranteed Obligations).

**11.02 Rights of Lenders.**

The Guarantor consents and agrees that the Administrative Agent and each the other Lenders may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent or any of the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, the Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of the Guarantor.

**11.03 Certain Waivers**.

The Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower, or the cessation from any cause whatsoever (including any act or omission of the Administrative Agent or any other Lender) of the liability of the Borrower (other than as to the payment in full of the Guaranteed Obligations); (b) any defense based on any claim that the Guarantor's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting the Guarantor's liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of the Administrative Agent or any other Lender whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by the Administrative Agent or any other Lender; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties (other than as to the payment in full of the Guaranteed Obligations). The Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

**11.04 Obligations Independent.**

The obligations of the Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against the Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

**11.05 Subrogation.**

The Guarantor shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations have been paid in full in cash (other than contingent Obligations that are not then due and payable) and the Commitments are terminated. If any amounts are paid to the Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Administrative Agent and the other Lenders and shall forthwith be paid to the Administrative Agent and the other Lenders to reduce the amount of the Obligations, whether matured or unmatured.

**11.06 Termination; Reinstatement.**

This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the earlier of (i) the Maturity Date and (ii) the release of the Guarantor pursuant to Section 10.01(f). Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or the Guarantor is made, or any of the Administrative Agent or the other Lenders exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Administrative Agent or the other Lenders in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Administrative Agent or the other Lenders are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Guarantor under this Section 11.06 shall survive termination of this Guaranty.

**11.07 Stay of Acceleration.**

If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against the Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by the Guarantor immediately upon demand by the Administrative Agent or the Lenders.

**11.08 Condition of Borrower.**

The Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower such information concerning the financial condition, business and operations of the Borrower as the Guarantor requires, and that none of the Administrative Agent or any other Lender has any duty, and the Guarantor is not relying on the Administrative Agent or any other Lender at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower (the Guarantor waiving any duty on the part of the Administrative Agent or any other Lender to disclose such information and any defense relating to the failure to provide the same).

**11.09 Appointment of Borrower.**

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that any notice or communication delivered by the Administrative Agent or a Lender to the Borrower shall be deemed delivered to each Loan Party.

**11.10 [Reserved].**

**11.11 Keepwell.**

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Loan Party with respect to such Swap Obligation as may be needed by such Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article XI voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 11.11 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 11.11 to constitute, and this Section 11.11 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

**[Remainder of Page Intentionally Left Blank]**

FINAL VERSION

**SCHEDULE 10.02**

**ADMINISTRATIVE AGENT'S OFFICE;**
**CERTAIN ADDRESSES FOR NOTICES**

**BORROWER:**

Healthpeak OP, LLC
c/o Healthpeak Properties, Inc.
~~5050~~4600 South Syracuse Street, Suite ~~800~~500
Denver, CO 80237
Attention: Legal Department
Telephone No.: (720) 428-5050
Electronic Mail: legaldept@healthpeak.com
Website Address: www.healthpeak.com
U.S. Taxpayer Identification Number: 33-0091377

*With a copy to*:
Healthpeak OP, LLC
c/o Healthpeak Properties, Inc.
~~5050~~4600 South Syracuse Street, Suite ~~800~~500
Denver, CO 80237
Attention: Treasurer
Telephone No.: (720) 428-5050
Electronic Mail: CashManagement@healthpeak.com and
DebtCompliance@healthpeak.com

**PARENT GUARANTOR:**

Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Legal Department
Telephone No.: (720) 428-5050
Electronic Mail: legaldept@healthpeak.com
Website Address: www.healthpeak.com
U.S. Taxpayer Identification Number: N/A

*With a copy to*:
Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Treasurer
Telephone No.: (720) 428-5050
Electronic Mail: CashManagement@healthpeak.com and
DebtCompliance@healthpeak.com

**ADMINISTRATIVE AGENT:**

*Administrative Agent's Office*

*(for payments and Requests for Credit Extensions):*
Bank of America, N.A.
900 W. Trade Street, Gateway Village, 900 Building
Mail Code: NC1-026-06-04
Charlotte, NC 28255
Attention: Melanie Brichant
Telephone No.: 980-386-4828
Facsimile No.: 704-409-0550
Electronic Mail: melanie.brichant@bofa.com

Bank of America, N.A.
New York, NY
Account No.: 1366072250600
ABA# 026009593
Attn: Credit Services
Ref: Healthpeak ~~Properties~~OP, ~~Inc.~~LLC

*Other Notices as Administrative Agent:*
Bank of America, N.A.
555 California Street
Mail Code: CA5-705-06-35
San Francisco, CA 94104
Attention: Liliana Claar
Telephone No.: 415-436-2770
Facsimile No.: 415-503-5003
Electronic Mail: liliana.claar@bofa.com

*With a copy to:*

Bank of America, N.A.
620 South Tryon Street
Mail Code: NC1-030-24-02
Charlotte, NC 28255
Attention: Darren Merten
Telephone No.: 980-683-6722
Electronic Mail: darren.merten@bofa.com

**EXHIBIT A**

**FORM OF COMMITTED LOAN NOTICE**

Date:_____,___

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ~~(the "Borrower")~~, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent.

The undersigned hereby requests:

***A. WITH RESPECT TO THE TERM A-1 FACILITY (IF APPLICABLE):***

1. Select one:
   - A Committed Borrowing of Committed Term A-1 Loans
   - A conversion or continuation of Term A-1 Loans
2. On _____(a Business Day).
3. In a principal amount under the Term A-1 Facility equal to $_____.
4. Comprised of the following Type of Loans: **[Base Rate Loans] [Term SOFR Loans]**.
5. For Term SOFR Loans: with an Interest Period of **[one] [three] [six]** month(s).

***B. WITH RESPECT TO THE TERM A-2 FACILITY (IF APPLICABLE):***

1. Select one:
   - A Committed Borrowing of Committed Term A-2 Loans
   - A conversion or continuation of Term A-2 Loans
2. On _____(a Business Day).
3. In a principal amount under the Term A-2 Facility equal to $_____.
4. Comprised of the following Type of Loans: **[Base Rate Loans] [Term SOFR Loans]**.
5. For Term SOFR Loans: with an Interest Period of **[one] [three] [six]** month(s).

The Committed Borrowing, if any, requested herein complies with the proviso to the first sentence in each of Section 2.01(a) and Section 2.01(b) of the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Committed Loan Notice as of the date first written above.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member
~~**HEALTHPEAK PROPERTIES, INC.**~~

By: _____
Name:
Title:

**EXHIBIT B**

**[RESERVED]**

**EXHIBIT C**

**[RESERVED]**

**EXHIBIT D-1**

**FORM OF TERM A-1 NOTE**

Date:_____,___

FOR VALUE RECEIVED, the undersigned, HEALTHPEAK ~~PROPERTIES~~OP, ~~INC.~~LLC, a Maryland ~~corporation~~limited liability company (the "Borrower"), hereby promises to pay to [_____] or its registered permitted assigns (the "Lender"), in accordance with the provisions of the Term Loan Agreement (as hereinafter defined), the principal amount of each Term A-1 Loan from time to time made by the Lender to the Borrower under that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Term Loan Agreement"; the terms defined therein being used herein as therein defined), among the Borrower, HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Term A-1 Loan owed to the Lender from the date of such Term A-1 Loan until such principal amount of such Term A-1 Loan is paid in full, at such interest rates and at such times as provided in the Term Loan Agreement. All such payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Same Day Funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand in accordance with the terms of the Term Loan Agreement, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Term Loan Agreement.

This Term A-1 Note is one of the Term A-1 Notes referred to in the Term Loan Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Term Loan Agreement, all amounts then remaining unpaid on this Term A-1 Note shall become, or may be declared to be, immediately due and payable, all as provided in the Term Loan Agreement. Term A-1 Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Term A-1 Note and endorse thereon the date, amount and maturity of its Term A-1 Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term A-1 Note.

[Signature Page Follows]

THIS TERM A-1 NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By: _____
Name:
Title:

**TERM A-1 LOANS AND PAYMENTS WITH RESPECT THERETO**

| Date | Type of Term A-1 Loan Made | Amount of Term A-1 Loan Made | End of Interest Period of Term A-1 Loan | Amount of Principal or Interest Paid on Term A-1 Loan This Date | Outstanding Principal Balance of Term A-1 Loan This Date | Notation Made By |
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**EXHIBIT D-2**

**FORM OF TERM A-2 NOTE**

Date:_____,___

FOR VALUE RECEIVED, the undersigned, HEALTHPEAK ~~PROPERTIES~~OP, ~~INC.~~LLC, a Maryland ~~corporation~~limited liability company (the "Borrower"), hereby promises to pay to [____] or its registered permitted assigns (the "Lender"), in accordance with the provisions of the Term Loan Agreement (as hereinafter defined), the principal amount of each Term A-2 Loan from time to time made by the Lender to the Borrower under that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Term Loan Agreement"; the terms defined therein being used herein as therein defined), among the Borrower, HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Term A-2 Loan owed to the Lender from the date of such Term A-2 Loan until such principal amount of such Term A-2 Loan is paid in full, at such interest rates and at such times as provided in the Term Loan Agreement. All such payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Same Day Funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand in accordance with the terms of the Term Loan Agreement, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Term Loan Agreement.

This Term A-2 Note is one of the Term A-2 Notes referred to in the Term Loan Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Term Loan Agreement, all amounts then remaining unpaid on this Term A-2 Note shall become, or may be declared to be, immediately due and payable, all as provided in the Term Loan Agreement. Term A-2 Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Term A-2 Note and endorse thereon the date, amount and maturity of its Term A-2 Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term A-2 Note.

[Signature Page Follows]

THIS TERM A-2 NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By: _____
Name:
Title:

**TERM A-2 LOANS AND PAYMENTS WITH RESPECT THERETO**

| Date | Type of Term A-2 Loan Made | Amount of Term A-2 Loan Made | End of Interest Period of Term A-2 Loan | Amount of Principal or Interest Paid on Term A-2 Loan This Date | Outstanding Principal Balance of Term A-2 Loan This Date | Notation Made By |
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**EXHIBIT E**

**FORM OF COMPLIANCE CERTIFICATE**

For the Fiscal Quarter/Fiscal Year ended:_____(the "Statement Date")

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation (~~the~~ "~~Borrower~~Parent Guarantor"), the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent.

The Borrower hereby certifies as of the date hereof that the Responsible Officer executing this Compliance Certificate is the of the Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to the Administrative Agent on behalf of the Borrower, and not in an individual capacity, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. The Borrower has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of the ~~Borrower~~Parent Guarantor ended as of the above referenced Statement Date, together with the report and opinion of an independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. The Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of the ~~Borrower~~Parent Guarantor ended as of the above referenced Statement Date. Such financial statements fairly present the consolidated financial condition of the ~~Borrower and its Subsidiaries~~Group as at such Statement Date and their results of operations for such period in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

2. A review of the activities of the ~~Borrower~~Loan Parties during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period covered by such financial statements the ~~Borrower~~Loan Parties performed and observed all ~~its~~their respective Obligations under the Loan Documents, and

***[select one:]***

[to the best knowledge of the undersigned during such fiscal period, no Default has occurred and is continuing as of the date hereof.]

***-or-***

[the following is a list of each such Default and its nature and status:]

3. The financial covenant analyses and information set forth on Schedule 1 and Annex 1 attached hereto are true and accurate on and as of the Statement Date referred to thereon.

[4. As of December 31 of the calendar year of the ~~Borrower~~Parent Guarantor most recently ended prior to the delivery of this Compliance Certificate to the Administrative Agent (such year, the "Specified Test Year"), the Sustainability Metric for the Specified Test Year [satisfied the Sustainability Metric Election Threshold][did not satisfy the Sustainability Metric Election Threshold].

5. The analyses and information set forth on Schedule 2 attached hereto are true and accurate as of December 31 of the Specified Test Year (using the Rolling Base Year Methodology).

6. The Borrower hereby elects that the Applicable Rate be based on the Sustainability Metric Pricing Grid, to be effective commencing on the date that is five (5) Business Days following the date this Compliance Certificate has been delivered to the Administrative Agent.

7. [Attached hereto is a copy of the Sustainability Metric Report for the Specified Test Year.][The Sustainability Metric Report for the Specified Test Year has been published at the following Internet or intranet website to which each Lender and the Administrative Agent has or has been granted access free of charge: [https://www.healthpeak.com/esg/].][1]

[Signature Page Follows]

[1] Certifications with respect to the Sustainability Metric to be included at the Borrower's election.

*IN WITNESS WHEREOF,* the undersigned has executed this Compliance Certificate as of_____, 202__.

_____

Name:
Title:

**SCHEDULE 1**

to the Compliance Certificate
($ in 000's)

For the Fiscal Quarter/Fiscal Year ended_____("Statement Date")

**I. Section 7.10(a) — Leverage Ratio.**

A. Enterprise Total Indebtedness on the Statement Date:

1. Indebtedness of ~~Borrower and its Subsidiaries~~the Group on a consolidated basis outstanding on the Statement Date: $ _____

2. Borrower's Pro Rata Share of Indebtedness of each Material Joint Venture outstanding on the Statement Date: $ _____

3. Enterprise Total Indebtedness (Line I.A.1 plus Line I.A.2 (without duplication))[2]: $ _____

B. Enterprise Gross Asset Value on the Statement Date:

1. Gross Asset Value of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis: $ _____

2. Borrower's Pro Rata Share of Gross Asset Value of each Material Joint Venture: $ _____

3. Enterprise Gross Asset Value on the Statement Date (Line I.B.1 + Line I.B.2 (without duplication)):[3] $ _____

C. Leverage Ratio (Line I.A.3 ÷ Line I.B.3): _____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.60 to 1.00

---

[2] For purposes of calculating the Leverage Ratio, (x) Line I.A.1. shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of the ~~Borrower and its Subsidiaries~~Group and (ii) escrow and other deposits to the extent available on the Statement Date for the repayment of any of the Indebtedness included in the calculation of Line I.A.1. up to an amount in the aggregate for this clause (x) not to exceed the aggregate amount of Indebtedness reflected in Line I.A.1. maturing in the immediately succeeding 24 months and (y) Line 1.A.2. shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of each such applicable Material Joint Venture and (ii) escrow and other deposits to the extent available on the Statement Date for the repayment of any of the Indebtedness included in the calculation of Line 1.A.2. up to an amount in the aggregate for this clause (y) not to exceed the aggregate amount of Indebtedness reflected in Line 1.A.2. maturing in the immediately succeeding 24 months. Enterprise Total Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

[3] Enterprise Gross Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents deducted in the calculation of Enterprise Total Indebtedness pursuant to the immediately preceding footnote.

Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the ~~Borrower~~Parent Guarantor shall be permitted to increase the maximum Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

**II. Section 7.10(b) — Secured Debt Ratio.**

A. Enterprise Secured Debt outstanding on the Statement Date: $ _____

B. Enterprise Gross Asset Value on the Statement Date (Line I.B.3): $ _____

C. Secured Debt Ratio (Line II.A ÷ Line II.B): [4] _____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.40 to 1.00

**III. Section 7.10(c) — Fixed Charge Coverage Ratio.**

A. Enterprise EBITDA for the twelve-month period ended on the Statement Date (See Annex 1):

1. EBITDA of the ~~Borrower and its Subsidiaries on a~~ Group on a consolidated basis (From Annex 1): $ _____

2. Borrower's Pro Rata Share of EBITDA of each Material Joint Venture (From Annex 1): $ _____

3. Enterprise EBITDA (Line III.A.1 + Line III.A.2 (without duplication)): $ _____

B. Enterprise Fixed Charges for the twelve-month period ended on the Statement Date:

1. Enterprise Interest Expense paid in cash during such period:

a. Interest Expense of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis paid in ~~a.~~ cash during such period: $ _____

[4] For purposes of calculating the Secured Debt Ratio, the aggregate amount of all unrestricted cash and cash equivalents on the Statement Date deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Unsecured Leverage Ratio as of the Statement Date.

b. Borrower's Pro Rata Share of Interest Expense of each Material Joint Venture paid in cash during such period: $ _____

c. Enterprise Interest Expense paid in cash during such period (Line III.B.1.a + Line III.B.1.b (without duplication)): $ _____

2. Scheduled Principal Payments during such period: $ _____

a. Regularly scheduled principal payments during such period by the ~~Borrower~~Parent Guarantor and its Subsidiaries with respect to Indebtedness of the ~~Borrower~~Parent Guarantor and its Subsidiaries (other than payments due at final maturity of any tranche of Indebtedness): $ _____

b. Borrower's Pro Rata Share of all regularly scheduled principal payments during such period with respect to the Indebtedness (other than payments due at final maturity of any tranche of Indebtedness) of each Material Joint Venture: $ _____

c. Scheduled Principal Payments (Line III.B.2.a + Line III.B.2.b (without duplication)):[5] $ _____

3. Cash dividends and distributions during such period in respect of preferred stock of the ~~Borrower and its Subsidiaries~~Group (excluding (i) redemption payments or charges in connection with the redemption of preferred stock and (ii) amounts paid to the Parent Guarantor, the Borrower or any of ~~its~~their respective Subsidiaries):
~~3.~~ $ _____

4. Enterprise Fixed Charges (Line III.B.1.c + Line III.B.2.c + Line III.B.3 (without duplication))[6]: $ _____

C. Fixed Charge Coverage Ratio (Line III.A.3 ÷ Line III.B.4): _____to 1.00

*Minimum requirement as of the end of any fiscal quarter:* 1.50 to 1.00

**IV. Section 7.10(d) — Unsecured Leverage Ratio.**

A. Enterprise Unsecured Debt outstanding on the Statement Date: $ _____

[5] For purposes of determining Scheduled Principal Payments, Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

[6] Enterprise Fixed Charges shall not include (i) any amounts with respect to any Intercompany Indebtedness, (ii) gains and losses from unwinding or break-funding of Swap Contracts, (iii) write-offs of unamortized deferred financing fees, (iv) prepayment fees, premiums and penalties, and (v) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

B. Enterprise Unencumbered Asset Value on the Statement Date:

1. Unencumbered Asset Value of the ~~Borrower and its Subsidiaries~~Group on a consolidated basis: ~~1.~~ $ _____

2. The Borrower's Pro Rata Share of Unencumbered Asset Value of each Material Joint Venture: $ _____

3. Enterprise Unencumbered Asset Value (Line IV.B.1 + Line IV.B.2 (without duplication)): $ _____

C. Unsecured Leverage Ratio (Line IV.A ÷ Line IV.B.3): [7] _____to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.60 to 1.00

Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the ~~Borrower~~Parent Guarantor shall be permitted to increase the maximum Unsecured Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Unsecured Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

**V. Section 7.10(e) — Consolidated Tangible Net Worth.**

A. Consolidated Tangible Net Worth on the Statement Date

1. Consolidated Shareholders' Equity: $ _____

2. Accumulated depreciation and amortization ~~of the Borrower and its Subsidiaries~~, determined on a ~~2.~~ consolidated basis in accordance with GAAP: $ _____

3. Consolidated Intangible Assets: $ _____

4. Consolidated Tangible Net Worth (Line V.A.1 plus Line V.A.2 minus Line V.A.3): $ _____

*Minimum required as of the end of any fiscal quarter:* $7,700,000,000

[7] For purposes of calculating the Unsecured Leverage Ratio, the aggregate amount of all unrestricted cash and cash equivalents on the Statement Date deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Secured Debt Ratio as of the Statement Date.

**ANNEX 1**
to the Compliance Certificate

For the Fiscal Quarter/Fiscal Year ended _____, _____

**EBITDA of ~~Borrower and its Subsidiaries~~the Group on a consolidated basis**

| **EBITDA of ~~Borrower and its Subsidiaries~~the Group** | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended | Year Ended |
|---|---|---|---|---|---|
| Net Income (without duplication) | | | | | |
| + Interest Expense of the ~~Borrower and its Subsidiaries~~Group | | | | | |
| + provision for taxes on or measured by income (whether or not payable during such period) | | | | | |
| + depreciation and amortization expense | | | | | |
| + non-cash expenses | | | | | |
| - items increasing Net Income which do not represent a cash receipt | | | | | |
| - any addition to EBITDA under "provision for taxes on or measured by income" above taken or payable during such period to the extent added to EBITDA in any prior or future period | | | | | |
| = EBITDA of ~~Borrower and Subsidiaries~~the Group on a consolidated basis | | | | | |

**Borrower's Pro Rata Share of EBITDA of Material Joint Ventures**

| **Borrower's Pro Rata Share of EBITDA of Material Joint Ventures** | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended | Year Ended |
|---|---|---|---|---|---|
| Net Income (without duplication) | | | | | |
| + Borrower's Pro Rata Share of Interest Expense of Material Joint Ventures | | | | | |
| + provision for taxes on or measured by income (whether or not payable during such period) | | | | | |
| + depreciation and amortization expense | | | | | |
| + non-cash expenses | | | | | |
| - items increasing Net Income which do not represent a cash receipt | | | | | |
| - any addition to EBITDA under "provision for taxes on or measured by income" above taken or payable during such period to the extent added to EBITDA in any prior or future period | | | | | |
| = Borrower's Pro Rata Share of EBITDA of Material Joint Ventures | | | | | |

**SCHEDULE 2**
to the Compliance Certificate

For the calendar year ended: December 31, _____[8] (such year, the "Specified Test Year")

**I. Rolling Base Year Percentage* for (x) the Specified Test Year and (y) each preceding calendar year ended on or after December 31, 2021.[9]**

**A. Rolling Base Year Percentage for calendar year ended December 31, 2021 (percentage change** of Line I.A.1. relative to Line I.A.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2020: _____ $tCO_2e$

**B. Rolling Base Year Percentage for calendar year ended December 31, 2022 (percentage change** of Line I.B.1. relative to Line I.B.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

**C. Rolling Base Year Percentage for calendar year ended December 31, 2023 (percentage change** of Line I.C.1. relative to Line I.C.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

**D. Rolling Base Year Percentage for calendar year ended December 31, 2024 (percentage change** of Line I.D.1. relative to Line I.D.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

**E. Rolling Base Year Percentage for calendar year ended December 31, 2025 (percentage change** of Line I.E.1. relative to Line I.E.2.):** _____%

[8] To be the calendar year most recently ended.

[9] Delete the rows for any calendar year ending after the Specified Test Year or leave such rows blank.

1. Sustainability Metric Components for calendar year ended December 31, 2025: _____ tCO2e

2. Sustainability Metric Components for calendar year ended December 31, 2024: _____ tCO2e

**F. Rolling Base Year Percentage for calendar year ended December 31, 2026 (percentage change** of Line I.F.1. relative to Line I.F.2.):** _____ %

1. Sustainability Metric Components for calendar year ended December 31, 2026: _____ tCO2e

2. Sustainability Metric Components for calendar year ended December 31, 2025: _____ tCO2e

**G. Rolling Base Year Percentage for calendar year ended December 31, 2027 (percentage change** of Line I.G.1. relative to Line I.G.2.):** _____ %

1. Sustainability Metric Components for calendar year ended December 31, 2027: _____ tCO2e

2. Sustainability Metric Components for calendar year ended December 31, 2026: _____ tCO2e

*The Rolling Base Year Percentage for a particular calendar year has been determined and calculated using the Rolling Base Year Methodology, which means that the Sustainability Metric Components for that particular calendar year have been compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of that particular calendar year.

**For the avoidance of doubt, such percentage change for a particular calendar year is expressed as a negative percentage in the event the Sustainability Metric Components for such calendar year are less than the Sustainability Metric Components for the immediately preceding calendar year.

**II. Sustainability Metric & Sustainability Metric Election Threshold for the Specified Test Year.**

**A.** Sustainability Metric for the Specified Test Year (which shall equal the sum of (x) the Rolling Base Year Percentage for such Specified Test Year (see Part I above) and (y) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021 (see Part I above)): _____ %

**B.** Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement): _____ %[10]

**C.** Does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Sustainability Metric Election Threshold (Line II.B.)? _____ (*Yes/No*)

[10] For the Specified Test Year ended: (a) December 31, 2022, insert -2.00%; (b) December 31, 2023, insert -3.00%; (c) December 31, 2024, insert -4.00%; and (d) December 31, 2025 or thereafter, insert -5.00%.

**EXHIBIT F**

**FORM OF ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the] [each][1] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each][2] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors] [and] [the Assignees][3] hereunder are several and not joint.][4] Capitalized terms used but not defined herein shall have the meanings given to them in the Term Loan Agreement identified below (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Term Loan Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Term Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Term Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Term Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

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[1] For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

[2] For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

[3] Select as appropriate.

[4] Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: _____

_____

2. Assignee[s]: _____

_____

[for each Assignee, indicate [Affiliate] [Approved Fund] of *[identify Lender]]*, which is a Lender

3. Borrower: Healthpeak ~~Properties~~OP, ~~Inc.~~ LLC

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Term Loan Agreement

5. Term Loan Agreement: Term Loan Agreement, dated as of August 22, 2022~~, among~~ (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ~~(the "Borrower")~~, the Lenders party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent.

6. Assigned Interest[s]:

| Assignor[s] | Assignee[s] | Class/Facility Assigned[5] | Aggregate Amount of Unused Commitments & Outstanding Loans of all Lenders under relevant Class/Facility[6] | Amount of Unused Commitment Assigned under relevant Class/Facility | Amount of Outstanding Loans Assigned under relevant Class/Facility | Percentage Assigned of Unused Commitments & Outstanding Loans under relevant Class/Facility[7] | CUSIP Number |
|---|---|---|---|---|---|---|---|
| | | | $ | $ | | % | |
| | | | $ | $ | | % | |
| | | | $ | $ | | % | |

[5] Fill in the appropriate terminology for the types of Facilities (or, if applicable, Class of Loans) under the Term Loan Agreement that are being assigned under this Assignment and Assumption (i.e., "Term A-1 Facility," "Term A-2 Facility" or a specific tranche of Incremental Term Loans).

[6] Amounts in this column and in the two columns immediately to the right to be adjusted by the counterparties to take into account any reduction of Commitment, any Borrowings, and any payments or prepayments of Loans, in each case, under relevant Class or Facility made between the Trade Date and the Effective Date.

[7] Set forth, to at least 9 decimals, as a percentage of the Commitments/Loans of all Lenders under relevant Class or Facility.

7. Trade Date: _____][8]

Effective Date:_____, 20____[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[8] To be completed if the relevant Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

**ASSIGNOR[S]:**[9]

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

**ASSIGNEE[S]:**[10]

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[Consented to and][11] Accepted:

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

By: _____
Name:
Title:

[Consented to:][12]

[HEALTHPEAK ~~PROPERTIES~~OP, ~~INC.~~LLC, as the Borrower~~]~~

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member]

[9] Add additional signature blocks as needed.

[10] Add additional signature blocks as needed.

[11] To be added only if the consent of the Administrative Agent is required by the terms of the Term Loan Agreement.

[12] To be added only if the consent of the Borrower is required by the terms of the Term Loan Agreement.

By: _____

Name:

Title:

**STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1. Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Term Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Term Loan Agreement, (ii) it meets all the requirements to be an assignee under Sections 10.06(b)(iii), (v), (vi), (vii) and (viii) of the Term Loan Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Term Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Term Loan Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Term Loan Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 5.05 thereof or delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Term Loan Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after theEffective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind with respect to [the][the relevant] Assigned Interest from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption.

THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**EXHIBIT G**

**FORM OF SUSTAINABILITY METRIC ANNUAL CERTIFICATE**

For the calendar year ended: December 31,____[13] (such year, the "Specified Test Year")

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ~~(the "Borrower")~~, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent.

The Borrower hereby certifies as of the date hereof that the Responsible Officer executing this Sustainability Metric Annual Certificate is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Sustainability Metric Annual Certificate to the Administrative Agent on behalf of the Borrower, and not in an individual capacity, and that:

1. As of December 31 of the Specified Test Year, the Sustainability Metric for the Specified Test Year [satisfied the Sustainability Metric Election Threshold][did not satisfy the Sustainability Metric Election Threshold].

2. The analyses and information set forth on Schedule 1 attached hereto are true and accurate as of December 31 of the Specified Test Year (using the Rolling Base Year Methodology).

3. The Borrower hereby elects that the Applicable Rate be based on the Sustainability Metric Pricing Grid, to be effective commencing on the date that is five (5) Business Days following the date this Sustainability Metric Annual Certificate has been delivered to the Administrative Agent.

4. [Attached hereto is a copy of the Sustainability Metric Report for the Specified Test Year.][The Sustainability Metric Report for the Specified Test Year has been published at the following Internet or intranet website to which each Lender and the Administrative Agent has or has been granted access free of charge: [https://www.healthpeak.com/esg/].]

[Signature Page Follows]

[13] To be the calendar year most recently ended.

*IN WITNESS WHEREOF,* the undersigned has executed this Sustainability Metric Annual Certificate as of _____, 202___ .

Name:
Title:

**SCHEDULE 1**
to the Sustainability Metric Annual Certificate

For the calendar year ended: December 31, _____[14] (such year, the "Specified Test Year")

**I. Rolling Base Year Percentage* for (x) the Specified Test Year and (y) each preceding calendar year ended on or after December 31, 2021.[15]**

**A. Rolling Base Year Percentage for calendar year ended December 31, 2021 (percentage change** of Line I.A.1. relative to Line I.A.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2020: _____ $tCO_2e$

**B. Rolling Base Year Percentage for calendar year ended December 31, 2022 (percentage change** of Line I.B.1. relative to Line I.B.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

**C. Rolling Base Year Percentage for calendar year ended December 31, 2023 (percentage change** of Line I.C.1. relative to Line I.C.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

**D. Rolling Base Year Percentage for calendar year ended December 31, 2024 (percentage change** of Line I.D.1. relative to Line I.D.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

**E. Rolling Base Year Percentage for calendar year ended December 31, 2025 (percentage change** of Line I.E.1. relative to Line I.E.2.):** _____%

[14] To be the calendar year most recently ended.

[15] Delete the rows for any calendar year ending after the Specified Test Year or leave such rows blank.

1. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

**F. Rolling Base Year Percentage for calendar year ended December 31, 2026 (percentage change** of Line I.F.1. relative to Line I.F.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

**G. Rolling Base Year Percentage for calendar year ended December 31, 2027 (percentage change** of Line I.G.1. relative to Line I.G.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2027: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

*The Rolling Base Year Percentage for a particular calendar year has been determined and calculated using the Rolling Base Year Methodology, which means that the Sustainability Metric Components for that particular calendar year have been compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of that particular calendar year.

**For the avoidance of doubt, such percentage change for a particular calendar year is expressed as a negative percentage in the event the Sustainability Metric Components for such calendar year are less than the Sustainability Metric Components for the immediately preceding calendar year.

**II. Sustainability Metric & Sustainability Metric Election Threshold for the Specified Test Year.**

**A.** Sustainability Metric for the Specified Test Year (which shall equal the sum of (x) the Rolling Base Year Percentage for such Specified Test Year (see Part I above) and (y) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021 (see Part I above)): _____%

**B.** Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement): _____%[16]

[16] For the Specified Test Year ended: (a) December 31, 2022, insert -2.00%; (b) December 31, 2023, insert -3.00%; (c) December 31, 2024, insert -4.00%; and (d) December 31, 2025 or thereafter, insert -5.00%.

**C.** Does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Sustainability Metric Election Threshold (Line II.B.)? _____ (*Yes/No*)

Sustainability Metric Annual Certificate

Schedule 1-3

EXHIBIT A-2

Clean Amended Credit Agreement

See attached.

**Exhibit A to Consent and Amendment No. 1 to Term Loan Agreement**

**FINAL VERSION**

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**TERM LOAN AGREEMENT**
(as amended, restated, supplemented and otherwise modified through and including that certain Consent and Amendment No. 1 dated as of February 10, 2023)

Dated as of August 22, 2022

among

**HEALTHPEAK OP, LLC,**
as Borrower,

**HEALTHPEAK PROPERTIES, INC.,**
as Parent Guarantor,

**THE LENDERS PARTY HERETO FROM TIME TO TIME**,

**BANK OF AMERICA, N.A.,**
as Administrative Agent,

**WELLS FARGO BANK, NATIONAL ASSOCIATION**,
**PNC BANK, NATIONAL ASSOCIATION,**
**THE BANK OF NOVA SCOTIA,** and
**TRUIST BANK**,
as Co-Syndication Agents,

and

**MIZUHO BANK, LTD,**
**REGIONS BANK,** and
**TORONTO-DOMINION BANK,**
as Co-Documentation Agents

---

**BOFA SECURITIES, INC.**, and
**WELLS FARGO SECURITIES, LLC**,
as Joint Bookrunners,

and

**BOFA SECURITIES, INC.**,
**WELLS FARGO SECURITIES, LLC**,
**PNC CAPITAL MARKETS LLC,**
**THE BANK OF NOVA SCOTIA**, and
**TRUIST SECURITIES, INC.**,
as Joint Lead Arrangers

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603

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**EXHIBITS**

***Form of***


A Committed Loan Notice
B [Reserved]
C [Reserved]
D-1 Term A-1 Note
D-2 Term A-2 Note
E Compliance Certificate
F Assignment and Assumption
G Sustainability Metric Annual Certificate

**TERM LOAN AGREEMENT**

This TERM LOAN AGREEMENT, dated as of August 22, 2022 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), among HEALTHPEAK OP, LLC, a Maryland limited liability company, HEALTHPEAK PROPERTIES, INC., a Maryland corporation the lending institutions party hereto from time to time (each, a "Lender" and collectively, the "Lenders"), BANK OF AMERICA, N.A., as Administrative Agent, WELLS FARGO BANK, NATIONAL ASSOCIATION, PNC BANK, NATIONAL ASSOCIATION, THE BANK OF NOVA SCOTIA, and TRUIST BANK, as Co-Syndication Agents, and MIZUHO BANK, LTD, REGIONS BANK AND TORONTO-DOMINION BANK, as Co-Documentation Agents.

WHEREAS, the Borrower has requested that the Lenders provide two delayed-draw term loan facilities pursuant to the terms of this Agreement, and the Lenders are willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS AND ACCOUNTING TERMS**

**1.01 Defined Terms.**

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

"2021 Credit Agreement" means that certain Second Amended and Restated Credit Agreement, dated as of September 20, 2021, among the Borrower, Bank of America, N.A., as administrative agent, L/C issuer and alternative currency fronting lender, and the lenders and other agents party thereto.

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

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

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

"Affected Financial Institution" means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agent Parties" has the meaning specified in Section 10.02(c).

"Agents" means the Administrative Agent, the Arrangers, the Co-Syndication Agents and the Co-Documentation Agents.

"Aggregate Commitments" means, at any date of determination, the sum of the Aggregate Term A-1 Commitments and the Aggregate Term A-2 Commitments on such date.

"Aggregate Term A-1 Commitments" means the Term A-1 Commitments of all Term A-1 Lenders, which as of the Closing Date are $250,000,000, which may be increased pursuant to Section 2.16 or decreased pursuant to Section 2.07.

"Aggregate Term A-2 Commitments" means the Term A-2 Commitments of all Term A-2 Lenders, which as of the Closing Date are $250,000,000, which may be increased pursuant to Section 2.16 or decreased pursuant to Section 2.07.

"Agreement" has the meaning specified in the introductory paragraph hereto.

"Agreement Currency" has the meaning specified in Section 10.19.

"Anti-Corruption Laws" has the meaning specified in Section 5.21.

"Applicable Percentage" means (a) with respect to the Term A-1 Facility for each Term A-1 Lender at any time, subject to adjustment as provided in Section 2.18, a fraction (expressed as a percentage, carried out to the ninth decimal place) of the Term A-1 Facility represented by (i) at any time during the Availability Period in respect of such Term A-1 Facility, the aggregate amount of such Term A-1 Lender's unused Term A-1 Commitment at such time plus the aggregate outstanding principal amount of such Term A-1 Lender's Term A-1 Loans at such time, and (ii) thereafter, the aggregate outstanding principal amount of such Term A-1 Lender's Term A-1 Loans at such time; (b) with respect to the Term A-2 Facility for each Term A-2 Lender at any time, subject to adjustment as provided in Section 2.18, a fraction (expressed as a percentage, carried out to the ninth decimal place) of the Term A-2 Facility represented by (i) at any time during the Availability Period in respect of such Term A-2 Facility, the aggregate amount of such Term A-2 Lender's unused Term A-2 Commitment at such time plus the aggregate outstanding principal amount of such Term A-2 Lender's Term A-2 Loans at such time, and (ii) thereafter, the aggregate outstanding principal amount of such Term A-2 Lender's Term A-2 Loans at such time; and (c) with respect to any Incremental Term Loan Facility for each Lender thereunder at any time, subject to adjustment as provided in Section 2.18, a fraction (expressed as a percentage, carried out to the ninth decimal place) of such Incremental Term Loan Facility represented by (i) on or prior to the applicable Increase Effective Date, such Lender's allocated portion of such Incremental Term Loan Facility, and (ii) thereafter, the aggregate outstanding principal amount of such Lender's Incremental Term Loans under such Incremental Term Loan Facility at such time. The Applicable Percentages of each Lender under the applicable Term Facility or Term Facilities as of the Closing Date are set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, for any Term Loan, from time to time, the number of basis points per annum set forth in the relevant columns of the following table based upon the Debt Rating as set forth immediately below:

| Pricing Level | Debt Ratings (S&P/Moody's/Fitch) | Applicable Rate for Term SOFR Loans | Applicable Rate for Base Rate Loans |
|---|---|---|---|
| 1 | ●A / ● A2 / ●A | 75.0 bps | 0 bps |
| 2 | A- / A3 / A- | 80.0 bps | 0 bps |
| 3 | BBB+ / Baa1 / BBB+ | 85.0 bps | 0 bps |
| 4 | BBB / Baa2 / BBB | 95.0 bps | 0 bps |
| 5 | BBB- / Baa3 / BBB- | 120.0 bps | 20.0 bps |
| 6 | <BBB- / <Baa3 / <BBB- or non-rated | 160.0 bps | 60.0 bps |

For purposes hereof, the term "Debt Rating" means, as of any date of determination, the rating by S&P, Moody's or Fitch of the Borrower's non-credit enhanced, senior unsecured long-term debt; provided that, if at any time when the Borrower has only two (2) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used, and(B) if the difference between such Debt Ratings is two or more ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the median of the applicable Debt Ratings were used. If at any time when the Borrower has three (3) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the highest of the Debt Ratings were used, and (B) if the difference between such Debt Ratings is two or more ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch), the Applicable Rate shall be the rate per annum that would be applicable if the average of the two (2) highest Debt Ratings were used; provided that, if such average is not a recognized rating category, then the Applicable Rate shall be the rate per annum that would be applicable if the second highest Debt Rating of the three were used.

Initially, the Applicable Rate shall be determined based upon the Debt Rating specified in the certificate delivered pursuant to Section 4.01(a)(vi). Thereafter, each change in the Applicable Rate shall occur on the first Business Day following the effective change in the Debt Rating.

Notwithstanding the foregoing, with respect to any calendar year ending on or after December 31, 2022, if the Borrower delivers a Sustainability Metric Annual Certificate to the Administrative Agent, certifying that the Sustainability Metric as of December 31 of the most recently ended calendar year (the "Specified Test Year") satisfies the Sustainability Metric Election Threshold for such Specified Test Year, and electing that the Applicable Rate instead be based on the table set forth below (the "Sustainability Metric Pricing Grid"), then the Applicable Rate with respect to each Facility shall be determined based on the relevant columns of the Sustainability Metric Pricing Grid for the period commencing on the fifth (5th) Business Day following the date such Sustainability Metric Annual Certificate is delivered to the Administrative Agent by the Borrower until the earlier to occur of (i) the date that is one (1) year after the date the Sustainability Metric Pricing Grid became effective for such period in connection with the delivery of such Sustainability Metric Annual Certificate and (ii) the date that is the fifth (5th) Business Day following the date of delivery by the Borrower of the Sustainability Metric Annual Certificate for the calendar year ending immediately after such Specified Test Year, which subsequent Sustainability Metric Annual Certificate indicates that (A) the Sustainability Metric for the calendar year ending immediately after such Specified Test Year did not satisfy the Sustainability Metric Election Threshold or (B) the Borrower does not elect to apply the Sustainability Metric Pricing Grid for the calendar year ending immediately after such Specified Test Year; provided that it is understood and agreed that (x) if the Sustainability Metric for any calendar year does not satisfy the Sustainability Metric Election Threshold, the Borrower shall not be restricted from making any subsequent election to apply the Sustainability Metric Pricing Grid pursuant to this paragraph if the Sustainability Metric for the calendar year most recently ended prior to such election satisfies the Sustainability Metric Election Threshold, and (y) a Sustainability Metric Annual Certificate electing to apply the Sustainability Metric Pricing Grid pursuant to this paragraph may be delivered at any time by the Borrower so long as the Sustainability Metric for the calendar year most recently ended prior to such election satisfies the Sustainability Metric Election Threshold.

If, as a result of (A) the agreement by the Borrower, the Administrative Agent and the Lenders that the Sustainability Metric for any calendar year as reported on any Sustainability Metric Annual Certificate was inaccurate or (B) the Borrower, the Administrative Agent or the Lenders becoming aware of any material inaccuracy in the Sustainability Metric for any calendar year as reported on any Sustainability Metric Annual Certificate (and, in the case of the Administrative Agent or the Lenders becoming aware thereof, written notice thereof has been delivered to the Borrower setting forth in reasonable detail the basis for such determination) (any such event referred to in clause (A) or (B) above, a "Sustainability Metric Annual Certificate Inaccuracy") and, in each case, the Borrower made an election to apply the Sustainability Metric Pricing Grid pursuant to such Sustainability Metric Annual Certificate and a proper calculation of the Sustainability Metric for such calendar year would not have resulted in any adjustment, or would have resulted in a smaller adjustment, to the Applicable Rate pursuant to the Sustainability Metric Pricing Grid for the relevant period covered by such election, then the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders promptly (and in any event, within five (5) Business Days) following written demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, immediately, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest that should have been paid for such period (or relevant portion thereof then elapsed in respect of which payments of interest were previously made) over the amount of interest actually paid for such period (or relevant portion thereof). Notwithstanding anything to the contrary herein, unless such amounts shall be due upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code, (i) any additional amounts required to be paid pursuant to the immediately preceding sentence shall not be due and payable until a written demand is made for such payment by the Administrative Agent, (ii) any nonpayment of such additional amounts prior to or upon such demand for payment by Administrative Agent shall not, whether retroactively or otherwise, (x) constitute a Default or Event of Default or (y) otherwise result in the failure to satisfy any condition precedent to any Credit Extension, a Maturity Date extension pursuant to Section 2.15, or an Increase Effective Date pursuant to Section 2.16, and (iii) none of such additional amounts shall be deemed overdue prior to such a demand or shall accrue interest at the Default Rate prior to such a demand. It is understood and agreed that no Sustainability Metric Annual Certificate Inaccuracy shall, whether retroactively or otherwise, (x) constitute a Default or Event of Default or (y) otherwise result in the failure to satisfy any condition precedent to any Credit Extension, a Maturity Date extension pursuant to Section 2.15, or an Increase Effective Date pursuant to Section 2.16; provided that the Borrower complies with the terms of this paragraph with respect to such Sustainability Metric Annual Certificate Inaccuracy.

***Sustainability Metric Pricing Grid***

| Pricing Level | Debt Ratings (S&P/Moody's/Fitch) | Applicable Rate for Term SOFR Loans | Applicable Rate for Base Rate Loans |
|---|---|---|---|
| 1 | ●A / ●A2 / ●A | 74.0 bps | 0 bps |
| 2 | A- / A3 / A- | 79.0 bps | 0 bps |
| 3 | BBB+ / Baa1 / BBB+ | 84.0 bps | 0 bps |
| 4 | BBB / Baa2 / BBB | 94.0 bps | 0 bps |
| 5 | BBB- / Baa3 / BBB- | 119.0 bps | 19.0 bps |
| 6 | <BBB- / <Baa3 / <BBB- or non-rated | 159.0 bps | 59.0 bps |

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

"Arrangers" means BofA Securities, Inc., Wells Fargo Securities, LLC, PNC Capital Markets LLC, The Bank of Nova Scotia and Truist Securities, Inc., each in its capacity as a joint lead arranger.

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

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

"Attributable Indebtedness" means, on any date, (a) in respect of any Financing Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Financing Lease.

"Audited Financial Statements" means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal year ended December 31, 2021, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

"Availability Period" means (a) in respect of the Term A-1 Facility, the period from and including the Closing Date to and including the earlier of (i) February 17, 2023, and (ii) the date of termination of the Aggregate Commitments pursuant to Section 8.02 and (b) in respect of the Term A-2 Facility, the period from and including the Closing Date to and including the earlier of (i) February 17, 2023, and (ii) the date of termination of the Aggregate Commitments pursuant to Section 8.02.

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

"Bail-In Legislation" means, (a) 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, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, as codified at 11 U.S.C. § 101 et seq., and the rules and regulations promulgated thereunder, or any successor provision thereto.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus ½ of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate" and (c) Term SOFR plus 1%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If at any time of determination the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate at such time shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. If the Base Rate determined in accordance with the above is below 1.0%, such rate shall be deemed to be 1.0% for purposes of this Agreement.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"Benefit Plan" means any of (a) an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in and subject to Section 4975 of the 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 Code) the assets of any such "employee benefit plan" or "plan."

"Borrower" means (i) prior to the consummation of the First Amendment Merger and First Amendment Conversion, Healthpeak Properties, Inc., a Maryland corporation, (ii) following the First Amendment Merger, Healthpeak Properties Interim, Inc., a Maryland corporation, and (iii) following the First Amendment Conversion, Healthpeak OP, LLC, a Maryland limited liability company.

"Borrower Materials" has the meaning specified in Section 6.02.

"Borrowing" means (a) a Committed Borrowing or (b) a borrowing consisting of simultaneous Incremental Term Loans of a specific tranche of the same Type, of the same Class, and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Lenders of such Class pursuant to Section 2.16, as the context may require.

"Borrowing Date" means, with respect to any Term Loan, any date on or after the Closing Date on which the applicable conditions set forth in Article IV are satisfied or waived and any Term Loans are made to the Borrower pursuant to Section 2.01, which day shall be a Business Day occurring during the Availability Period for the applicable Term Facility.

"Boundary Property" means any building that is part of the Borrower's portfolio of assets under management and that the Borrower identifies internally as under the Borrower's operational control. For purposes of this definition, such operational control shall mean that the Borrower or any of its Controlled Subsidiaries maintains, provides service to, and/or has the authority to implement operating policies with respect to energy usage, water usage and/or waste disposal, in any such case, for all or any portion of such building. Any reference herein to the square footage of a Boundary Property shall be a reference to the proportional percentage of total square footage of such Boundary Property that is under the Borrower's operational control with respect to such Boundary Property.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of California or the State of New York or the state where the Administrative Agent's Office is located.

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

"Change of Control" means an event or series of events by which, after the date of the First Amendment Merger:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of 35% or more of the equity securities of the Parent Guarantor having ordinary voting powers to elect a majority of the members of the board of directors or equivalent governing body of the Parent Guarantor (irrespective of whether at such time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency) on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right) and the Borrower shall not have repaid all of the outstanding Obligations in full in cash (other than contingent Obligations that are not then due and payable) and terminated the Aggregate Commitments within forty-five (45) days after such "person" or "group" shall have become the "beneficial owner" of such percentage of such stock;

(b) during any period of twelve (12) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Parent Guarantor cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved or recommended by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved or recommended by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(c) the Parent Guarantor shall, at any time, cease to Control the Borrower.

"Class" (a) when used with respect to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Committed Term A-1 Loans, Committed Term A-2 Loans or a specific tranche of Incremental Term Loans, (b) when used with respect to any Lender, refers to whether such Lender has any (i) Term A-1 Commitment or Term A-1 Loan, (ii) Term A-2 Commitment or Term A-2 Loan, or (iii) Incremental Term Loan of a specific tranche or commitment to make an Incremental Term Loan of a specific tranche, and (c) when used with respect to any Commitment, refers to whether such Commitment is a Term A-1 Commitment, a Term A-2 Commitment or a commitment to make an Incremental Term Loan of a specific tranche.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"CME" means CME Group Benchmark Administration Limited.

"Co-Documentation Agent" means each of Mizuho Bank, Ltd., Regions Bank and Toronto-Dominion Bank, in their capacities as Co-Documentation Agents.

"Co-Syndication Agent" means each of Wells Fargo, PNC Bank, National Association, The Bank of Nova Scotia, and Truist Bank, in their capacities as Co-Syndication Agents.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commitment" means a Term A-1 Commitment or a Term A-2 Commitment, as the context may require.

"Committed Borrowing" means a borrowing consisting of simultaneous Committed Loans of the same Type, of the same Class, and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Lenders of such Class pursuant to Section 2.01.

"Committed Loan" means a Committed Term A-1 Loan or a Committed Term A-2 Loan, as the context may require.

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

"Committed Term A-1 Loan" has the meaning specified in Section 2.01(a).

"Committed Term A-2 Loan" has the meaning specified in Section 2.01(b).

"Compliance Certificate" means a certificate substantially in the form of Exhibit E.

"Conforming Changes" means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate or Term SOFR, as applicable, any conforming changes to the definitions of "Base Rate," "Daily Simple SOFR," "SOFR," "Term SOFR," "Term SOFR Screen Rate," and "Interest Period," timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of "Business Day" and "U.S. Government Securities Business Day," timing of borrowing requests or prepayment, conversion or continuation notices, and the applicability and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent (after consultation in good faith with the Borrower), to reflect the adoption and implementation of such applicable rate(s) and to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent (after consultation in good faith with the Borrower) determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

"Consolidated Intangible Assets" means, as of any date of determination, an amount equal to the Intangible Assets of the Group on a consolidated basis.

"Consolidated Shareholders' Equity" means, as of any date of determination, consolidated shareholders' equity of the Group, as determined in accordance with GAAP.

"Consolidated Tangible Net Worth" means, as of any date of determination, for the Group on a consolidated basis, an amount equal to (a) Consolidated Shareholders' Equity on such date plus (b) accumulated depreciation and amortization, determined on a consolidated basis in accordance with GAAP, on such date, minus (c) Consolidated Intangible Assets on such date.

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

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

"Covered Party" has the meaning specified in Section 10.24.

"Credit Extension" means a Borrowing.

"Daily Simple SOFR" means, with respect to any applicable determination date, the SOFR published on such date on the Federal Reserve Bank of New York's website (or any successor source).

"Debt Rating" has the meaning specified in the definition of "Applicable Rate."

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

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

"Default Rate" means an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that, with respect to a Term SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

"Defaulting Lender" means, subject to Section 2.18(b), any Lender that, as reasonably determined by the Administrative Agent, (a) has failed to (i) perform any of its funding obligations hereunder, including in respect of its Loans, within two (2) Business Days of the date required to be funded by it hereunder, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's good faith determination that a condition 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 or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such notice or public statement states that such position is based on such Lender's good faith determination that a condition precedent (each of which conditions precedent, together with any applicable default, shall be specifically identified in such notice or public statement) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three (3) Business Days after request by the Administrative Agent or the Borrower, to confirm in writing in a manner satisfactory to the Administrative Agent and the Borrower that it will comply with its funding obligations hereunder, 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 a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets or a custodian appointed for it, (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment or (iv) 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 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 one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.18(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

"Delaware Divided LLC" means any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

"Delaware LLC Division" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"Designated Jurisdiction" means any country, region or territory to the extent that such country, region or territory itself is the subject of comprehensive Sanctions (as of the date of the First Amendment, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People's Republic and the so-called Luhansk People's Republic).

"Development Property" means any real property in which the development and construction with respect thereto are not complete.

"Disclosed Matters" means any event, circumstance, condition or other matter expressly disclosed in the reports and other documents furnished to or filed with the SEC by the Borrower and that are publicly available prior to the Closing Date.

"Disposition" or "Dispose" means the sale, transfer or assignment (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith and including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division, in any case other than sales or other dispositions of assets in the ordinary course of business.

"Dollar" and "$" mean lawful money of the United States.

"EBITDA" means, for any period, for a Person and its Subsidiaries on a consolidated basis, an amount equal to, without duplication, the Net Income of such Person and its Subsidiaries for such period plus (a) the following to the extent deducted in calculating such Net Income: (i) Interest Expense of such Person and its Subsidiaries for such period, (ii) the provision for Federal, state, local and foreign taxes on or measured by income of such Person and its Subsidiaries for such period (whether or not payable during that period), (iii) depreciation and amortization expense for such period and (iv) expenses of such Person and its Subsidiaries reducing such Net Income during such period which do not represent a cash expenditure in such period or any prior or future period and minus (b) (i) all items of such Person and its Subsidiaries increasing Net Income for such period which do not represent a cash receipt in such period or any prior or future period and (ii) any addition to EBITDA pursuant to clause (a)(ii) above taken or payable during such period to the extent added to EBITDA in any prior or future period.

"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 clause (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.

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

"Enterprise EBITDA" means, for any period, the sum of (a) EBITDA of the Group on a consolidated basis for such period plus (b) without duplication, the Borrower's Pro Rata Share of EBITDA of each Material Joint Venture for such period.

"Enterprise Fixed Charges" means, for any period, with respect to the Group on a consolidated basis, the sum of, without duplication, (a) Enterprise Interest Expense paid in cash during such period plus (b) Scheduled Principal Payments during such period plus (c) cash dividends and distributions in respect of preferred stock of the Group during such period (but excluding (i) redemption payments or charges in connection with the redemption of preferred stock and (ii) amounts paid to the Parent Guarantor, the Borrower or any of their respective Subsidiaries); provided that Enterprise Fixed Charges shall not include (i) any amounts with respect to any Intercompany Indebtedness, (ii) gains and losses from unwinding or break-funding of Swap Contracts, (iii) write-offs of unamortized deferred financing fees, (iv) prepayment fees, premiums and penalties, and (v) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

"Enterprise Gross Asset Value" means, as of any date of determination, the sum of (a) Gross Asset Value of the Group on a consolidated basis plus (b) without duplication, the Borrower's Pro Rata Share of Gross Asset Value of each Material Joint Venture; provided that, without duplication, for purposes of calculating the Leverage Ratio, Enterprise Gross Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents deducted in the calculation of Enterprise Total Indebtedness pursuant to the first proviso of the definition of "Enterprise Total Indebtedness."

"Enterprise Interest Expense" means, for any period, the sum of (a) Interest Expense of the Group on a consolidated basis for such period plus (b) without duplication, the Borrower's Pro Rata Share of Interest Expense of each Material Joint Venture for such period.

"Enterprise Secured Debt" means, as of any date of determination, that portion of Enterprise Total Indebtedness that is subject to a Lien (other than Permitted Specified Liens).

"Enterprise Total Indebtedness" means, as of any date of determination, an amount equal to, without duplication, (a) Indebtedness of the Group on a consolidated basis outstanding on such date, plus (b) without duplication, the Borrower's Pro Rata Share of Indebtedness of each Material Joint Venture outstanding on such date; provided that for purposes of calculating the Leverage Ratio, (x) clause (a) shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of the Group and (ii) escrow and other deposits to the extent available on such date for the repayment of any of the Indebtedness included in the calculation of clause (a) above up to an amount in the aggregate for this clause (x) not to exceed the aggregate amount of Indebtedness reflected in clause (a) above maturing in the immediately succeeding 24 months and (y) clause (b) shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of each such applicable Material Joint Venture and (ii) escrow and other deposits to the extent available on such date for the repayment of any of the Indebtedness included in the calculation of clause (b) above up to an amount in the aggregate for this clause (y) not to exceed the aggregate amount of Indebtedness reflected in clause (b) above maturing in the immediately succeeding 24 months; provided, further, that Enterprise Total Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

"Enterprise Unencumbered Asset Value" means, as of any date of determination, the sum of (a) Unencumbered Asset Value of the Group on a consolidated basis plus (b) without duplication, the Borrower's Pro Rata Share of Unencumbered Asset Value of each Material Joint Venture.

"Enterprise Unsecured Debt" means, as of any date of determination, that portion of Enterprise Total Indebtedness that is not Enterprise Secured Debt or a Guarantee of Enterprise Secured Debt.

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

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

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person and all of the warrants or options for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person (but excluding any debt security that is convertible into or exchangeable for capital stock).

"ERISA" means the Employee Retirement Income Security Act of 1974.

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

"ERISA Event" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001 (a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) 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 a Loan Party or any ERISA Affiliate in excess of the Threshold Amount.

"ESG Report" means the annual non-financial disclosure substantially similar to the GRI Standards as publicly reported by the Parent Guarantor or the Borrower and published on an Internet or intranet website to which each Lender and the Administrative Agent has or has been granted access free of charge.

"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.

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Swap Obligations" means, with respect to the Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of the Guarantor of, or the grant by the Guarantor of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of the Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to Section 11.11 and any other "keepwell", support or other agreement for the benefit of the Guarantor and any and all guarantees of the Guarantor's Swap Obligations by other guarantors (if any)) at the time the Guaranty of the Guarantor, or grant by the Guarantor of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes in each case (i) imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located or (ii) that are Other Connection Taxes, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which any Loan Party is located, (c) any backup withholding tax that is required to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any U.S. withholding tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Loan Parties with respect to such withholding tax pursuant to Section 3.01(a) and (e) United States federal withholding Taxes imposed under FATCA.

"Facility" means the Term A-1 Facility, the Term A-2 Facility, or an Incremental Term Loan Facility, as the context may require.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Code, as of the Closing Date (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, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

"Federal Funds Rate" means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that, if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Financing Lease" means, as applied to any Person, any lease of any property by that Person as lessee which, in accordance with GAAP, is required to be accounted for as a financing lease on the balance sheet of that Person.

"First Amendment" means that certain Consent and Amendment No. 1 to Second Amended and Restated Credit Agreement dated as of February 10, 2023, by and among the Parent Guarantor, the Borrower, the Lenders party thereto and the Administrative Agent.

"First Amendment Conversion" means the "Conversion" (as defined in the First Amendment).

"First Amendment Merger" means the "Merger" (as defined in the First Amendment).

"Fitch" means Fitch Ratings, Inc. and any successor thereto.

"Fixed Charge Coverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise EBITDA for the twelve-month period ending on such date to (b) Enterprise Fixed Charges for the twelve-month period ending on such date.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

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

"Fund" means any Person (other than a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

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

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

"GRI Standards" means the Global Reporting Initiative Sustainability Reporting Standards (2016) (or successor standards) published by the Global Reporting Initiative.

"Gross Asset Value" means, as of any date of determination, an amount equal to (a) all assets of a Person and its Subsidiaries as determined in accordance with GAAP plus (b) all accumulated depreciation and accumulated amortization associated with such assets minus (c) Intangible Assets of such Person and its Subsidiaries.

"Group" means the Parent Guarantor, the Borrower and their respective Subsidiaries.

"Guarantee" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any payment obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning specified in Section 11.01.

"Guarantor" means the Parent Guarantor.

"Guaranty" means the Guarantee made by the Parent Guarantor under Article XI in favor of the Administrative Agent and the Lenders.

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

"HMT" has the meaning specified in the definition of "Sanction(s)."

"Increase Effective Date" has the meaning specified in Section 2.16(d).

"Incremental Term Loan" has the meaning specified in Section 2.16(a).

"Incremental Term Loan Amendment" has the meaning specified in Section 2.16(e)(iii).

"Incremental Term Loan Facility" means, at any time, any new tranche of term loans established pursuant to Section 2.16 and the aggregate Outstanding Amount of the Incremental Term Loans under such tranche of all Lenders at such time.

"Indebtedness" means, at any time and with respect to any Person, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations of such Person for borrowed money, whether secured or unsecured, and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments, including, without limitation, recourse and non-recourse mortgage debt;

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

(c) aggregate net obligations of such Person under Swap Contracts;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than (i) trade accounts payable and other accrued obligations in the ordinary course of business and (ii) liabilities with respect to earnouts, reimbursements, true-ups and other similar obligations incurred in connection with the purchase or sale of assets except to the extent such liabilities are required to appear on the balance sheet of such Person prepared in accordance with GAAP);

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

(f) Financing Leases and Synthetic Lease Obligations;

(g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person (other than OP units or LTIP units issued by such Person) at any time prior to the date that is six (6) months after the latest Maturity Date then in effect (other than obligations that can solely be satisfied by delivery of Equity Interests of such Person), valued, in the case of a redeemable preferred interest, at the liquidation preference thereof; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, (i) the amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date (which shall be a positive number if such amount would be owed by the Parent Guarantor, the Borrower or any of their respective Subsidiaries and a negative number if such amount would be owed to the Parent Guarantor, the Borrower or any of their respective Subsidiaries) and the net obligations under Swap Contracts shall not be less than zero and (ii) the amount of any Financing Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. Any liability will be excluded so long as it is (1) secured by a letter of credit issued for the benefit of the Parent Guarantor, the Borrower or any of their respective Subsidiaries in form and substance and from a financial institution reasonably acceptable to the Administrative Agent, but only to the extent neither the Parent Guarantor, the Borrower nor any of their respective Subsidiaries has liability therefor, (2) any obligation (including obligations under so called "sandwich leases") against which a third party indemnifies the Parent Guarantor, the Borrower or any of their respective Subsidiaries, or guarantees all loss suffered by the Parent Guarantor, the Borrower or any of their respective Subsidiaries on account thereof, to the extent the indemnitor or guarantor has the financial wherewithal to satisfy its obligation, or (3) otherwise acceptable as a "Covered Liability" in the reasonable discretion of the Administrative Agent and the Required Lenders.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitee" has the meaning specified in Section 10.04(b).

"Initial Term A-2 Maturity Date" has the meaning specified in Section 2.15(a).

"Intangible Assets" means, as of any date of determination, assets of a Person and its Subsidiaries that are classified as intangible assets under GAAP, but excluding interests in real estate that are classified as intangible assets in accordance with GAAP.

"Intercompany Indebtedness" means, as of any date, Indebtedness to which the only parties are the Parent Guarantor, the Borrower and/or any of their respective Subsidiaries as of such date and which, if the Parent Guarantor or the Borrower is the borrower with respect to such Indebtedness, is subordinated to the obligations under this Agreement and the other Loan Documents.

"Interest Expense" means, for any period, for a Person and its Subsidiaries on a consolidated basis, the sum, without duplication, of all (a) interest expense for such period determined in accordance with GAAP (but excluding, to the extent included in Interest Expense, (i) any charges resulting from settlement of options to repurchase remarketable bonds, (ii) remaining unamortized fees paid pursuant to the 2021 Credit Agreement, and (iii) amortization of deferred financing fees, amortization of debt discounts and swap breakage costs) and (b) interest that is capitalized in such period in accordance with GAAP.

"Interest Payment Date" means, (a) as to any Term SOFR Loan, the last day of each Interest Period applicable to such Loan and the applicable Maturity Date; provided, however, that, if any Interest Period for a Term SOFR Loan exceeds three (3) months, then the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each calendar quarter and the applicable Maturity Date.

"Interest Period" means, as to each Term SOFR Loan, the period commencing on the date such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Committed Loan Notice; provided that:

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

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

(c) no Interest Period shall extend beyond the applicable Maturity Date.

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"IP Rights" has the meaning specified in Section 5.16.

"IRS" means the United States Internal Revenue Service.

"Joint Venture" means any Person in which the Borrower, directly or indirectly, has an ownership interest but does not consolidate the assets or income of such Person in preparing its consolidated financial statements.

"Judgment Currency" has the meaning specified in Section 10.19.

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

"Lender" has the meaning specified in the introductory paragraph hereto. The term "Lender" may also be used to refer to a Term A-1 Lender, a Term A-2 Lender, or a Lender of an Incremental Term Loan, as the context may require.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Leverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Total Indebtedness outstanding on such date to (b) Enterprise Gross Asset Value as of such date.

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

"Loan" means an extension of credit by a Lender to the Borrower under Article II in the form of a Committed Loan or an Incremental Term Loan of any tranche.

"Loan Documents" means this Agreement, each Note and any Sustainability Metric Annual Certificate.

"Loan Parties" means, collectively, the Borrower and the Guarantor.

"Master Agreement" has the meaning specified in the definition of "Swap Contract."

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, properties or financial condition of the Group, taken as a whole, (b) the ability of the Loan Parties to perform any of their material obligations under the Loan Documents, or (c) the rights of or remedies available to the Administrative Agent and the Lenders under the Loan Documents.

"Material Group" has the meaning specified in the definition of "Material Subsidiary."

"Material Joint Venture" means a Joint Venture in which the Borrower has made a net equity investment of $15,000,000 or greater. For purposes of this definition, the Borrower's aggregate Investment in a Joint Venture will be valued at book value as shown on the consolidated balance sheet of the Borrower, as determined in accordance with GAAP.

"Material Recourse Indebtedness" means any Indebtedness of the Parent Guarantor, the Borrower and/or any of their respective Subsidiaries (other than Indebtedness under the Loan Documents and Indebtedness under Swap Contracts) that (a) does not constitute Non-Recourse Indebtedness, and (b) individually or in the aggregate, has a principal amount (including, without duplication, undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount.

"Material Subsidiary" means each Subsidiary or any group of Subsidiaries (i) which, as of the most recent fiscal quarter of the Parent Guarantor or the Borrower, as applicable, for the period of four consecutive fiscal quarters then ended, for which financial statements have been delivered pursuant to Section 6.01 (or, prior to the delivery of such financial statements for the fiscal quarter ending September 30, 2022, for the period of four consecutive fiscal quarters ended June 30, 2022), contributed greater than $100,000,000 of Enterprise EBITDA for such period or (ii) which contributed greater than $300,000,000 of Enterprise Gross Asset Value as of such date. A group of Subsidiaries (a "Material Group") each of which is not otherwise a Material Subsidiary (defined in the foregoing sentence) shall constitute a Material Subsidiary if the group taken as a single entity satisfies the requirements of the foregoing sentence.

"Maturity Date" means (a) with respect to the Term A-1 Facility, the Term A-1 Maturity Date, (b) with respect to the Term A-2 Facility, the Term A-2 Maturity Date, and/or (c) with respect to any tranche of Incremental Term Loans, subject to Section 2.16(e)(iii), the date set forth in the applicable Incremental Term Loan Amendment as the "Maturity Date" for such tranche of Incremental Term Loans, in each case, as the context may require.

"Maximum Rate" has the meaning specified in Section 10.09.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage Lien" means any Lien that encumbers a real property owned by a Person other than Permitted Specified Liens.

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

"Negative Pledge" means any provision of a document, instrument or agreement (other than this Agreement or any other Loan Document) that is binding on a Loan Party or any Wholly-Owned Subsidiary and prohibits the creation or assumption of any Lien on any assets of such Person to secure the Obligations; provided, however, that a provision conditioning a Person's ability to encumber its assets upon the maintenance of one or more specified ratios shall not constitute a Negative Pledge so long as such provision does not generally prohibit the encumbrance of such Person's assets or the encumbrance of specific assets.

"Net Income" means, for any period, for a Person and its Subsidiaries on a consolidated basis, the net income of such Person and its Subsidiaries for such period as determined in accordance with GAAP (without giving effect to (i) any net after tax gains or losses attributable to sales of non-current assets out of the ordinary course of business and write-downs of non-current assets in anticipation of losses to the extent they have decreased net income, and (ii) gains and losses from dispositions of depreciable real estate investments, impairment charges, the early extinguishment of debt and transaction costs of acquisitions not permitted to be capitalized pursuant to GAAP and other non-recurring items, including, without limitation, charges resulting from settlement of options to repurchase remarketable bonds and other similar charges).

"New Lender Joinder Agreement" has the meaning specified in Section 2.16(c).

"Non-Recourse Indebtedness" of a Person means any Indebtedness of such Person, the recourse for which is limited to the asset or assets securing such Indebtedness (and, if applicable, in the event such Person owns no assets other than real estate that secures such Indebtedness and assets incident to ownership of such real estate (e.g., personal property) and has no other Indebtedness, to such Person and/or such Person's Equity Interests), other than in respect of environmental liabilities, fraud, misrepresentation and other similar matters.

"Notes" means, collectively, the Term Notes and any promissory notes made by the Borrower evidencing any Incremental Term Loans in a form agreed between the Borrower and the Administrative Agent, as the context may require, and "Note" means any of them individually.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that, without limiting the foregoing, the Obligations of the Guarantor shall exclude any Excluded Swap Obligations with respect to the Guarantor.

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

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

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

"Other Taxes" means all present or future stamp, court, documentary intangible, recording, filing or similar taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other 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 3.06 or Section 10.13).

"Outstanding Amount" means, with respect to Loans of one or more Class(es) on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans of such Class(es) occurring on such date.

"Overnight Rate" means, for any day, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"Parent Guarantor" means, upon completion of the First Amendment Merger, Healthpeak Properties, Inc., a Maryland corporation.

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

"Participant Register" has the meaning specified in Section 10.06(d).

"Patriot Act" has the meaning specified in Section 10.17.

"PBGC" means the Pension Benefit Guaranty Corporation.

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

"Permitted Specified Liens" means Liens permitted under Section 7.01(c) – (m) and (o) – (q).

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

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

"Platform" has the meaning specified in Section 6.02.

"Pro Forma Basis" means, for purposes of determining any financial covenant hereunder, that the subject transaction shall be deemed to have occurred as of the first day of the period of four (4) consecutive fiscal quarters ending as of the end of the most recent fiscal quarter for which annual or quarterly financial statements shall have been delivered in accordance with the provisions of this Agreement. Further, for purposes of making calculations on a "Pro Forma Basis" hereunder, (a) in the case of a Disposition, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such Disposition shall be excluded to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness paid or retired in connection with the subject transaction shall be deemed to have been paid and retired as of the first day of the applicable period; (b) in the case of an acquisition, development or redevelopment, (i) income statement items (whether positive or negative) attributable to the property, entities or business units that are the subject of such acquisition, development or redevelopment shall be included to the extent relating to any period prior to the date of the subject transaction, and (ii) Indebtedness incurred in connection with the subject transaction shall be deemed to have been incurred as of the first day of the applicable period (and interest expense shall be imputed for the applicable period utilizing the actual interest rates thereunder or, if actual rates are not ascertainable, assuming prevailing interest rates hereunder) and (c) in the case of the issuance or exercise of Equity Interests, Indebtedness paid or retired in connection therewith shall be deemed to have been paid and retired as of the first day of the applicable period.

"Pro Rata Share" means (a) with respect to the EBITDA, Net Income, Interest Expense, Gross Asset Value and Unencumbered Asset Value of each Joint Venture, the Borrower's direct or indirect percentage ownership interest in such Joint Venture and (b) with respect to the Indebtedness of each Joint Venture (i) if the Indebtedness is recourse to the Parent Guarantor, the Borrower or any of their respective Subsidiaries, the amount of such Indebtedness that is recourse to the Parent Guarantor, the Borrower or such Subsidiary and (ii) if the Indebtedness is not recourse to the Parent Guarantor, the Borrower or any of their respective Subsidiaries, the Borrower's percentage ownership interest in such Joint Venture.

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

"Public Lender" has the meaning specified in Section 6.02.

"QFC Credit Support" has the meaning specified in Section 10.24.

"Qualified ECP Guarantor" means, at any time, each Loan Party with total assets exceeding $10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Recipient" means the Administrative Agent and any Lender, as applicable.

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

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

"Related Indemnified Party" of an Indemnitee means (a) any trustees, members, administrators, managers, partners, Controlling Person or Controlled Affiliate of such Indemnitee, (b) the respective directors, officers or employees of such Indemnitee or any of its Controlling Persons or Controlled Affiliates and (c) the respective advisors, attorneys, accountants, agents and representatives of such Indemnitee or any of its Controlling Persons or Controlled Affiliates, in the case of this clause (c), acting on behalf of, or at the express instructions of, such Indemnitee, Controlling Person or such Controlled Affiliate.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

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

"Request for Credit Extension" means, with respect to a Borrowing or a conversion or continuation of any Loan, a Committed Loan Notice.

"Required Class Lenders" means, at any time with respect to any Class of Loans (or any Class of commitments to make Loans), Lenders having Total Loan Exposures with respect to such Class representing more than 50% of the Total Loan Exposures of all Lenders of such Class. The Total Loan Exposure of any Defaulting Lender with respect to such Class shall be disregarded in determining Required Class Lenders at any time.

"Required Lenders" means, as of any date of determination, Lenders having Total Loan Exposures representing more than 50% of the Total Loan Exposures of all Lenders. The Total Loan Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Required Term A-1 Lenders" means, as of any date of determination, Term A-1 Lenders having Total Term A-1 Loan Exposures representing more than 50% of the Total Term A-1 Loan Exposures of all Term A-1 Lenders. The Total Term A-1 Loan Exposure of any Defaulting Lender shall be disregarded in determining Required Term A-1 Lenders at any time.

"Required Term A-2 Lenders" means, as of any date of determination, Term A-2 Lenders having Total Term A-2 Loan Exposures representing more than 50% of the Total Term A-2 Loan Exposures of all Term A-2 Lenders. The Total Term A-2 Loan Exposure of any Defaulting Lender shall be disregarded in determining Required Term A-2 Lenders at any time.

"Rescindable Amount" has the meaning specified in Section 2.13(b)(ii).

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer" means the chief executive officer, president, chief financial officer, each executive vice president and senior vice president, and the treasurer of any Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party or any entity authorized to act on behalf of such Loan Party, and, solely for purposes of notices given pursuant to Article II, any other officer or employee of a Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of such Loan Party designated in or pursuant to an agreement between such Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the applicable Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any payment (whether in cash, securities or other property) by the Parent Guarantor, the Borrower or any of their respective Subsidiaries, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any of the Parent Guarantor's or Borrower's capital stock or other Equity Interest, or on account of any return of capital to the Parent Guarantor's or the Borrower's stockholders, partners or members (or the equivalent Person thereof); provided that dividends to the extent in the form of Equity Interests shall not constitute Restricted Payments.

"Rolling Base Year Methodology" has the meaning specified in the definition of "Sustainability Metric."

"Rolling Base Year Percentage" has the meaning specified in the definition of "Sustainability Metric."

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc., and any successor thereto.

"Same Day Funds" means immediately available funds.

"Sanction(s)" means any international economic sanctions administered or enforced by the United States federal government (including, without limitation, OFAC), the United Nations Security Council, the European Union, His Majesty's Treasury of the United Kingdom ("HMT") or other relevant sanctions authority.

"Scheduled Principal Payment" means, for any period, (a) all regularly scheduled principal payments during such period by the Parent Guarantor and its Subsidiaries with respect to Indebtedness of the Parent Guarantor and its Subsidiaries (other than payments due at final maturity of any tranche of Indebtedness) and (b) without duplication, the Borrower's Pro Rata Share of all regularly scheduled principal payments during such period with respect to the Indebtedness (other than payments due at final maturity of any tranche of Indebtedness) of each Material Joint Venture. For purposes of determining Scheduled Principal Payments, Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

"Scheduled Unavailability Date" has the meaning specified in Section 3.03(b).

"Scope 1" means direct greenhouse gas emissions relating to natural gas, transport fuel and refrigerants (or other similar categories) as disclosed in the applicable annual Sustainability Metric Report.

"Scope 2" means indirect greenhouse gas emissions relating to purchased electricity and purchased chilled water refrigerants (or other similar categories) as disclosed in the applicable annual Sustainability Metric Report.

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

"Secured Debt Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Secured Debt outstanding on such date to (b) Enterprise Gross Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Unsecured Leverage Ratio as of such date.

"Significant Acquisition" means the acquisition (in one or a series of related transactions) of all or substantially all of the assets or Equity Interests of a Person or any division, line of business or business unit of a Person for an aggregate consideration in excess of $450,000,000.

"SOFR" means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator of such rate).

*"*SOFR Adjustment*"* with respect to Daily Simple SOFR means 0.10% (10 basis points); and with respect to Term SOFR means 0.10% (10 basis points).

"Specified Arrangers" means BofA Securities, Inc. and Wells Fargo Securities, LLC, each in its capacity as a joint lead arranger.

"Specified Default" means an Event of Default arising under Section 8.01(a) or 8.01(f).

"Specified Representations" means the representations and warranties set forth in the Loan Documents (or otherwise mutually agreed between the Borrower and the applicable Lenders providing any applicable Incremental Term Loans) relating to: corporate existence of each Loan Party and good standing of such Loan Party in its jurisdiction of organization; power and authority, due authorization, execution and delivery and enforceability, in each case, relating to such Loan Party entering into and performance of the Loan Documents; no conflicts with or consents under such Loan Party's Organization Documents, applicable Law or material contractual obligations (in each case, as they relate to the entering into and performance of the Loan Documents); use of proceeds of the Incremental Term Loans on the relevant Increase Effective Date; solvency of the Loan Parties and their Subsidiaries on a consolidated basis; Federal Reserve margin regulations; the Investment Company Act of 1940; the Patriot Act; OFAC; and Sanctions and Anti-Corruption Laws.

"Specified Test Year" has the meaning specified in the definition of "Applicable Rate."

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity the accounts of which are consolidated with the accounts of such Person in such Person's consolidated financial statements prepared in accordance with GAAP. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of a Loan Party.

"Successor Rate" has the meaning specified in Section 3.03(b).

"Supported QFC" has the meaning specified in Section 10.24.

"Sustainability Assurance Provider" means Cventure LLC, or any replacement sustainability assurance provider thereof as designated from time to time by the Borrower; provided that any such replacement Sustainability Assurance Provider (a) shall be (i) a qualified external reviewer, independent of the Loan Parties and their Subsidiaries, believed in good faith by the Borrower to have relevant expertise, such as an auditor, environmental consultant and/or independent ratings agency or (ii) another firm designated by the Borrower and identified in writing to the Administrative Agent and the Lenders, so long as Lenders constituting the Required Lenders do not object to such designation pursuant to this clause (a)(ii) within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection), and (b) to the extent relevant to the Sustainability Metric Components, shall apply auditing standards and methodology that are the same as or substantially consistent with the auditing standards and methodology used in the Borrower's ESG Report for the calendar year ended December 31, 2020, except for any changes to such standards and/or methodology that (x) are not material, (y) are consistent with then generally accepted industry standards or (z) if not so consistent, are proposed by the Borrower and notified in writing to the Administrative Agent and the Lenders, so long as, in the case of this subclause (z), Lenders constituting Required Lenders do not object to such changes within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection).

"Sustainability Metric" means, for any given calendar year (for purposes of this definition, the "subject year"), the percentage change of the Sustainability Metric Components relative to the Sustainability Metric Baseline, which percentage change for any subject year shall be determined and calculated based on the following methodology: (a) the Sustainability Metric Components for such subject year shall be compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of such subject year (such methodology described in this clause (a), the "Rolling Base Year Methodology," and the percentage change of such Sustainability Metric Components for a subject year relative to such Sustainability Metric Components for the immediately preceding calendar year being referred to as the "Rolling Base Year Percentage", which, for the avoidance of doubt, shall be expressed as a negative percentage in the event such Sustainability Metric Components for such subject year are less than such Sustainability Metric Components for the immediately preceding calendar year); (b) in the case of the Specified Test Year ending December 31, 2022, the Sustainability Metric for such Specified Test Year shall be the percentage equal to the sum of (i) the Rolling Base Year Percentage for such Specified Test Year and (ii) the Rolling Base Year Percentage for the calendar year ended December 31, 2021; and (c) in the case of a Specified Test Year ending after December 31, 2022, the Sustainability Metric for such Specified Test Year shall be the percentage equal to the sum of (i) the Rolling Base Year Percentage for such Specified Test Year and (ii) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021.

"Sustainability Metric Annual Certificate" means a certificate substantially in the form of Exhibit G (or such other form as may be approved by the Administrative Agent), signed by a Responsible Officer, and attaching a copy of the Sustainability Metric Report for the most recently ended calendar year (provided that such a copy shall not be required to be so attached if such Sustainability Metric Report has been published on an Internet or intranet website to which each Lender and the Administrative Agent has or has been granted access free of charge); provided that the Borrower may, but shall not be required to, include a certification regarding whether or not the Sustainability Metric Election Threshold has been satisfied as of December 31 of the then most recently ended calendar year (commencing with the calendar year ending December 31, 2022) in any Compliance Certificate delivered by the Borrower from time to time pursuant to Section 6.02(a), and any Compliance Certificate containing such a certification (and attaching a copy of the applicable Sustainability Metric Report, except to the extent such attachment is not required as described above) shall be deemed to be the Sustainability Metric Annual Certificate for the calendar year most recently ended prior to the delivery of such Compliance Certificate.

"Sustainability Metric Annual Certificate Inaccuracy" has the meaning specified in the definition of "Applicable Rate."

"Sustainability Metric Baseline" means the Borrower's Sustainability Metric Components for the calendar year ended December 31, 2020, as set forth in the applicable Sustainability Metric Report (for the avoidance of doubt, subject to the Rolling Base Year Methodology).

"Sustainability Metric Components" means, for any calendar year of the Borrower, the combined Scope 1 and Scope 2 greenhouse gas emissions of the Parent Guarantor, the Borrower and their respective Controlled Subsidiaries for such calendar year (determined in all material respects in conformity with the GRI Standards), less any qualified emissions offsets (including, but not limited to, renewable energy certificates) of the Parent Guarantor, the Borrower and their respective Controlled Subsidiaries during such calendar year, in each case, with respect to the Boundary Properties (subject to the Rolling Base Year Methodology). Qualified emissions offsets include any offsets used to calculate Scope 1 and Scope 2 emissions for reporting emissions in the applicable annual Sustainability Metric Report, including any offsets in which Parent Guarantor, Borrower and/or any of their respective Controlled Subsidiaries has an interest as a result of purchasing environmental attributes of projects other than those owned directly by the Parent Guarantor, the Borrower and/or any of their respective Controlled Subsidiaries.

"Sustainability Metric Election Threshold" means, with respect to any Specified Test Year of the Borrower listed in the first column of the table set forth below, the percentage change specified opposite such Specified Test Year in the second column of the table below (such change specified in such column, the "Sustainability Metric Election Threshold").

| **Specified Test Year ending December 31 of** | **Required Sustainability Metric Reduction** |
|---|---|
| 2022 | -2.00% |
| 2023 | -3.00% |
| 2024 | -4.00% |
| 2025 and thereafter | -5.00% |

For purposes hereof, the Sustainability Metric Election Threshold for any Specified Test Year shall be satisfied if the Sustainability Metric for such Specified Test Year is a negative number the absolute value of which is equal to or greater than the absolute value of such Sustainability Metric Election Threshold.

"Sustainability Metric Pricing Grid" has the meaning specified in the definition of "Applicable Rate."

"Sustainability Metric Report" means an annual report by the Parent Guarantor or the Borrower (it being understood that such annual report for any year may take the form of the annual ESG Report) that sets forth the Sustainability Metric Components for a specific calendar year and with respect to which a verification review of the Scope 1 and Scope 2 emissions reported therein for such calendar year has been conducted by the Sustainability Assurance Provider; provided that, to the extent relevant to such Sustainability Metric Components, the qualified or limited statement of assurance from the Sustainability Assurance Provider that is set forth in, or attached to, such report shall be the same as or substantially similar in all material respects to the statement of the Sustainability Assurance Provider set forth on page 54 of the ESG Report for the calendar year ended December 31, 2020, except for any changes that (x) are with respect to any additional or increased level of assurance or any expanded scope of review, (y) are with respect to accounting standards or methodology, so long as, in the case of this subclause (y), such changes are consistent with the requirements of clause (b) of the definition of "Sustainability Assurance Provider" (without regard to whether such Sustainability Assurance Provider is a replacement Sustainability Assurance Provider) or (z) are proposed by the Borrower and notified in writing to the Administrative Agent and the Lenders, so long as, in the case of this subclause (z), Lenders constituting Required Lenders do not object to such changes within five (5) Business Days after notice thereof (setting forth in reasonable detail the basis for such objection).

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

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

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

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease or (b) any similar off-balance sheet financing product that is considered borrowed money indebtedness for tax purposes but classified as an operating lease under GAAP.

"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 A-1 Borrowing" means a borrowing consisting of simultaneous Term A-1 Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Term A-1 Lenders pursuant to Section 2.01(a).

"Term A-1 Commitment" means, as to each Term A-1 Lender, its obligation to make Committed Term A-1 Loans to the Borrower pursuant to Section 2.01(a), in an aggregate principal amount which does not exceed the Dollar amount set forth opposite such Lender's name in the column entitled "Term A-1 Commitment" on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Term A-1 Facility" means, at any time, (a) during the Availability Period in respect of such Facility, the sum of (i) the aggregate amount of the unused Term A-1 Commitments of all Term A-1 Lenders at such time and (ii) the aggregate Outstanding Amount of the Term A-1 Loans of all Term A-1 Lenders at such time and (b) thereafter, the aggregate Outstanding Amount of the Term A-1 Loans of all Term A-1 Lenders at such time.

"Term A-1 Lender" means a Lender with a Term A-1 Commitment or an outstanding Committed Term A-1 Loan.

"Term A-1 Loan" means any extension of credit under the Term A-1 Facility in the form of a loan by a Term A-1 Lender to the Borrower under Article II.

"Term A-1 Loan Exposure" means, as to any Lender at any time, the aggregate Outstanding Amount at such time of its Term A-1 Loans; provided that at any time prior to the end of the Availability Period with respect to the Term A-1 Facility, the Term A-1 Loan Exposure of any Lender shall also include such Lender's unused Term A-1 Commitment at such time.

"Term A-1 Maturity Date" means August 22, 2027 (or, if such date is not a Business Day, the immediately preceding Business Day).

"Term A-1 Note" means a promissory note made by the Borrower in favor of a Term A-1 Lender evidencing Term A-1 Loans made by such Lender, substantially in the form of Exhibit D-1.

"Term A-2 Borrowing" means a borrowing consisting of simultaneous Term A-2 Loans of the same Type and, in the case of Term SOFR Loans, having the same Interest Period made by each of the Term A-2 Lenders pursuant to Section 2.01(b).

"Term A-2 Commitment" means, as to each Term A-2 Lender, its obligation to make Committed Term A-2 Loans to the Borrower pursuant to Section 2.01(b), in an aggregate principal amount which does not exceed the Dollar amount set forth opposite such Lender's name in the column entitled "Term A-2 Commitment" on Schedule 2.01 or in the Assignment and Assumption or the New Lender Joinder Agreement pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Term A-2 Facility" means, at any time, (a) during the Availability Period in respect of such Facility, the sum of (i) the aggregate amount of the unused Term A-2 Commitments of all Term A-2 Lenders at such time and (ii) the aggregate Outstanding Amount of the Term A-2 Loans of all Term A-2 Lenders at such time and (b) thereafter, the aggregate Outstanding Amount of the Term A-2 Loans of all Term A-2 Lenders at such time.

"Term A-2 Lender" means a Lender with a Term A-2 Commitment or an outstanding Committed Term A-2 Loan.

"Term A-2 Loan" means any extension of credit under the Term A-2 Facility in the form of a loan by a Term A-2 Lender to the Borrower under Article II.

"Term A-2 Loan Exposure" means, as to any Lender at any time, the aggregate Outstanding Amount at such time of its Term A-2 Loans; provided that at any time prior to the end of the Availability Period with respect to the Term A-2 Facility, the Term A-2 Loan Exposure of any Lender shall also include such Lender's unused Term A-2 Commitment at such time.

"Term A-2 Maturity Date" means February 22, 2027 (or, if such date is not a Business Day, the immediately preceding Business Day), subject to extension in accordance with Section 2.15.

"Term A-2 Note" means a promissory note made by the Borrower in favor of a Term A-2 Lender evidencing Term A-2 Loans made by such Lender, substantially in the form of Exhibit D-2.

"Term Facility" means the Term A-1 Facility or the Term A-2 Facility, as the context may require.

"Term Loan" means a Term A-1 Loan or a Term A-2 Loan, as the context may require.

"Term Note" means a Term A-1 Note or a Term A-2 Note, as the context may require.

"Term SOFR" means:

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that, if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto for which such rate was published, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day; provided that, if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto for which such rate was published;

provided that, if Term SOFR determined in accordance with the provisions of either clause (a) or (b) above would otherwise be less than 0.00%, then Term SOFR shall be deemed 0.00% for purposes of this Agreement.

"Term SOFR Loan" means a Loan that bears interest at a rate based on clause (a) of the definition of "Term SOFR."

"Term SOFR Screen Rate" means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

"Threshold Amount" means $150,000,000.

"Ticking Fee" has the meaning specified in Section 2.10(c).

"Total Loan Exposure" means, as to any Lender at any time, (a) in respect of the Term A-1 Facility, the Term A-1 Loan Exposure of such Lender at such time, (b) in respect of the Term A-2 Facility, the Term A-2 Loan Exposure of such Lender at such time, and (c) in respect of any Incremental Term Loan Facility, the aggregate Outstanding Amount at such time of its Incremental Term Loans under such Incremental Term Loan Facility; provided that at any time prior to the termination of all commitments to make Incremental Term Loans under such Incremental Term Loan Facility, the Total Loan Exposure in respect of such Incremental Term Loan Facility of any Lender shall also include such Lender's unused commitment, if any, at such time to make Incremental Term Loans under such Incremental Term Loan Facility.

"Treasury Management Agreement" means any treasury, depository or cash management arrangements, services or products, including, without limitation, overdraft services and automated clearinghouse transfers of funds.

"Treasury Management Lender" means any Person that, at the time it enters into a Treasury Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Treasury Management Agreement.

"Type" means, with respect to a Loan, its character as a Base Rate Loan or a Term SOFR Loan.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unencumbered Asset Value" means, for a Person and its Subsidiaries on a consolidated basis, as of any date of determination, the sum of (a) the aggregate net book value, as determined in accordance with GAAP, of all real property of a Person that is not subject to a Mortgage Lien plus (b) all accumulated depreciation and amortization with respect to such real properties plus (c) unrestricted cash and cash equivalents of such Person plus (d) the sum of (i) unencumbered mezzanine and mortgage loan receivables (at the value reflected in the consolidated financial statements of the Parent Guarantor, in accordance with GAAP, as of such date, including the effect of any impairment charges) and (ii) unencumbered marketable securities (at the value reflected in the consolidated financial statements of the Parent Guarantor, in accordance with GAAP, as of such date, including the effect of any impairment charges); provided that the items described in this clause (ii) and in the preceding clause (i) shall not be taken into account to the extent that the amounts of such items exceed, in the aggregate, 20% of Unencumbered Asset Value. For purposes of this definition, (1) "Mortgage Lien" shall not include any lien securing Intercompany Indebtedness and (2) for the avoidance of doubt, the value of any asset or property subject to Liens on assets of the Parent Guarantor, the Borrower or any of their respective Subsidiaries securing obligations under Swap Contracts shall not be included in the calculation of Unencumbered Asset Value.

"Unfunded Pension Liability" means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

"United States" and "U.S." mean the United States of America.

"Unsecured Leverage Ratio" means, on the last day of any fiscal quarter, the ratio of (a) Enterprise Unsecured Debt outstanding on such date to (b) Enterprise Unencumbered Asset Value as of such date. Notwithstanding anything to the contrary contained herein, for the purposes of this ratio, the aggregate amount of all unrestricted cash and cash equivalents on such date deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Secured Debt Ratio as of such date.

"U.S. Government Securities Business Day" means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

"U.S. Special Resolution Regimes" has the meaning specified in Section 10.24.

"Wells Fargo" means Wells Fargo Bank, National Association and its successors.

"Wholly-Owned Subsidiary" means any wholly-owned Subsidiary of the Parent Guarantor or the Borrower, as applicable, in each case, that is not a special purpose entity.

"Write-Down and Conversion Powers" means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**1.02 Other Interpretive Provisions.**

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

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

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

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

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

(e) For the avoidance of doubt, the parties intend that the term "Enterprise" refer to financial calculations that cover (i) the Group and (ii) the Borrower's Pro Rata Share of Material Joint Ventures.

**1.03 Accounting Terms.**

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Parent Guarantor and its Subsidiaries shall be deemed to be carried in accordance with GAAP, excluding the effects of FASB ASC 825 on financial liabilities.

(b) Changes in GAAP. 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 Required 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 Required Lenders and the Borrower); provided 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) the Borrower shall provide to the Administrative Agent financial statements and other documents required under this Agreement or as reasonably requested in writing hereunder by the Administrative Agent setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

**1.04 Rounding.**

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

**1.05 [Reserved].**

**1.06 [Reserved].**

**1.07 Interest Rates.** Except as specifically set forth herein, the Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any such rate (or component thereof) provided by any such information source or service.

**1.08 Times of Day.**

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

## ARTICLE II

## THE COMMITMENTS AND CREDIT EXTENSIONS

**2.01 Committed Loans**.

(a) Term A-1 Borrowings. Subject to the terms and conditions set forth herein, each Term A-1 Lender severally agrees to make term loans (each such loan, a "Committed Term A-1 Loan") to the Borrower in Dollars from time to time, on any Business Day during the Availability Period for the Term A-1 Facility, in an aggregate amount not to exceed such Term A-1 Lender's Applicable Percentage of the Term A-1 Facility; provided that, there shall be no more than five (5) separate Borrowing Dates on which any Term Loans made pursuant to Section 2.01(a) and/or Section 2.01(b) during the Availability Period. Each Term A-1 Borrowing shall consist of Term A-1 Loans made simultaneously by the Term A-1 Lenders in accordance with their respective Applicable Percentage of the Term A-1 Facility. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term A-1 Loans may be Base Rate Loans or Term SOFR Loans, as further provided herein.

(b) Term A-2 Borrowings. Subject to the terms and conditions set forth herein, each Term A-2 Lender severally agrees to make term loans (each such loan, a "Committed Term A-2 Loan") to the Borrower in Dollars from time to time, on any Business Day during the Availability Period for the Term A-2 Facility, in an aggregate amount not to exceed such Term A-2 Lender's Applicable Percentage of the Term A-2 Facility; provided that, there shall be no more than five (5) separate Borrowing Dates on which any Term Loans made pursuant to Section 2.01(a) and/or Section 2.01(b) during the Availability Period. Each Term A-2 Borrowing shall consist of Term A-2 Loans made simultaneously by the Term A-2 Lenders in accordance with their respective Applicable Percentage of the Term A-2 Facility. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Term A-2 Loans may be Base Rate Loans or Term SOFR Loans, as further provided herein.

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

(a) Each Borrowing, each conversion of Loans from one Type to another Type, and each continuation of Term SOFR Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such Committed Loan Notice must be received by the Administrative Agent not later than 12:00 Noon (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Term SOFR Loans or of any conversion of Term SOFR Loans to Base Rate Loans (or, with respect to such a Borrowing of any Incremental Term Loan, such other notice period as may be agreed to in the relevant Incremental Term Loan Amendment), (ii) [reserved], and (iii) on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of or conversion to Term SOFR Loans, or continuation of Term SOFR Loans, shall be in a principal amount equal to $1,000,000 or a whole multiple of $100,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount equal to $500,000 or a whole multiple of $100,000 in excess thereof.

Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the Borrower is requesting a Borrowing of Committed Term A-1 Loans, a Borrowing of Committed Term A-2 Loans, a Borrowing of Incremental Term Loans of a specific tranche, a conversion of Loans from one Type to another Type, or a continuation of Term SOFR Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type and Class of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; provided, however, that, in the case of a failure to timely request a continuation of Term SOFR Loans, such Loans shall be continued as Term SOFR Loans with an Interest Period of one month (unless an Event of Default exists and is continuing at such time and the Administrative Agent has notified the Borrower that the Required Lenders have determined that such a continuation as Term SOFR Loans is not appropriate in accordance with Section 2.02(c)). Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term SOFR Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Term SOFR Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice requesting a Committed Borrowing, the Administrative Agent shall promptly notify each applicable Lender of the amount of its Applicable Percentage of the Committed Loans under the applicable Facility.

In the case of a Borrowing, each applicable Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. In any event, a Lender may cause any domestic branch or Affiliate to fund or make the amount of its Loan available in accordance with the foregoing provisions. Upon satisfaction or waiver of the applicable conditions set forth in Section 4.02 (or in the case of (x) a Borrowing requested by the Borrower to be made on the Closing Date, the conditions set forth in Section 4.01, or (y) a Borrowing of Incremental Term Loans, the applicable conditions set forth in Section 2.16(e)), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) Except as otherwise provided herein, a Term SOFR Loan may be continued or converted only on the last day of an Interest Period for such Term SOFR Loan. During the existence of an Event of Default that is continuing, no Loans may be requested as, converted to or continued as Term SOFR Loans if the Administrative Agent has notified the Borrower that the Required Lenders have determined that such a continuation or conversion is not appropriate.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Term SOFR Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to another Type, and all continuations of Committed Loans as the same Type, there shall not be more than (i) six (6) Interest Periods in effect with respect to all Committed Term A-1 Loans and (ii) six (6) Interest Periods in effect with respect to all Committed Term A-2 Loans.

(f) With respect to SOFR or Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

**2.03 [Reserved].**

**2.04 [Reserved].**

**2.05 [Reserved].**

**2.06 Prepayments**. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time, voluntarily prepay any Loans of any Class in whole or in part without premium or penalty pursuant to this Section 2.06; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days (or such shorter period as the Administrative Agent shall agree) prior to any date of prepayment of Term SOFR Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Term SOFR Loans shall be in a principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) and Class(es) of Loans to be prepaid and, if Term SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment of the applicable Class(es) of Loans. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, however, that a notice of voluntary prepayment may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice of prepayment may be revoked by the Borrower if such condition is not satisfied. Any prepayment of a Term SOFR Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.18, each prepayment of Loans of any Class made pursuant to this Section 2.06 shall be made ratably among the Lenders of such Class in accordance with their respective Applicable Percentages of such Class of Loans.

**2.07 Termination or Reduction of Commitments.**

(a) Concurrently with the Borrowing of any Term A-1 Loans on any Borrowing Date, the Term A-1 Commitment of each Term A-1 Lender will be permanently reduced on a dollar-for-dollar basis by the principal amount of Term A-1 Loans made by such Term A-1 Lender on such Borrowing Date. Concurrently with the Borrowing of any Term A-2 Loans on any Borrowing Date, the Term A-2 Commitment of each Term A-2 Lender will be permanently reduced on a dollar-for-dollar basis by the principal amount of Term A-2 Loans made by such Term A-2 Lender on such Borrowing Date.

(b) Unless previously terminated, (i) the Aggregate Term A-1 Commitments will terminate in full at 5:00 p.m. on the last day of the Availability Period with respect to the Term A-1 Facility and (ii) the Aggregate Term A-2 Commitments will terminate in full at 5:00 p.m. on the last day of the Availability Period with respect to the Term A-2 Facility.

(c) The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Term A-1 Commitments or the Aggregate Term A-2 Commitments, or from time to time permanently reduce the Aggregate Term A-1 Commitments or the Aggregate Term A-2 Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 12:00 Noon five (5) Business Days prior to the date of termination or reduction, and (ii) any such partial reduction shall be in an aggregate amount of $5,000,000 or any whole multiple of $1,000,000 in excess thereof. Each such notice of termination shall specify such election to terminate, the relevant Class(es) of Commitments to be terminated, and the effective date thereof. The Administrative Agent will promptly notify the Lenders of the relevant Class(es) of any such notice of termination or reduction of Commitments of such Class(es). A notice delivered by the Borrower pursuant to this Section 2.07(c) may state that such notice is conditioned upon an event, such as the effectiveness of other credit facilities, the receipt of the proceeds from the issuance of Equity Interests or other Indebtedness or the receipt of the proceeds from a Disposition, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(d) Any reduction of the Aggregate Term A-1 Commitments pursuant to Section 2.07(b) or (c) shall be applied to the Term A-1 Commitment of each Lender according to its Applicable Percentage of the Term A-1 Facility. Any reduction of the Aggregate Term A-2 Commitments pursuant to Section 2.07(b) or (c) shall be applied to the Term A-2 Commitment of each Lender according to its Applicable Percentage of the Term A-2 Facility.

**2.08 Repayment.**

(a) The Borrower shall repay to the Term A-1 Lenders on the Term A-1 Maturity Date, unless accelerated sooner pursuant to Section 8.02, the entire outstanding principal balance of all Committed Term A-1 Loans, together with accrued but unpaid interest, fees and all other sums with respect thereto.

(b) The Borrower shall repay to the Term A-2 Lenders on the Term A-2 Maturity Date, unless accelerated sooner pursuant to Section 8.02, the entire outstanding principal balance of all Committed Term A-2 Loans, together with accrued but unpaid interest, fees and all other sums with respect thereto.

**2.09 Interest**.

(a) Applicable Interest. Subject to the provisions of Section 2.09(b), (i) each Term SOFR Loan shall bear interest on the outstanding principal amount thereof for each Interest Period applicable thereto at a rate per annum equal to Term SOFR for such Interest Period plus the Applicable Rate; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) Default Interest.

(i) If any amount of principal of any Loan is not paid when due, whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

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

(iii) Upon the request of the Required Lenders, while any Event of Default exists, (x) the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws and (y) any adjustment to the Applicable Rate pursuant to the Sustainability Metric Pricing Grid shall cease to apply.

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

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

**2.10 Fees**.

(a) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times as separately agreed upon in writing between the Borrower, the applicable Arrangers and the Administrative Agent, as applicable. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, absent manifest error.

(b) The Borrower shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever, absent manifest error.

(c) Ticking Fee. The Borrower agrees to pay to the Administrative Agent for the account of each Lender with respect to each Term Facility a ticking fee (the "Ticking Fee") in Dollars, which, subject to adjustment as provided in Section 2.18, shall accrue at a rate of 0.15% (15.0 basis points) per annum on the actual daily amount of the undrawn Commitments of such Lender under such Term Facility during the period commencing on October 21, 2022 to but not including the earlier of (x) the final day of the Availability Period with respect to such Term Facility and (y) the date on which all Commitments under such Term Facility shall have been terminated. Accrued and unpaid Ticking Fees with respect to a Term Facility shall be due and payable in arrears upon the earliest of (i) the date that is the final day of the Availability Period with respect to such Term Facility, (ii) the date on which any Committed Borrowing under such Term Facility occurs and (iii) the date on which any Commitments under such Term Facility are terminated. All Ticking Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

**2.11 Computation of Interest and Fees**.

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.13(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

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

**2.13 Payments Generally; Administrative Agent's Clawback.**

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, such due date shall be extended to the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Term SOFR Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to the Loans constituting such Borrowing. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. In the event the Borrower pays such amount to the Administrative Agent, then such amount shall reduce the principal amount of such Borrowing (subject to the last sentence of this paragraph and any applicable provisions of Section 2.18). If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by the Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders of any Class 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, in reliance upon such assumption, distribute to the Lenders of such Class the amount due. With respect to any payment that the Administrative Agent makes for the account of any of the Lenders hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount"): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by Borrower (whether or not then owed); or (3) the Administrative Agent has for any reason otherwise erroneously made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.13(b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Section 4.02 (or in the case of (x) a Borrowing requested by the Borrower to be made on the Closing Date, the conditions set forth in Section 4.01, or (y) a Borrowing of Incremental Term Loans, the applicable conditions set forth in Section 2.16(e)) are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Term A-1 Loans and Committed Term A-2 Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under Section 10.04(c).

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

**2.14 Sharing of Payments by Lenders.**

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 the Loans of any Class made by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans of such Class and accrued interest thereon greater than its pro rata share thereof as provided herein, 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 of the relevant Class(es), or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the relevant Lenders of the relevant Class(es) ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans of the relevant Class(es) or such other amounts owing them under the relevant Facilities, 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 2.14 shall not be construed to apply to (x) any payment made by or on behalf of 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) [reserved] or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Commitments or Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary thereof (as to which the provisions of this Section 2.14 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.

**2.15 Extension of Term A-2 Maturity Date.**

(a) Requests for Extension. The Borrower may, by written notice to the Administrative Agent (who shall promptly notify the Term A-2 Lenders) not earlier than ninety (90) days and not later than thirty (30) days prior to the Term A-2 Maturity Date then in effect (such date, the "Initial Term A-2 Maturity Date"), elect that the Term A-2 Lenders extend the Term A-2 Maturity Date for an additional twelve (12) months after such Initial Term A-2 Maturity Date; provided that the Borrower may not make more than one (1) such election pursuant to this Section 2.15 during the term of this Agreement.

(b) Confirmation by Administrative Agent. The Administrative Agent shall confirm receipt of the Borrower's notice delivered pursuant to Section 2.15(a) no later than the date that is fifteen (15) days prior to the Initial Term A-2 Maturity Date (or, if such date is not a Business Day, on the next preceding Business Day).

(c) Extension of Term A-2 Maturity Date. If (and only if) the conditions precedent set forth in Section 2.15(d) have been met, then, effective as of the Initial Term A-2 Maturity Date, the Term A-2 Maturity Date shall be extended to the date falling twelve (12) months after the Initial Term A-2 Maturity Date (except that, if such date is not a Business Day, such Term A-2 Maturity Date as so extended shall be the next preceding Business Day). Upon satisfaction of the conditions precedent set forth in Section 2.15(d), as certified by the Borrower to the Administrative Agent in writing, the Administrative Agent shall deliver a copy of such certification to each Term A-2 Lender.

(d) Conditions to Effectiveness of Extensions. As a condition precedent to such extension, (i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Initial Term A-2 Maturity Date signed by a Responsible Officer (x) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension and (y) certifying that (1) the representations and warranties contained in Article V and in the other Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Initial Term A-2 Maturity Date (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty was true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.15, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01 and (2) as of the Initial Term A-2 Maturity Date, and immediately after giving effect to such extension, no Default exists and (ii) the Borrower shall pay to the Term A-2 Lenders on or prior to the Initial Term A-2 Maturity Date a fee (to be shared among the Term A-2 Lenders based upon their Applicable Percentages of the Outstanding Amount of the Term A-2 Loans) equal to the product of (x) 0.125% multiplied by (y) the then Outstanding Amount of the Term A-2 Loans.

(e) Conflicting Provisions. This Section 2.15 shall supersede any provisions in Section 2.02(b), 2.14 or 10.01 to the contrary.

**2.16 Incremental Term Loans.**

(a) Request for Incremental Term Loans. From time to time, the Borrower shall have the right to enter into one or more new tranches (or increase an existing tranche) of term loans under this Agreement (each, an "Incremental Term Loan"); provided that (i) subject to the last proviso to clause (e)(i) below, no Default has occurred and is continuing, (ii) each increase or tranche of Incremental Term Loans must be in a minimum amount of $10,000,000 and in integral multiples of $5,000,000 in excess thereof (or such other amounts as are agreed to by the Borrower and the Administrative Agent), and (iii) after giving effect to all such Incremental Term Loans, the sum, without duplication, of the aggregate principal amounts of the Term A-1 Loans, the Term A-2 Loans and all such Incremental Term Loans shall not exceed $1,000,000,000. At the time of sending such notice to the Administrative Agent of the exercise of such right, the Borrower (in consultation with the Administrative Agent) shall specify the Lenders to be approached to provide all or a portion of such Incremental Term Loan (subject in each case to any requisite consents required under Section 10.06) and the time period within which each such Lender is requested to respond (which time period shall be as mutually agreed between the Borrower and the Administrative Agent).

(b) Lender Elections to Participate. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to participate in such new tranche or increase, as the case may be, and, if so, the maximum aggregate principal amount of the proposed Incremental Term Loans that such Lender is offering to provide. Any Lender not responding within such time period shall be deemed to have declined to participate in such new tranche or increase, as the case may be. Any such new tranche or increase shall be syndicated on a best efforts basis and no Lender shall be required to participate in any tranche of Incremental Term Loans to facilitate such tranche or increase.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. Subject to the approval of the Administrative Agent (which approval shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel (a "New Lender Joinder Agreement").

(d) Effective Date and Allocations. If any Incremental Term Loan is extended in accordance with this Section 2.16, the Administrative Agent and the Borrower shall determine the effective date (the "Increase Effective Date") and the final allocation thereof. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such Incremental Term Loan and the Increase Effective Date.

(e) Conditions to Effectiveness of Incremental Term Loans. As a condition precedent to any Incremental Term Loan:

(i) the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Increase Effective Date signed by a Responsible Officer (A) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such Incremental Term Loan, and (B) certifying that (1) the representations and warranties contained in Article V and in the other Loan Documents are true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Increase Effective Date (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty was true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall have been true and correct in all respects) as of such earlier date, and except that for purposes of this Section 2.16, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01; provided that, in the case of any Incremental Term Loan the proceeds of which are to be used to finance an acquisition (including by means of a merger, amalgamation or consolidation) or other Investment not prohibited by this Agreement (and related transaction costs) the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing or that is otherwise subject to customary "funds certain provisions," to the extent agreed by the applicable Lenders providing such Incremental Term Loan, the representations and warranties the accuracy of which in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be accurate in all respects) are a condition to the funding of such Incremental Term Loan shall be limited to (x) the Specified Representations (or such other formulation thereof as may be agreed by the applicable Lenders providing such Incremental Term Loan) and (y) those representations of the acquired company in the applicable acquisition agreement that are material to the interests of the applicable Lenders providing such Incremental Term Loan and which, if breached or inaccurate, would give the Parent Guarantor, the Borrower or any Subsidiary the right to terminate or refuse to close under the applicable acquisition agreement, and (2) as of the Increase Effective Date, and immediately after giving effect to such Incremental Term Loan, no Default or Event of Default exists; provided that, in the case of any Incremental Term Loan the proceeds of which are to be used to finance an acquisition or other Investment not prohibited by this Agreement (and related transaction costs) the consummation of which is not conditioned on the availability of, or on obtaining, third-party financing or that is otherwise subject to customary "funds certain provisions," to the extent agreed by the applicable Lenders providing such Incremental Term Loan, this condition shall be limited to (x) at the time of the execution and delivery of the applicable acquisition agreement related to such acquisition, no Default shall have occurred and be continuing or shall occur as a result thereof and (y) upon the effectiveness and making of any Incremental Term Loan on the applicable Increase Effective Date, no Specified Default shall have occurred and be continuing or shall occur as a result thereof;

(ii) (A) upon the reasonable request of any Lender made at least five (5) days prior to the applicable Increase Effective Date, the Borrower shall have provided to such Lender the documentation and other information so requested by such Lender that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and (B) if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation it shall have delivered, to each Lender that so requests at least five (5) days prior to the applicable Increase Effective Date, a Beneficial Ownership Certification in relation to the Borrower;

(iii) in the case of any tranche of Incremental Term Loans, such Incremental Term Loans (A) shall rank pari passu in right of payment with the Term Loans and any other outstanding Incremental Term Loans, (B) shall not mature earlier than the latest Maturity Date then in effect (but may have amortization prior to such date so long as the weighted average life to maturity of any Incremental Term Loans shall be no shorter than the remaining weighted average life to maturity of any previously funded and then outstanding Incremental Term Loans (if any) at such time); provided that, notwithstanding the foregoing, any increase pursuant to this Section 2.16 to a then existing tranche of Loans under this Agreement shall have the same Maturity Date as such then existing tranche that is being so increased, and (C) shall be treated substantially the same as (and in any event no more favorably than) the Term Loans and any other outstanding Incremental Term Loans; provided that (1) the terms and conditions applicable to any tranche of Incremental Term Loans maturing after the latest Maturity Date then in effect may provide for material additional or different financial or other covenants or requirements applicable only during periods after such Maturity Date then in effect, (2) the Incremental Term Loans may be priced differently than the Term Loans and any other outstanding Incremental Term Loans and (3) other terms and conditions applicable to Incremental Term Loans may be materially different from those of the Term Loans and any other outstanding Incremental Term Loans to the extent such differences are solely administrative in nature or are terms and conditions reasonably acceptable to the Administrative Agent or that customarily apply to syndicated term loan facilities (as determined in good faith by the board of directors or other equivalent governing body of the Borrower). Incremental Term Loans may be made hereunder pursuant to an amendment or 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 or increase 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 2.16;

(iv) the Administrative Agent shall have received a Request for Credit Extension in accordance with the terms hereof; and

(v) the Borrower shall provide a Note to any Lender joining on the Increase Effective Date, if requested.

(f) Conflicting Provisions. This Section 2.16 shall supersede any provisions in Sections 2.14 or 10.01 to the contrary.

(g) Fees. In connection with any Incremental Term Loans pursuant to this Section 2.16, the Borrower shall pay such fees to the Administrative Agent, for its own account and for the benefit of the Lenders participating in such Incremental Term Loans, determined at the time of such funding of such Incremental Term Loans (or such other time specified in the relevant Incremental Term Loan Amendment) and agreed to by the Borrower in writing.

(h) Lenders. In connection with any Incremental Term Loans pursuant to this Section 2.16, any new Lender party hereto shall (i) execute such documents and agreements as the Administrative Agent may reasonably request and (ii) in the case of any new 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 rules and regulations, including, without limitation, the Patriot Act.

**2.17 [Reserved].**

**2.18 Defaulting Lenders.**

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

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01 and in the definitions of "Required Class Lenders," "Required Lenders," "Required Term A-1 Lenders" and "Required Term A-2 Lenders."

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no 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; third, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; fourth, to the payment of any amounts owing to the other Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no 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 sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, with respect to this clause sixth, if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (y) such Loans were to be made at a time when the conditions set forth in Section 4.02 (or in the case of (A) Loans requested by the Borrower to be made on the Closing Date, the conditions set forth in Section 4.01, or (B) Incremental Term Loans, the applicable conditions set forth in Section 2.16(e)) were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.18(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. Such Defaulting Lender shall not be entitled to receive any Ticking Fee on unfunded amounts pursuant to Section 2.10(c) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any Ticking Fee on any unfunded amounts pursuant to Section 2.10(c) that otherwise would have been required to have been paid to such Defaulting Lender during such period).

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, such Lender will, to the extent applicable, take such actions as the Administrative Agent may determine to be necessary to cause the Loans under each applicable Facility to be held on a pro rata basis by the Lenders of such Facility in accordance with their respective Applicable Percentages of such Facility, 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 such Lender was a Defaulting Lender; and provided, further, that subject to Section 10.20 and 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 such Lender's having been a Defaulting Lender.

## ARTICLE III

## TAXES, YIELD PROTECTION AND ILLEGALITY

**3.01 Taxes.**

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes; provided that, if the applicable Loan Party or the Administrative Agent shall be required by applicable Law to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to Section 3.01(e), (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the Administrative Agent or the applicable Lender, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of Section 3.01(a), the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnification. (i) Without limiting the provisions of Section 3.01(a) or 3.01(b), each of the Loan Parties shall, and does hereby, jointly and severally, indemnify the Administrative Agent and each Lender, and shall make payment in respect thereof, within ten (10) Business Days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by the Administrative Agent or such Lender, as the case may be, or required to be withheld or deducted from a payment to the Administrative Agent or such Lender as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, to the extent such Indemnified Taxes or Other Taxes are payable in respect of any payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document or otherwise with respect to any Loan Document or activities related thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of any 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.

(ii) Without limiting the provisions of Section 3.01(a) or 3.01(b), each Lender shall, and do hereby, indemnify the Loan Parties and the Administrative Agent, and shall make payment in respect thereof, within ten (10) days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Loan Parties and the Administrative Agent) incurred by or asserted against the Administrative Agent by any Governmental Authority as a result of the failure by such Lender to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender to the Borrower or the Administrative Agent pursuant to Section 3.01(e). Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Loan Party to a Governmental Authority, the Borrower 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.

(e) Status of Lenders. (i) Each Lender shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made by the Borrower hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdictions. Notwithstanding anything to the contrary in the preceding sentence, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), Section 3.01(e)(ii)(B) and Section 3.01(e)(ii)(C)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States:

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed copies of IRS Form W-9 or such other documentation or information prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine that such Lender is not subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall 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 request of Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) duly completed executed copies of IRS Form W-8ECI,

(iii) duly completed executed copies of IRS Form W-8IMY and all required supporting documentation,

(iv) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, or

(v) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States 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

(C) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by 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 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 (C), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Law of any jurisdiction that any Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

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

(f) Treatment of Certain Refunds. Unless required by applicable Law, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that each Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.01(f) shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person. Notwithstanding anything to the contrary in this Section 3.02(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 3.02(f) if 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.

**3.02 Illegality.**

If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR or Term SOFR, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of such Lender to make or continue Term SOFR Loans or to convert Base Rate Loans to Term SOFR Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, if necessary to avoid such illegality, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term SOFR Loan to such day, or immediately, if such Lender may not lawfully continue to maintain such Term SOFR Loan to such day and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

**3.03 Inability to Determine Rates**.

(a) Subject to Section 3.03(b), if in connection with any request for a Term SOFR Loan or a conversion of Base Rate Loans to Term SOFR Loans or a continuation of any of such Loans, as applicable, (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.03(b), and the circumstances under clause (i) of Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (B) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan or in connection with an existing or proposed Base Rate Loan, or (ii) the Administrative Agent or the Required Lenders determine that for any reason that Term SOFR for any requested Interest Period with respect to a proposed Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender.

Thereafter, (x) the obligation of the Lenders to make or maintain Term SOFR Loans, or to convert Base Rate Loans to Term SOFR Loans, shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of the Base Rate, the utilization of the Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of this Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice.

Upon receipt of such notice, (i) the Borrower may revoke any pending request for a Borrowing of, or conversion to, or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of or conversion to, as applicable, Base Rate Loans in the amount specified therein and (ii) any outstanding affected Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period.

(b) Replacement of Term SOFR or Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining one month, three month and six month interest periods of Term SOFR, including, without limitation, because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease; provided that, at the time of such statement, there is no successor administrator that is reasonably satisfactory to the Administrative Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the "Scheduled Unavailability Date");

then, on a date and time determined by the Administrative Agent (any such date, the "Term SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily Simple SOFR *plus* the SOFR Adjustment for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "Successor Rate").

If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest payments will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (i) if the Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.03(b)(i) or (ii) have occurred with respect to the Successor Rate then in effect, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a "Successor Rate". Any such amendment executed by the Administrative Agent and the Borrower shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than 0.00%, the Successor Rate will be deemed to be 0.00% for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

This Section 3.03 shall supersede any provisions in Section 10.01 to the contrary.

**3.04 Increased Costs**.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Administrative Agent or any Lender;

(ii) subject the Administrative Agent or any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Term SOFR Loan made by it, or change the basis of taxation of payments to the Administrative Agent or such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Administrative Agent or such Lender); or

(iii) impose on the Administrative Agent or any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Term SOFR Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to the Administrative Agent or such Lender of making, maintaining, converting to or continuing any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by the Administrative Agent or such Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Administrative Agent or such Lender, the Borrower will pay to the Administrative Agent or such Lender, as the case may be, such additional amount or amounts as will compensate the Administrative Agent or such Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's 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 such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then 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. The Borrower shall not be required to pay such additional amounts unless such amounts are the result of requirements imposed generally on lenders similar to such Lender and not the result of some specific reserve or similar requirement imposed on such Lender as a result of such Lender's special circumstances.

(c) Certificates for Reimbursement. A certificate of the Administrative Agent or a Lender setting forth in reasonable detail the basis for and calculation of the amount or amounts necessary to compensate the Administrative Agent or such Lender or its holding company, as the case may be, as specified in Section 3.04(a) or 3.04(b) and delivered to the Borrower, in detail sufficient to enable the Borrower to verify the computation thereof, shall be conclusive absent manifest error. The Borrower shall pay the Administrative Agent or such Lender, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof. Any amounts requested to be payable pursuant to this Section 3.04 shall be requested in good faith (and not on an arbitrary and capricious basis) and consistent with similarly situated customers of the Administrative Agent or the applicable Lender after consideration of factors as the Administrative Agent or such Lender, as the case may be, then reasonably determines to be relevant.

(d) Delay in Requests. Failure or delay on the part of the Administrative Agent or any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of the Administrative Agent or such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate the Administrative Agent or a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that the Administrative Agent or such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Administrative Agent's or such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) [Reserved].

(f) The provisions set forth in Sections 3.04(a) and (b) above shall not apply to the extent any increased cost is already compensated for by payment made by or on behalf of the Borrower pursuant to Section 3.01.

**3.05 Compensation for Losses**.

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 (other than loss of anticipated profits) incurred by it as a result of:

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

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

(c) [reserved]; or

(d) any assignment of a Term SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13.

The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

**3.06 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

**3.07 Survival.**

All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender.

## ARTICLE IV

## CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**4.01 Conditions to Effectiveness of this Agreement.**

The effectiveness of this Agreement and, if the Borrower shall have requested any Credit Extension be made on the Closing Date, the obligation of each Lender to make its initial Credit Extension hereunder on the Closing Date, if any, are subject to satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or facsimile or electronic copies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts of this Agreement, executed and delivered by the Administrative Agent, the Borrower and each Lender listed on Schedule 2.01;

(ii) a Term Note executed by the Borrower in favor of each Lender requesting a Term Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower is duly organized or formed, and that the Borrower is validly existing, in good standing and qualified to engage in business in its state of organization and in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) favorable opinions of Skadden, Arps, Slate Meagher & Flom LLP and Ballard Spahr LLP, counsels to the Borrower, addressed to the Administrative Agent and each Lender; and

(vi) a certificate signed by a Responsible Officer certifying (A) that the conditions specified in Sections 4.01(e) and (f) have been satisfied; (B) the current Debt Ratings; and (C) that, as of the date of the last financial statements of the Borrower delivered pursuant to the 2021 Credit Agreement, the Borrower was in pro forma compliance (giving pro forma effect to the Term Loans, if any, made on the Closing Date) with the financial covenants contained in Section 7.10.

(b) Any fees required to be paid by the Borrower on or prior to the Closing Date pursuant to the Loan Documents and all expenses required to be reimbursed by the Borrower on or prior to the Closing Date pursuant to the Loan Documents shall have been paid; provided that invoices for such expenses have been presented to the Borrower a reasonable period of time (and in any event not less than one (1) Business Day) prior to the Closing Date (including, unless waived by the Administrative Agent, all reasonable, documented, out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent)).

(c) (i) Upon the reasonable request of any Lender made in writing at least ten (10) Business Days prior to the Closing Date, the Borrower shall have provided to such Lender the documentation and other information so requested by such Lender that satisfies all requirements of regulatory authorities applicable to such Lender and such Lender's internal policies and procedures in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five (5) Business Days prior to the Closing Date and (ii) at least five (5) Business Days prior to the Closing Date, if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation it shall have delivered, to each Lender that so requests at least ten (10) Business Days prior to the Closing Date, a Beneficial Ownership Certification in relation to the Borrower.

(d) The Administrative Agent's receipt of an executed copy of a certificate signed by a Responsible Officer certifying the Borrower's Sustainability Metric Components for the calendar year ended December 31, 2020 (solely for purposes of this Section 4.01(d), reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ended December 31, 2020).

(e) The representations and warranties of the Borrower contained in Article V shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Closing Date, except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) as of such earlier date.

(f) No Default shall exist on the Closing Date, and, if the Borrower shall have requested any Credit Extension be made on such date, no Default would result from such proposed Credit Extension or from the application of the proceeds thereof.

(g) If any Credit Extension is to be made on the Closing Date, the Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, (i) this Agreement and each other document to which it is a party or which it has reviewed and (ii) any other matter required hereunder or thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received a written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**4.02 Conditions to All Credit Extensions after the Closing Date.**

The obligation of each Lender to honor any Request for Credit Extension (other than (x) the extensions of credit, if any, requested by the Borrower to be made on the Closing Date, (y) a Committed Loan Notice requesting only a conversion of Loans to another Type, or a continuation of Term SOFR Loans, and (z) a Borrowing of Incremental Term Loans on the relevant Increase Effective Date) is subject to the following conditions precedent:

(a) The representations and warranties of the Loan Parties contained in Article V or any other Loan Document shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or 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 Credit Extension (other than the representations and warranties in Section 5.05(c) and Section 5.22, which shall be made only as of the Closing Date), except to the extent that any such representation or warranty specifically refers to an earlier date, in which case such representation or warranty shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality or Material Adverse Effect or similar language, in which case such representation or warranty shall be true and correct in all respects) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist on the date of such Credit Extension, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each such Request for Credit Extension (other than (x) the extensions of credit, if any, requested by the Borrower to be made on the Closing Date, (y) a Committed Loan Notice requesting only a conversion of Loans to another Type, or a continuation of Term SOFR Loans, and (z) a Borrowing of Incremental Term Loans on the relevant Increase Effective Date) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## ARTICLE V

## REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent and the Lenders that:

**5.01 Existence, Qualification and Power.**

Each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, where applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and (c) is duly qualified to do business and, where applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (a) (other than with respect to any Loan Party or any Material Subsidiary), clause (b)(i) or clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

**5.02 Authorization; No Contravention**.

The execution, delivery and performance by each Loan Party of each Loan Document to which it is party has been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Loan Party's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Loan Party is party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (c) violate any Law; except in each case referred to in clause (b) or (c), to the extent such conflict, breach, contravention or violation, or creation of any such Lien or required payment, could not reasonably be expected to have a Material Adverse Effect.

**5.03 Governmental Authorization; Other Consents**.

No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for such approvals, consents, exemptions, authorizations or other actions or notices or filings which have already been completed or obtained.

**5.04 Binding Effect**.

This Agreement has been, and each other Loan Document to which each Loan Party is a party, when delivered hereunder, will have been, duly executed and delivered by such Loan Party. This Agreement constitutes, and each other Loan Document to which each Loan Party is a party when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or other similar laws, now or hereafter in effect, relating to or affecting the enforcement of creditors' rights generally and except that the remedy of specific performance and other equitable remedies are subject to judicial discretion.

**5.05 Financial Statements; No Material Adverse Effect**.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and material Indebtedness, in each case, to the extent required by GAAP.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal quarter ended June 30, 2022, and the related unaudited consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on such date, (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein or as otherwise permitted pursuant to Section 1.03, (ii) fairly present the consolidated financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments and (iii) show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and material Indebtedness, in each case, to the extent required by GAAP.

(c) Since the date of the Audited Financial Statements, there has been no event or condition, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

**5.06 Litigation.**

There are no actions, suits, proceedings, claims, investigations or disputes pending or, to the knowledge of any Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of their respective Subsidiaries or against any of their properties or revenues that (a) affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.07 No Default.**

No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

**5.08 Ownership of Property and Valid Leasehold Interests; Liens.**

(a) Each of the Loan Parties and each of their respective Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title or valid leasehold interests as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

**5.09 Environmental Compliance.**

There are no existing violations of Environmental Laws by any Loan Party or any Subsidiary or claims against any Loan Party or any Subsidiary alleging potential liability under, or responsibility for the violation of, any Environmental Law that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**5.10 Insurance**.

Each Loan Party and each of its Subsidiaries maintain or require the tenants or managers of their owned properties to maintain insurance that complies with the requirements set forth in Section 6.07.

**5.11 Taxes**.

Each Loan Party and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which 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, or (b) where the failure to take any of the foregoing actions could not reasonably be expected to cause, individually or in the aggregate, a Material Adverse Effect. To the knowledge of any Loan Party, there is no proposed tax assessment against such Loan Party or any Subsidiary that would, if made, have a Material Adverse Effect. As of the Closing Date, neither the Borrower nor any Subsidiary thereof is party to any tax sharing agreement.

**5.12 ERISA Compliance.**

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws, except for any such failures to comply as, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of any Loan Party, nothing has occurred that could reasonably be expected to prevent, or cause the loss of, such qualification. Each Loan Party and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA; except in each case referred to in clauses (i) through (v), to the extent that any such event, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(d) As of the Closing Date, the Borrower is not and will not be (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to Section 4975 of the Code, (iii) 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 or (iv) a "governmental plan" within the meaning of ERISA.

**5.13 Margin Regulations; Investment Company Act; REIT Status.**

(a) No Loan Party is engaged and no Loan Party will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) No Loan Party is, and no Loan Party is required to be, registered as an "investment company" under the Investment Company Act of 1940.

(c) The Parent Guarantor meets all requirements to qualify as a REIT.

**5.14 Disclosure**.

(a) No report, financial statement, certificate or other information furnished in writing by or on behalf of any Loan Party or any of its Subsidiaries to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as and when furnished and as modified or supplemented by other information so furnished), together with all such information previously provided and when taken as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made (together with all such information previously provided and when taken as a whole), not materially misleading; provided, however, that it is understood that no Loan Party makes any representation or warranty with respect to any general economic or specific industry information, any projections, pro forma financial information, financial estimates, forecasts and forward-looking information, except that, with respect to projected financial information concerning the Loan Parties and their respective Subsidiaries furnished in writing by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time such information was prepared. It is further understood that (i) any projected financial information furnished to the Administrative Agent or any Lender is not to be viewed as facts, is not a guarantee of future performance and is subject to significant uncertainties and contingencies, many of which are beyond a Loan Party's control, (ii) no assurance is given by such Loan Party that such projections will be realized and (iii) the actual results may differ from such projections and such differences may be material.

(b) As of the Closing Date, the information included in the Beneficial Ownership Certification delivered to the Administrative Agent and/or any Lender pursuant to Section 4.01(c), if applicable, is true and correct in all respects.

**5.15 Compliance with Laws.**

Each of the Loan Parties and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**5.16 Intellectual Property; Licenses, Etc.**

Each Loan Party and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person, except to the extent failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing is not a representation or warranty with respect to infringement or other violation of the IP Rights of any other Person (which is addressed in the following sentence of this Section 5.16). To the knowledge of any Loan Party, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by such Loan Party or any Subsidiary infringes upon any rights held by any other Person to an extent that such infringement could reasonably be expected to result in a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending against any Loan Party or any of its Subsidiaries or, to the knowledge of any Loan Party, threatened against such Loan Party or any of its Subsidiaries, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**5.17 Use of Proceeds.**

The proceeds of the Loans hereunder will be used solely for the purposes specified in Section 6.11. No proceeds of the Loans hereunder will be used for the acquisition of another Person unless the board of directors (or other comparable governing body) or stockholders (or other equity owners), as appropriate, of such other Person has approved such acquisition.

**5.18 Taxpayer Identification Number.**

Each Loan Party's true and correct U.S. taxpayer identification number is set forth on Schedule 10.02.

**5.19 Sanctions.**

None of the Loan Parties, any Subsidiary of the Loan Parties or, to the knowledge of the chief executive officer, chief financial officer or general counsel of any Loan Party, any director, officer or employee thereof is an individual or entity that is currently (i) the subject of any Sanctions or in violation of any Sanctions or (ii) located, organized or resident in a Designated Jurisdiction.

**5.20 Affected Financial Institution.**

No Loan Party is an Affected Financial Institution.

**5.21 Anti-Corruption Laws.**

Each Loan Party and each of its Subsidiaries (a) have conducted their businesses for the past two years (or if any Loan Party or Subsidiary was formed within the past two years, for the duration of such Loan Party's or Subsidiary's existence) and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of such Loan Party, their respective directors, officers, agents and employees are, in each case, in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar applicable anti-money-laundering and anti-corruption legislation in other applicable jurisdictions, in any such case of the foregoing, to the extent applicable to, and binding on, the Loan Parties and their Subsidiaries (collectively, "Anti-Corruption Laws"), and (b) have instituted and maintain policies and procedures reasonably designed to promote and achieve compliance by each Loan Party, its Subsidiaries and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of such Loan Party, their respective directors, officers, agents and employees with applicable Anti-Corruption Laws and applicable Sanctions.

**5.22 Solvency.**

As of the Closing Date, immediately after giving effect to the initial Credit Extensions (if any) made on the Closing Date, (a) the fair value of the assets of the Borrower and its Subsidiaries, taken as a whole, will exceed their debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, taken as a whole, will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and mature; and (c) the Borrower will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

## ARTICLE VI

## AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent Obligations that are not then due and payable), each Loan Party shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.12) cause each of its Subsidiaries to:

**6.01 Financial Statements.**

Deliver to the Administrative Agent (for distribution to each Lender):

(a) as soon as available, but in any event within five (5) Business Days following the date the Parent Guarantor is required to file its Form 10-K with the SEC (without giving effect to any extension of such due date, whether obtained by filing the notification permitted by Rule 12b-25 or any successor provision thereto or otherwise) (commencing with the fiscal year ending December 31, 2022), a consolidated balance sheet of the Group as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and applicable securities laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit (provided that, to the extent the components of such consolidated financial statements relating to a prior fiscal period are separately audited by different independent public accounting firms, the audit report of any such accounting firm may contain a qualification or exception as to scope of such consolidated financial statements as they relate to such components); and

(b) as soon as available, but in any event within five (5) Business Days following the date the Parent Guarantor is required to file its Form 10-Q with the SEC (without giving effect to any extension of such due date, whether obtained by filing the notification permitted by Rule 12b-25 or any successor provision thereto or otherwise) (commencing with the fiscal quarter ending September 30, 2022), an unaudited consolidated balance sheet of the Group as at the end of such fiscal quarter, and the related unaudited consolidated statements of income or operations for such fiscal quarter and for the portion of the Parent Guarantor's fiscal year then ended, and an unaudited statement of cash flow for the portion of the Parent Guarantor's fiscal year then ended setting forth in each case in comparative form the figures for the corresponding date of the previous fiscal year or the corresponding portion of the previous fiscal year, as applicable, all in reasonable detail, such consolidated statements to be certified by a Responsible Officer as fairly presenting the consolidated financial condition of the Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

**6.02 Certificates; Other Information.**

Deliver to the Administrative Agent (for distribution to each Lender):

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ending September 30, 2022), a duly completed Compliance Certificate signed by a Responsible Officer;

(b) promptly after any request by the Administrative Agent, copies of any management letters submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with an audit of the accounts of the Loan Parties and their respective Subsidiaries;

(c) [reserved];

(d) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of any Loan Party, and copies of all annual, regular, periodic and special reports and registration statements which such Loan Party may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation by such agency regarding financial or other operational results of such Loan Party or any Subsidiary thereof, other than ordinary course or routine notices, correspondence, inquiries, examinations or audits;

(f) promptly following any written request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation (to the extent any Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation and has provided a Beneficial Ownership Certification to any Lender or the Administrative Agent in connection with this Agreement as required by the Beneficial Ownership Regulation); and

(g) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower or the Parent Guarantor posts such documents, or provides a link thereto on the Borrower's or the Parent Guarantor's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's or the Parent Guarantor's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail), which shall notify each Lender, of the posting of any such documents and, upon request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower or the Parent Guarantor with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Loan Party hereby acknowledges that (a) the Administrative Agent and/or the Specified Arrangers will make available to the Lenders materials and/or information provided by or on behalf of any Loan Party hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel that do not wish to receive material non-public information with respect to any Loan Party or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agrees that so long as such Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (x) by marking Borrower Materials "PUBLIC," each Loan Party shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to such Loan Party or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07) (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Arrangers shall treat any Borrower Materials that are not marked "PUBLIC" or that are marked "PRIVATE" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, no Loan Party shall be under any obligation to mark any Borrower Materials "PUBLIC."

**6.03 Notices.**

Promptly following knowledge thereof by a Responsible Officer, notify the Administrative Agent (which shall notify each Lender) of:

(a) the occurrence of any Default or Event of Default;

(b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) the information set forth in Section 6.13 at the times required therein;

(d) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary; and

(e) any announcement by Moody's, S&P or Fitch of any change or possible adverse change in a Debt Rating.

Each notice pursuant to this Section 6.03 (other than Section 6.03(e)) shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the applicable Loan Party has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**6.04 Payment of Taxes.**

Pay and discharge as the same shall become due and payable, all of its tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves with respect thereto, to the extent required by GAAP, are maintained on the books of the applicable Person, in each case in this Section 6.04, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.05 Preservation of Existence, Etc.**

(a) Preserve, renew and maintain in full force and effect its legal existence and, where applicable, good standing under the Laws of the jurisdiction of its organization except in a transaction not prohibited by Section 7.04 or 7.05, or to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**6.06 Maintenance of Properties.**

(a) Maintain, preserve and protect, or make contractual or other provisions to cause to maintain, preserve or protect, all of its properties and equipment necessary in the operation of its business in good working order and condition, 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; and (b) make, or make contractual or other provisions to cause to be made, all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**6.07 Maintenance of Insurance.**

Maintain, or use reasonable efforts to cause the tenants under all leases to which it is a party as landlord or the manager of its facilities to maintain, insurance with respect to its owned properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and owning similar properties in localities where the applicable Loan Party or the applicable Subsidiary operates, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons (including with respect to any captive insurance subsidiary or self-insurance, a system or systems of self-insurance and reinsurance which accords with the practices of similar businesses).

**6.08 Compliance with Laws.**

Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

**6.09 Books and Records.**

Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of any Loan Party or its Subsidiary, as the case may be.

**6.10 Inspection Rights.**

Subject to (x) rights of tenants, (y) applicable health and safety laws, and (z) except to the extent disclosure could reasonably be expected to contravene attorney client privilege or similar protection or violate any confidentiality or privacy obligation or otherwise contravene applicable law, permit representatives and independent contractors of the Administrative Agent and each Lender (in each case of a Lender, coordinated through the Administrative Agent) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (provided that the Loan Parties shall have the right to participate in any such discussions), all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Loan Parties; provided, however, that, excluding any such visits and inspections during the continuation of an Event of Default, only one (1) such visit and inspection by the Administrative Agent during any calendar year shall be at the reasonable expense of the Borrower; provided, further, however, that when an Event of Default exists and is continuing the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

**6.11 Use of Proceeds.**

Use proceeds from the Committed Loans for working capital and general corporate purposes, including Investments not prohibited by Section 7.02, dividends and distributions, and acquisitions and developments and, in each case, not in contravention of any applicable Law in any material respect or of any Loan Document.

**6.12 REIT Status.**

The Parent Guarantor shall maintain its qualification as a real estate investment trust under Sections 856 through 860 of the Code.

**6.13 Employee Benefits.**

(a) Comply with the applicable provisions of ERISA and the Code with respect to each Plan, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect and (b) furnish to the Administrative Agent (x) within five (5) Business Days after any Responsible Officer or any ERISA Affiliate knows or has reason to know that, any ERISA Event has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of any Loan Party or any of its ERISA Affiliates in an aggregate amount exceeding the Threshold Amount or the imposition of a Lien, a statement setting forth details as to such ERISA Event and the action, if any, that such Loan Party or ERISA Affiliate proposes to take with respect thereto, and (y) upon request by the Administrative Agent, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Loan Party or any ERISA Affiliate with the Internal Revenue Service with respect to each Pension Plan; (ii) the most recent actuarial valuation report for each Pension Plan; (iii) all notices received by any Loan Party or any ERISA Affiliate from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event; and (iv) such other documents or governmental reports or filings relating to any Plan as the Administrative Agent shall reasonably request.

**6.14 Anti-Corruption Laws.**

Conduct its businesses in compliance in all material respects with applicable Anti-Corruption Laws and maintain policies and procedures reasonably designed to promote and achieve compliance by each Loan Party, its Subsidiaries and, to the knowledge of the chief executive officer, chief financial officer, chief operating officer (if any) or general counsel of such Loan Party, their respective directors, officers, agents and employees with applicable Anti-Corruption Laws.

## ARTICLE VII

## NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent Obligations that are not then due and payable), no Loan Party shall, nor shall it permit any Subsidiary (except Section 7.09 shall apply only to Wholly-Owned Subsidiaries) to, directly or indirectly:

**7.01 Liens**.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

(a) Liens pursuant to any Loan Document;

(b) Liens securing Indebtedness of the Parent Guarantor and its Subsidiaries permitted under Section 7.03;

(c) Liens for Taxes not yet due 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;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than thirty (30) days 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;

(e) pledges or deposits or other Liens arising in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, or to secure statutory obligations, other than any Lien imposed by ERISA;

(f) Liens and rights of setoff of banks and securities intermediaries in respect of deposit accounts and securities accounts maintained in the ordinary course of business;

(g) the interests of lessees and lessors under leases or subleases of, and the interest of managers or operators with respect to, real or personal property made in the ordinary course of business;

(h) Liens on property where the Parent Guarantor or its Subsidiaries is insured against such Liens by title insurance;

(i) Liens on property acquired by the Parent Guarantor or any of its Subsidiaries after the date hereof and which are in place at the time such properties are so acquired and not created in contemplation of such acquisition;

(j) Liens securing assessments or charges payable to a property owner association or similar entity, which assessments are not yet due and payable or that 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;

(k) Liens securing assessment bonds, so long as the Parent Guarantor or its Subsidiaries is not in default under the terms thereof;

(l) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(m) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(n) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h) or securing appeal or other surety bonds related to such judgments;

(o) Liens solely on any cash earnest money deposits made by the Parent Guarantor or any of its Subsidiaries in connection with any letter of intent or purchase agreement;

(p) assignments to a reverse Section 1031 exchange trust;

(q) licenses of intellectual property granted in the ordinary course of business;

(r) Liens on assets of the Borrower or any of its Subsidiaries securing obligations under Swap Contracts; and

(s) precautionary UCC filings in respect of operating leases;

provided that, notwithstanding the forgoing, in no event shall any Loan Party create, incur, assume or suffer to exist any Lien on the Equity Interests of Borrower or any other Subsidiary of Parent Guarantor that directly or indirectly owns any Equity Interests of Borrower, in each case, that is owned by a Loan Party.

**7.02 Investments.**

(a) Make or allow Investments in Development Property to exceed, in the aggregate at any one time outstanding, 35% of Enterprise Gross Asset Value.

(b) Make or allow Investments in Joint Ventures to exceed, in the aggregate at any one time outstanding, 25% of Enterprise Gross Asset Value. For purposes of this Section 7.02(b), the Loan Parties' aggregate Investment in Joint Ventures will be valued at book value as shown on the consolidated balance sheet of the Parent Guarantor, as determined in accordance with GAAP.

**7.03 Indebtedness**.

Create, incur, assume or suffer to exist any Indebtedness of any Loan Party or any of its Subsidiaries, except:

(a) Indebtedness under the Loan Documents; and

(b) other Indebtedness; provided that (i) at the time of the incurrence of such Indebtedness and immediately after giving effect thereto (including any Liens associated therewith) no Event of Default has occurred and is continuing or would result therefrom and (ii) with respect to obligations of a Loan Party in respect of Swap Contracts, such Swap Contracts shall be (x) entered into in order to manage existing or anticipated risk and not for speculative purposes or (y) (i) for the sale of Equity Interests issued by Guarantor at a future date that could be discharged solely by (1) delivery of the Parent Guarantor's Equity Interests, or, (2) solely at Parent Guarantor's option made at any time, payment of the net cash value of such Equity Interests at the time, irrespective of the form or duration of such agreement, commitment or arrangement and (ii) not for speculative purposes.

**7.04 Fundamental Changes.**

Merge, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom, (i) any Person may merge with or into, consolidate with or amalgamate with the Borrower in a transaction in which the Borrower shall be the continuing or surviving Person, (ii) any Person (other than Parent Guarantor) may merge with or into, consolidate with or amalgamate with any Subsidiary (other than the Borrower) in a transaction in which the continuing or surviving Person shall be a Subsidiary of the Borrower, (iii) any Subsidiary of the Borrower may merge with or into, consolidate with or amalgamate with any Person in order to consummate an Investment permitted by Section 7.02 or a Disposition permitted by Section 7.05; (iv) any Subsidiary of the Borrower may merge into, the Parent Guarantor, the Borrower or any other Subsidiary of the Borrower; and (v) any Subsidiary of the Borrower may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders.

**7.05 Dispositions**.

Make any Disposition (other than any Disposition to any Loan Party or any Subsidiary) of all or substantially all of the assets (whether now owned or hereafter acquired, including pursuant to a Delaware LLC Division) of any Loan Party and its Subsidiaries, taken as a whole.

**7.06 Restricted Payments.**

Declare or make, directly or indirectly, any Restricted Payment; provided that, (i) (a) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment required to qualify and maintain such Loan Party's qualification as a real estate investment trust under Sections 856 through 860 of the Code, and (b) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment required to avoid the payment of federal or state income or excise tax; which permitted Restricted Payments under clauses (i)(a) and (i)(b), for the avoidance of doubt, include Restricted Payments from the Borrower to its equity holders in order for the Parent Guarantor to comply with the foregoing, (ii) so long as no Default shall have occurred and be continuing or would result therefrom, each Loan Party and each Subsidiary may purchase, redeem, retire, acquire, cancel or terminate Equity Interests issued by such Loan Party or such Subsidiary so long as immediately after giving effect thereto the Parent Guarantor is in compliance on a Pro Forma Basis with the requirements of Section 7.10(e), (iii) so long as no Default shall have occurred and be continuing or would result therefrom, each Loan Party and each Subsidiary may make any payment on account of any return of capital to the Parent Guarantor's stockholders, partners or members (or the equivalent Person thereof), (iv) each Loan Party and each Subsidiary may declare and make dividend payments, other distributions or other Restricted Payments payable solely in the Equity Interests in such Person, (v) any Subsidiary may at any time make Restricted Payments to the Parent Guarantor, the Borrower or any other Subsidiary and, solely to the extent such Restricted Payments to other holders of its Equity Interests are required by its Organization Documents, to such other holders of Equity Interests, and (vi) each Loan Party and each Subsidiary may declare or make, directly or indirectly, any Restricted Payment within sixty (60) days after the date of declaration thereof, if on the date of declaration of such payment, such payment would have been permitted pursuant to another clause of this Section 7.06 and, on the date of such payment, no Default under Section 8.01(a), (f) or (g) shall have occurred and be continuing.

**7.07 Change in Nature of Business.**

Engage in any material line of business substantially different from those lines of business conducted by each Loan Party and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

**7.08 Transactions with Affiliates.**

Enter into any transaction of any kind with any Affiliate of any Loan Party (other than transactions between or among a Loan Party and a Subsidiary (including any entity that becomes a Subsidiary as a result of such transaction) (or any combination thereof)), whether or not in the ordinary course of business, except (i) transactions on fair and reasonable terms substantially as favorable to such Loan Party or such Subsidiary as would be obtainable by such Loan Party or such Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate, (ii) payments of compensation, perquisites and fringe benefits arising out of any employment or consulting relationship in the ordinary course of business, (iii) making Restricted Payments permitted by this Agreement, (iv) payments (whether in cash, securities or other property) by any non-Wholly-Owned Subsidiary of the Borrower, including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Equity Interests of such Subsidiary, or on account of any return of capital to such Subsidiary's stockholders, partners or members (or the equivalent Person thereof), in any such case, made to holders of Equity Interests in such Subsidiary (x) to the extent required pursuant to such Subsidiary's Organization Documents or (y) to the extent such payment would have been permitted by Section 7.06 had it constituted a Restricted Payment, (v) other transactions expressly permitted by this Agreement, (vi) transactions with Affiliates that are Disclosed Matters (together with any amendments, restatements, extensions, replacements or other modifications thereto that are not adverse to the interests of the Lenders in their capacities as such), (vii) transactions in the ordinary course of business that comply with the requirements of the North American Securities Administrators Association's Statement of Policy of Real Estate Investment Trusts and (viii) transactions between a Loan Party or Subsidiary and any "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of any Loan Party or Subsidiary.

**7.09 Burdensome Agreements**.

Enter into, assume or otherwise be bound, or permit any Wholly-Owned Subsidiary to enter into, assume or otherwise be bound, by any Negative Pledge other than (i) any Negative Pledge contained in an agreement entered into in connection with any Indebtedness that is permitted pursuant to Section 7.03, which Indebtedness is of a type that customarily includes a Negative Pledge or with respect to which such Negative Pledge is no more restrictive on a Loan Party or such Wholly-Owned Subsidiary in any material respect, when taken as a whole, than this Section 7.09 (as determined in good faith by the Borrower); (ii) any Negative Pledge required or imposed by, or arising under or as a result of, any Law; (iii) Negative Pledges contained in (x) the 2021 Credit Agreement, the agreements set forth on Schedule 7.09 or that are Disclosed Matters; (y) any agreement relating to the Disposition of any Subsidiary or any assets pending such Disposition; provided that, in any such case, the Negative Pledge applies only to the Subsidiary or the assets that are the subject of such Disposition; or (z) any agreement in effect at the time any Person becomes a Wholly-Owned Subsidiary so long as such agreement was not entered into in contemplation of such Person becoming a Wholly-Owned Subsidiary and such restriction only applies to such Person and/or its assets, (iv) customary restrictions in leases, licenses and other contracts restricting the assignment thereof, (v) other customary restrictions set forth in agreements relating to assets specified in such agreements and entered into in the ordinary course of business to the extent such restrictions shall solely apply to such specified assets; and (vi) restrictions that apply only to the Equity Interests in, or assets of, any Person other than a Loan Party or a Wholly-Owned Subsidiary, in each case as such agreements, leases or other contracts may be amended from time to time and including any renewal, extension, refinancing or replacement thereof; provided that, with respect to any agreement described in clause (iii), such amendment, renewal, extension, refinancing or replacement does not contain restrictions of the type prohibited by this Section 7.09 that are, in the aggregate, more onerous in any material respect on a Loan Party or any Wholly-Owned Subsidiary than the restrictions, in the aggregate, in the original agreement.

**7.10 Financial Covenants.**

(a) Leverage Ratio. Permit the Leverage Ratio to be greater than 0.60 to 1.00 as of the end of any fiscal quarter. Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the Parent Guarantor shall be permitted to increase the maximum Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

(b) Secured Debt Ratio. Permit the Secured Debt Ratio to be greater than 0.40 to 1.00 as of the end of any fiscal quarter.

(c) Fixed Charge Coverage Ratio. Permit the Fixed Charge Coverage Ratio to be less than 1.50 to 1.00 as of the end of any fiscal quarter.

(d) Unsecured Leverage Ratio. Permit the Unsecured Leverage Ratio to be greater than 0.60 to 1.00 as of the end of any fiscal quarter. Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the Parent Guarantor shall be permitted to increase the maximum Unsecured Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Unsecured Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

(e) Consolidated Tangible Net Worth. Permit the Consolidated Tangible Net Worth to be less than $7,700,000,000 as of the end of any fiscal quarter.

**7.11 Sanctions.**

Directly or, to its knowledge, indirectly, use any part of the proceeds of any Credit Extension or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions (except to the extent permitted for a Person required to comply with such Sanctions) or (ii) in any other manner that will result in a violation by any Person of Sanctions.

**7.12 Anti-Corruption Laws.**

Directly or, to its knowledge, indirectly use the proceeds of any Credit Extension for any purpose which would violate in any material respect any applicable Anti-Corruption Laws.

## ARTICLE VIII

## EVENTS OF DEFAULT AND REMEDIES

**8.01 Events of Default.**

Any of the following shall constitute an Event of Default:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. The Borrower, any other Loan Party or any of their respective Subsidiaries fails to perform or observe any term, covenant or agreement contained in any of (i) Section 6.03(b), 6.05 (solely with respect to the legal existence of the Loan Parties) or 6.11 or Article VII and such failure continues for five (5) consecutive Business Days, or (ii) Section 6.03(a) or Section 6.03(d) and such failure continues for fifteen (15) consecutive Business Days; or

(c) Other Defaults. The Borrower, any Loan Party or any of their respective Subsidiaries fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or 8.01(b)) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) consecutive days after the receipt by the Borrower of written notice of such failure from the Administrative Agent; provided that, if such failure is of such a nature that can be cured but cannot with reasonable effort be completely cured within thirty (30) days, then such thirty (30) day period shall be extended for such additional period of time (not exceeding ninety (90) additional days) as may be reasonably necessary to cure such failure so long as such Loan Party or its Subsidiaries, as applicable, commence such cure within such thirty (30) day period and diligently prosecute same until completion; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect in any material respect when made or deemed made (or, in the case of the representations and warranties in Section 5.14(b) or any representation and warranty that is qualified by materiality, shall be incorrect in any respect when made or deemed made) and, with respect to any representation, warranty, certification or statement (other than the representations and warranties in Section 5.14(b)) not known by such Loan Party at the time made or deemed made to be incorrect, the defect causing such representation or warranty to be incorrect when made or deemed made is not removed within thirty (30) days after the first to occur of (i) the date upon which a Responsible Officer of any Loan Party obtains knowledge thereof or (ii) receipt by the Borrower of written notice thereof from the Administrative Agent; or

(e) Cross-Default. (i) The Borrower, the Parent Guarantor or any of their respective Subsidiaries (x) fails (after giving effect to any notice or grace periods applicable thereto) to make any required payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Recourse Indebtedness or (y) fails to observe or perform any other agreement or condition relating to any such Material Recourse Indebtedness contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, with the giving of notice if required, such Material Recourse Indebtedness pursuant to the terms thereof to be demanded or to become due or to require the Borrower, the Parent Guarantor or such Subsidiary to repurchase, prepay, defease or redeem (automatically or otherwise) or make an offer to repurchase, prepay, defease or redeem such Material Recourse Indebtedness pursuant to the terms thereof, prior to its stated maturity; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; provided that this clause (e) shall not apply to (1) secured Indebtedness that becomes due and payable (or as to which an offer to repurchase, prepay, defease or redeem is required to be made) as a result of the voluntary Disposition of the property or assets securing such Indebtedness, if such Disposition is permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness that has become so due and payable (including as a result of such offer to repurchase, prepay, defease or redeem such Indebtedness) is assumed or repaid in full when and to the extent required under the document providing for such Indebtedness (after giving effect to any notice or grace periods applicable thereto), (2) any redemption, repurchase, conversion or settlement with respect to any convertible debt security which is consummated in accordance with the terms of such convertible debt security, unless such redemption, repurchase, conversion or settlement results from a default thereunder or an event of the type that constitutes an Event of Default or (3) any early payment requirement or unwinding or termination with respect to any Swap Contract (A) not arising out of a default by any Loan Party or any Subsidiary and (B) to the extent that such Swap Termination Value owed has been paid in full by any Loan Party or any of its Subsidiaries when due; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any of its Material Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged, undismissed or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undischarged, undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any of its Material Subsidiaries becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any of its Material Subsidiaries (i) a final non-appealable judgment or order that has not been discharged, satisfied, dismissed or vacated for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent (x) not paid, fully bonded or covered by independent third-party insurance as to which the insurer has not denied coverage or (y) for which such Loan Party or applicable Material Subsidiary has not been indemnified), or (ii) any one or more non-monetary final non-appealable judgments that have not been discharged, dismissed or vacated and that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case of clause (i) or (ii), (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations arising under the Loan Documents, ceases to be in full force and effect; or any Loan Party or any of its Subsidiaries contests in writing in any manner the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports in writing to revoke, terminate or rescind any material provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control.

For purposes of clauses (f), (g), and (h) above, no Event of Default shall be deemed to have occurred with respect to a Material Group unless the type of event specified therein has occurred with respect to each Subsidiary that is a member of such Material Group.

**8.02 Remedies Upon Event of Default.**

If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Commitments of each Lender to make Loans to be terminated, whereupon such Commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties;

(c) [reserved]; and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an Event of Default with respect to any Loan Party pursuant to Section 8.01(f) or (g) or the occurrence of an actual or deemed entry of an order for relief with respect to any Loan Party under the Bankruptcy Code, the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Administrative Agent or any Lender.

**8.03 Application of Funds.**

After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Section 2.18, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and fees, premiums and scheduled periodic payments, and any interest accrued thereon, due under any Swap Contract between any Loan Party and any Lender, or any Affiliate of a Lender, ratably among the Lenders (and, in the case of such Swap Contracts, Affiliates of Lenders) in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, payment of breakage, termination or other payments, and any interest accrued thereon, due under any Swap Contract between any Loan Party and any Lender, or any Affiliate of a Lender and amounts owing under Treasury Management Agreements, ratably among the Lenders (and, in the case of such Swap Contracts, Affiliates of Lenders) and the Treasury Management Lenders in proportion to the respective amounts described in this clause Fourth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

## ARTICLE IX

## ADMINISTRATIVE AGENT

### 9.01 Appointment and Authority.

Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as otherwise expressly set forth herein and except with respect to Section 9.06, the provisions of this Article IX are solely for the benefit of the Administrative Agent and the Lenders, and no Loan Party shall have any rights as a third-party beneficiary of any of such provisions.

### 9.02 Rights as a Lender.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

### 9.03 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**9.04 Reliance by Administrative Agent.**

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**9.05 Delegation of Duties.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**9.06 Resignation of Administrative Agent.**

The Administrative Agent may at any time resign as Administrative Agent upon thirty (30) days' notice to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the approval (not to be unreasonably withheld or delayed) of the Borrower (unless an Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States; provided that, if any such potential successor is not classified as a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, then the Borrower shall have the right to prohibit such potential successor from becoming the Administrative Agent in its reasonable discretion. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders (and subject to the approval (not to be unreasonably withheld or delayed) of the Borrower (unless an Event of Default has occurred and is continuing)), appoint a successor Administrative Agent meeting the qualifications set forth above; provided that, if any such potential successor is not classified as a "U.S. person" and a "financial institution" within the meaning of Treasury Regulation Section 1.1441-1, then the Borrower shall have the right to prohibit such potential successor from becoming the Administrative Agent in its reasonable discretion; provided, further, that, if the retiring Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

**9.07 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**9.08 No Other Duties, Etc.**

Anything herein to the contrary notwithstanding, none of the Arrangers, Co-Syndication Agents, or Co-Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

**9.09 Administrative Agent May File Proofs of Claim.**

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding under any Debtor Relief Law relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.10 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.10 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

**9.10 Recovery of Erroneous Payments.**

Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender, whether or not in respect of an Obligation due and owing by Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Lender in Same Day Funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by 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. Each Lender irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Lender promptly upon determining that any payment made to such Lender comprised, in whole or in part, a Rescindable Amount.

## ARTICLE X

## MISCELLANEOUS

**10.01 Amendments, Etc.**

Except as set forth in Section 2.02(f) in respect of Conforming Changes made pursuant to such section, Section 2.15 in respect of an extension of a Maturity Date, Section 2.16 in respect of an Incremental Term Loan Amendment, or Section 3.03 in respect of the replacement of Term SOFR and/or Conforming Changes or other amendments or modifications made pursuant to such section, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) extend the expiration date or increase the amount of any Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 2.07 or Section 8.02) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent in Section 4.02 or of any Default or Event of Default is not considered an extension or increase in the Commitments of any Lender);

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (other than mandatory prepayments (if any) with respect to any Loan) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided, however, that only the consent of the Required Class Lenders shall be necessary to amend the definition of "Default Rate" with respect to such Class or to waive any obligation of the Borrower to pay interest at the Default Rate with respect to such Class;

(d) change Section 2.14 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(e) change any provision of this Section 10.01 or the definition of "Required Lenders" or "Required Class Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender (but any change to the definition of "Required Term A-1 Lenders" or "Required Term A-2 Lenders" shall only require the written consent of each Lender under the applicable Term Facility);

(f) release all or substantially all of the value of the Guaranteed Obligations of the Guarantor under the Guaranty (except as provided herein) without the written consent of each Lender; or

(g) directly and materially adversely affect the rights of Lenders holding Commitments or Loans of one Class differently from the rights of Lenders holding Commitments or Loans of any other Class without the written consent of the applicable Required Class Lenders;

and provided, further, that (i) only the written consent of the Borrower and the Required Term A-1 Lenders shall be required to the extent such amendment, waiver or consent shall (x) amend, waive or otherwise modify any of the conditions precedent set forth in Section 4.02 with respect to any Credit Extension under the Term A-1 Facility or (y) impose any greater restriction on the ability of any Term A-1 Lender to assign any of its rights or obligations hereunder with respect to the Term A-1 Facility (and, for the avoidance of doubt, no other Lenders shall have any right to approve or disapprove any such amendment, waiver or consent described in this clause (i)); (ii) only the written consent of the Borrower and the Required Term A-2 Lenders shall be required to the extent such amendment, waiver or consent shall (x) amend, waive or otherwise modify any of the conditions precedent set forth in Section 4.02 with respect to any Credit Extension under the Term A-2 Facility or (y) impose any greater restriction on the ability of any Term A-2 Lender to assign any of its rights or obligations hereunder with respect to the Term A-2 Facility (and, for the avoidance of doubt, no other Lenders shall have any right to approve or disapprove any such amendment, waiver or consent described in this clause (ii)); (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) any fee letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto (and, for the avoidance of doubt, no other parties shall have any right to approve or disapprove any such amendment, waiver or consent). 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 (or all Lenders of a Class or each affected Lender of a Class) may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such 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 consent of such Defaulting Lender.

Notwithstanding anything to the contrary herein, (A) the Administrative Agent and the Borrower may, with the consent of the other (but without the consent of any other Person), amend, modify or supplement any Loan Document to correct, amend or cure any ambiguity, inconsistency, omission, mistake or defect or correct any obvious error or any error or omission of an administrative or technical nature so long as such amendment, modification or supplement does not impose additional obligations on any Lender; provided that the Administrative Agent shall promptly give the Lenders notice of, and provide to the Lenders a copy of, any such amendment, modification or supplement, and (B) this Agreement may be amended and restated without the consent of any Lender (but with the consent of the Borrower and the Administrative Agent) if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, and such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement.

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

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

In addition, notwithstanding the foregoing, the Borrower may, by written notice to the Administrative Agent from time to time, make one or more offers (each, a "Loan Modification Offer") to all the Lenders of one or more Classes to make one or more amendments or modifications to (A) allow the maturity of the Accepting Lenders' (as defined below) Commitments or Loans of such Class(es) to be extended, (B) modify the Applicable Rate and/or fees payable with respect to the Accepting Lenders' Loans and/or Commitments of such Class(es), (C) modify any covenants or other provisions or add new covenants or provisions with respect to such Class(es) that are agreed between the Borrower, the Administrative Agent and the Accepting Lenders; provided that such modified or new covenants and provisions are applicable only during periods after the applicable Maturity Date that is in effect on the effective date of such Permitted Amendment, and (D) any other amendment to a Loan Document required to give effect to the Permitted Amendments described in clauses (A), (B) and (C) of this paragraph ("Permitted Amendments," and any amendment to this Agreement to implement Permitted Amendments, a "Loan Modification Agreement") pursuant to procedures reasonably specified by the Administrative Agent and reasonably acceptable to the Borrower. Such notice shall set forth (i) the relevant Class(es) of Lenders to which the Borrower is making the Loan Modification Offer described in such notice, (ii) the terms and conditions of the requested Permitted Amendments and (iii) the date on which such Permitted Amendments are requested to become effective. Permitted Amendments shall become effective only with respect to the Commitments and/or Loans of the relevant Class(es) of the Lenders that accept the applicable Loan Modification Offer (such Lenders, the "Accepting Lenders") and, in the case of any Accepting Lender, only with respect to such Lender's Commitments and/or Loans of the relevant Class(es) as to which such Lender's acceptance has been made. The Borrower and each Accepting Lender shall execute and deliver to the Administrative Agent a Loan Modification Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof, and the Borrower shall also deliver such resolutions, opinions and other documents as reasonably requested by the Administrative Agent. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each of the parties hereto hereby agrees that (1) upon the effectiveness of any Loan Modification Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Permitted Amendments evidenced thereby and only with respect to each Accepting Lender's Commitments and Loans of the relevant Class(es) as to which such Lender's acceptance has been made, (2) any applicable Lender who is not an Accepting Lender may be replaced by the Borrower in accordance with Section 10.13, and (3) the Administrative Agent and the Borrower shall be permitted to make any amendments or modifications to any Loan Documents necessary to allow any borrowings, prepayments and commitment reductions to be ratable across any relevant Class of commitments to make Loans of such Class, the mechanics for which may be implemented through the applicable Loan Modification Agreement and may include technical changes related to the borrowing and repayment procedures of the Lenders; provided that with the consent of the Accepting Lenders such prepayments and commitment reductions may be applied on a non-ratable basis to the non-Accepting Lenders of the relevant Class(es).

Notwithstanding anything herein to the contrary, this Agreement may be amended in connection with Incremental Term Loans, as set forth in Section 2.16(e)(iii).

**10.02 Notices; Effectiveness; Electronic Communication.**

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.02(b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower or any other Loan Party or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Loan Parties).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in Section 10.02(b) below, shall be effective as provided in such Section 10.02(b).

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

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice, e-mail or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Loan Party, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower and any other Loan Party and the Administrative Agent may change its address, facsimile number, telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile number, telephone number or e-mail address for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to any Loan Party or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in accordance with Section 10.02. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**10.03 No Waiver; Cumulative Remedies.**

No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against any Loan Party and its Subsidiaries or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) [reserved], (c) any Lender from enforcing payments of amounts payable to such Lender pursuant to Sections 3.01, 3.04, 3.05 and 10.04 or from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.14), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party or any Subsidiary under any Debtor Relief Law; and provided, further, that, if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.14, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**10.04 Expenses; Indemnity; Damage Waiver.**

(a) Costs and Expenses. Each Loan Party shall, jointly and severally, pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and the Arrangers (limited, in the case of legal fees, to the reasonable and documented fees, charges and disbursements of one primary counsel, and, if applicable, one local counsel in each material jurisdiction, for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, due diligence, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) [reserved] and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent or any Lender (limited, in the case of legal fees, to the reasonable and documented fees, charges and disbursements of (x) one primary counsel for the Administrative Agent (and, if reasonably required, one counsel for the Administrative Agent per specialty area and one local counsel for the Administrative Agent per applicable jurisdiction) and (y) one additional counsel for all the Lenders (and, if reasonably required, one additional counsel per specialty area and one local counsel per applicable jurisdiction), plus additional counsel for the Lenders as necessary in the event of an actual or potential conflict of interest among the Lenders), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.04, or (B) in connection with the Loans made hereunder, including all such reasonable and documented out-of-pocket expenses (subject to the limitations set forth above with respect to legal fees) incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Loan Parties. Each Loan Party shall, jointly and severally, indemnify the Administrative Agent (and any sub-agent thereof), each Lender, the Agents and their Affiliates and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, penalties, liabilities and related reasonable and documented out-of-pocket expenses (including the reasonable and documented out-of-pocket fees, charges and disbursements of one primary counsel for the Indemnitees; provided that reimbursement for reasonable and documented out-of-pocket fees, charges and disbursements of additional counsel of the Indemnitees will be limited to such specialist counsel as may reasonably be required by the Indemnitees, a single firm of local counsel for the Indemnitees in each material jurisdiction and, in the event of an actual or potential conflict of interest (as reasonably determined by the applicable Indemnitee), one additional firm of counsel to each group of similarly affected Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby (including, without limitation, each Lender's agreement to make Loans or the use or intended use of the proceeds thereof) or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities or related expenses (A)(x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or any of its Related Indemnified Parties or (y) result from a claim brought by any Loan Party against an Indemnitee for breach in bad faith or a material breach of the obligations of such Indemnitee or any of its Related Indemnified Parties hereunder or under any other Loan Document, if any Loan Party has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (B) arise out of a dispute solely among Indemnitees and not resulting from any act or omission by any Loan Party or any of its Affiliates (other than any such losses, claims, damages, penalties, liabilities or related reasonable and documented out-of-pocket expenses against an Indemnitee in its capacity or in fulfilling its role as an Agent). Notwithstanding the foregoing, Section 3.01 shall be the sole remedy for any indemnification claim in respect of Taxes. No Loan Party shall, except as a result of its indemnification obligations hereunder, and nor shall any of its Related Parties have any liability for any special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof.

(c) Reimbursement by Lenders. To the extent that any Loan Party for any reason fails to indefeasibly pay any amount required under Section 10.04(a) or 10.04(b) to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing and without relieving such Loan Party of its obligations with respect thereto, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's Applicable Percentage at such time) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 10.04(c) are subject to the provisions of Section 2.13(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, each Loan Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee or Related Indemnified Party referred to in Section 10.04(b) 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 to the extent of such Indemnitee's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment.

(e) Payments. All amounts due under this Section 10.04 shall be payable not later than ten (10) Business Days after demand therefor (accompanied by backup documentation to the extent available).

(f) Survival. The agreements in this Section 10.04 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

**10.05 Payments Set Aside.**

To the extent that any payment by or on behalf of any Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**10.06 Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment or grant of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent 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(s) and the Loans with respect to any Facility at the time owing to it); provided that, in each case with respect to any Facility, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's applicable Commitment(s) and/or the applicable Loans at the time owing to it, in each case with respect to such Facility, 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 subsection (b)(i)(A) of this Section, the aggregate principal amount of the Commitment and/or outstanding Loans of the assigning Lender subject to each such assignment, in each case with respect to such Facility, 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 in respect of such Facility unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments with respect to such Facility to members of an Assignee Group and concurrent assignments with respect to such Facility from members of an Assignee Group to a single assignee (or to an assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met with respect to such Facility.

(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 applicable Loans or the applicable Commitments assigned. Without limiting the generality of the foregoing, to the extent that any unused Commitments remain under a Facility at a time when any Loans are also outstanding under such Facility, any assignment by a Lender with respect to such Facility shall be a ratable assignment by such Lender of its unused Commitments and outstanding Loans under such Facility.

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Person that is a Lender, an Affiliate of any Lender or an Approved Fund with respect to any Lender; 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 ten (10) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required unless such assignment is to a Person that is a Lender, an Affiliate of any Lender or an Approved Fund with respect to any Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to the Loan Parties. No such assignment shall be made to any Loan Party or any of the Loan Parties' Affiliates or Subsidiaries.

(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) No Assignment to Defaulting Lenders. No such assignment shall be made to a Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (vii).

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

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver Note(s) with respect to the applicable Facility or Facilities to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (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, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower and any Lender (with respect to its own interest only), 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 or the Administrative Agent, sell participations to any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person), a Defaulting Lender (or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or any of its Subsidiaries) or any Loan Party or any of the Loan Parties' 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 Commitments 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 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 any amendment, waiver or other modification described in clauses (a) through (e) of the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.06(b); provided that such Participant agrees to be subject to the provisions of Sections 3.01, 3.04, 3.05, 3.06 and 10.13 and any requirements or limitations contained therein as if it were an assignee under subsection (b) of this Section. 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 Sections 3.06 and 10.13 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided such Participant agrees to be subject to Section 2.14 as though it were a Lender.

Each Lender that sells a participation 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 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 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) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

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

**10.07 Treatment of Certain Information; Confidentiality.**

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) on a need-to-know basis to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors, consultants, service providers and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any governmental agency or regulatory authority purporting to have jurisdiction over it or its Affiliates (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as (or no less restrictive than) those of this Section 10.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.16(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower, (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 10.07 or (y) becomes available to the Administrative Agent or any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower that the Administrative Agent or any such Lender reasonably believes is not bound by a duty of confidentiality to the Borrower, (i) to any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder (provided such rating agencies are advised of the confidential nature of such information and agree to keep such information confidential) or (j) to any Person that would qualify as an Eligible Assignee hereunder (without giving effect to the consent required under Section 10.06(b)(iii)) providing financing to the disclosing Lender, to the extent reasonably required by such Person (provided such other Persons are advised of the confidential nature of such information and agree to keep such information confidential). In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and customary information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section 10.07, "Information" means all information received from or on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary; provided that, in the case of information received from the Borrower or any Subsidiary 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 10.07 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 or its other similarly situated customers' confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning any Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**10.08 Right of Setoff.**

If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the applicable Loan Party against any and all of the Obligations of such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided that, in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.18 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 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. The rights of each Lender and its Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

**10.09 Interest Rate Limitation.**

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

**10.10 Counterparts; Integration; Effectiveness.**

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

**10.11 Survival of Representations and Warranties.**

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**10.12 Severability.**

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

**10.13 Replacement of Lenders.**

If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if any Lender does not consent to any amendment or waiver of any provision hereof or of any other Loan Document for which its consent is required under Section 10.01 after Required Lenders or applicable Required Class Lenders have consented thereto, 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 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(a) the assignment fee specified in Section 10.06(b) shall have been paid to or waived by the Administrative Agent;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

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 party hereto agrees that (i) an assignment required pursuant to this Section 10.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (ii) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender; provided, further, that any such documents shall be without recourse to or warranty by the parties thereto.

**10.14 Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION 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 OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.14(b). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**10.15 Waiver of Jury Trial.**

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.15.**

**10.16 No Advisory or Fiduciary Responsibility.**

In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees**,** and acknowledges its Subsidiaries' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Lenders and the Arrangers are arm's-length commercial transactions between the Borrower and each other Loan Party, on the one hand, and the Administrative Agent, the Lenders and the Arrangers, on the other hand, (B) the Borrower and each other Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) 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 and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any other Loan Party or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Lender nor any Arranger has any obligation to the Borrower or any other Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lenders and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and each other Loan Party and its Affiliates, and neither the Administrative Agent, any Lender nor any Arranger has any obligation to disclose any of such interests to the Borrower or any other Loan Party or its Affiliates. To the fullest extent permitted by law, the Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, the Lenders and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**10.17 USA Patriot Act and Beneficial Ownership Regulation Notice.**

Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower and each other Loan Party that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act") and the Beneficial Ownership Regulation, as applicable, it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act and the Beneficial Ownership Regulation, as applicable.

**10.18 Delivery of Signature Page.**

Each Lender to become a party to this Agreement on the date hereof shall do so by delivering to the Administrative Agent a counterpart of this Agreement duly executed by such Lender.

**10.19 Judgment Currency**.

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower and each other Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower or any other Loan Party in the Agreement Currency, the Borrower and each other Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower or such other Loan Party (or to any other Person who may be entitled thereto under applicable law). All of the Borrower's and each other Loan Party's obligations under this Section 10.19 shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

**10.20 Acknowledgement and Consent to Bail-In of Affected Financial Institutions**.

Solely to the extent any Lender that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected 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 the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected 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 Affected 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 the applicable Resolution Authority.

**10.21 Electronic Execution of Assignments and Certain Other Documents**.

The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, and waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

**10.22 [Reserved]**.

**10.23 Lender Representations**.

(a) Each Lender (x) represents and warrants, as of the Closing Date or such later date such Person became a Lender party hereto, to, and (y) covenants, from the Closing Date or such later 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 and the Arrangers and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of any 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 Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(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 subsections (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 either (1) subclause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the Closing Date or such later date such Person became a Lender party hereto, to, and (y) covenants, from the Closing Date or such later 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 and the Arrangers and their respective Affiliates and not, for the avoidance of doubt, to or for the benefit of any Loan Party, that none of the Administrative Agent or the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent or the Arrangers under this Agreement, any Loan Document or any documents related hereto or thereto).

**10.24 Acknowledgement Regarding Any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, "QFC Credit Support," and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 10.24, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

**10.25 Cashless Settlement**. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans of any Class in connection with any refinancing, extension, loan modification or similar transaction with respect to such Class of Loans that is permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

## ARTICLE XI

## CONTINUING GUARANTY

**11.01 Guaranty.**

The Guarantor hereby absolutely and unconditionally, jointly and severally guarantees, as primary obligor and as guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all Obligations (for the Guarantor, subject to the proviso in this sentence, its "Guaranteed Obligations"); provided that (a) the Guaranteed Obligations of the Guarantor shall exclude any Excluded Swap Obligations with respect to the Guarantor and (b) the liability of the Guarantor individually with respect to this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code of the United States or any comparable provisions of any applicable state law or other applicable Law. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities, or portion thereof, which may be or hereafter become unenforceable or compromised or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any debtor under any Debtor Relief Laws. The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon the Guarantor, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of the Guarantor, or any of them, under this Guaranty, and the Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than a defense as to the payment in full of the Guaranteed Obligations).

**11.02 Rights of Lenders.**

The Guarantor consents and agrees that the Administrative Agent and each the other Lenders may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent or any of the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, the Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of the Guarantor.

**11.03 Certain Waivers**.

The Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrower, or the cessation from any cause whatsoever (including any act or omission of the Administrative Agent or any other Lender) of the liability of the Borrower (other than as to the payment in full of the Guaranteed Obligations); (b) any defense based on any claim that the Guarantor's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting the Guarantor's liability hereunder; (d) any right to proceed against the Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of the Administrative Agent or any other Lender whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by the Administrative Agent or any other Lender; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties (other than as to the payment in full of the Guaranteed Obligations). The Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations.

**11.04 Obligations Independent.**

The obligations of the Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against the Guarantor to enforce this Guaranty whether or not the Borrower or any other person or entity is joined as a party.

**11.05 Subrogation**.

The Guarantor shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations have been paid in full in cash (other than contingent Obligations that are not then due and payable) and the Commitments are terminated. If any amounts are paid to the Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Administrative Agent and the other Lenders and shall forthwith be paid to the Administrative Agent and the other Lenders to reduce the amount of the Obligations, whether matured or unmatured.

**11.06 Termination; Reinstatement.**

This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the earlier of (i) the Maturity Date and (ii) the release of the Guarantor pursuant to Section 10.01(f). Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or the Guarantor is made, or any of the Administrative Agent or the other Lenders exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Administrative Agent or the other Lenders in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Administrative Agent or the other Lenders are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Guarantor under this Section 11.06 shall survive termination of this Guaranty.

**11.07 Stay of Acceleration**.

If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against the Guarantor or the Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by the Guarantor immediately upon demand by the Administrative Agent or the Lenders.

**11.08 Condition of Borrower.**

The Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower such information concerning the financial condition, business and operations of the Borrower as the Guarantor requires, and that none of the Administrative Agent or any other Lender has any duty, and the Guarantor is not relying on the Administrative Agent or any other Lender at any time, to disclose to it any information relating to the business, operations or financial condition of the Borrower (the Guarantor waiving any duty on the part of the Administrative Agent or any other Lender to disclose such information and any defense relating to the failure to provide the same).

**11.09 Appointment of Borrower**.

Each of the Loan Parties hereby appoints the Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that any notice or communication delivered by the Administrative Agent or a Lender to the Borrower shall be deemed delivered to each Loan Party.

**11.10 [Reserved].**

**11.11 Keepwell**.

Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Loan Party with respect to such Swap Obligation as may be needed by such Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article XI voidable under applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 11.11 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section 11.11 to constitute, and this Section 11.11 shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

**[Remainder of Page Intentionally Left Blank]**

FINAL VERSION

**SCHEDULE 10.02**

**ADMINISTRATIVE AGENT'S OFFICE;**
**CERTAIN ADDRESSES FOR NOTICES**

**BORROWER:**

Healthpeak OP, LLC
c/o Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Legal Department
Telephone No.: (720) 428-5050
Electronic Mail: legaldept@healthpeak.com
Website Address: www.healthpeak.com
U.S. Taxpayer Identification Number: 33-0091377

*With a copy to*:
Healthpeak OP, LLC
c/o Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Treasurer
Telephone No.: (720) 428-5050
Electronic Mail: CashManagement@healthpeak.com and
DebtCompliance@healthpeak.com

**PARENT GUARANTOR:**

Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Legal Department
Telephone No.: (720) 428-5050
Electronic Mail: legaldept@healthpeak.com
Website Address: www.healthpeak.com
U.S. Taxpayer Identification Number: N/A

*With a copy to*:
Healthpeak Properties, Inc.
4600 South Syracuse Street, Suite 500
Denver, CO 80237
Attention: Treasurer
Telephone No.: (720) 428-5050
Electronic Mail: CashManagement@healthpeak.com and
DebtCompliance@healthpeak.com

**ADMINISTRATIVE AGENT:**

*Administrative Agent's Office*
*(for payments and Requests for Credit Extensions):*
Bank of America, N.A.
900 W. Trade Street, Gateway Village, 900 Building
Mail Code: NC1-026-06-04
Charlotte, NC 28255
Attention: Melanie Brichant
Telephone No.: 980-386-4828
Facsimile No.: 704-409-0550
Electronic Mail: melanie.brichant@bofa.com

Bank of America, N.A.
New York, NY
Account No.: 1366072250600
ABA# 026009593
Attn: Credit Services
Ref: Healthpeak OP, LLC

*Other Notices as Administrative Agent:*
Bank of America, N.A.
555 California Street
Mail Code: CA5-705-06-35
San Francisco, CA 94104
Attention: Liliana Claar
Telephone No.: 415-436-2770
Facsimile No.: 415-503-5003
Electronic Mail: liliana.claar@bofa.com

*With a copy to:*

Bank of America, N.A.
620 South Tryon Street
Mail Code: NC1-030-24-02
Charlotte, NC 28255
Attention: Darren Merten
Telephone No.: 980-683-6722
Electronic Mail: darren.merten@bofa.com

**EXHIBIT A**

**FORM OF COMMITTED LOAN NOTICE**

Date: _____, ____

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent.

The undersigned hereby requests:

***A. WITH RESPECT TO THE TERM A-1 FACILITY (IF APPLICABLE):***

1. Select one:

    - A Committed Borrowing of Committed Term A-1 Loans
    - A conversion or continuation of Term A-1 Loans

2. On_____(a Business Day).

3. In a principal amount under the Term A-1 Facility equal to $_____.

4. Comprised of the following Type of Loans: **[Base Rate Loans] [Term SOFR Loans]**.

5. For Term SOFR Loans: with an Interest Period of **[one] [three] [six]** month(s).

***B. WITH RESPECT TO THE TERM A-2 FACILITY (IF APPLICABLE):***

1. Select one:

    - A Committed Borrowing of Committed Term A-2 Loans
    - A conversion or continuation of Term A-2 Loans

2. On_____(a Business Day).

3. In a principal amount under the Term A-2 Facility equal to $_____.

4. Comprised of the following Type of Loans: **[Base Rate Loans] [Term SOFR Loans]**.

5. For Term SOFR Loans: with an Interest Period of **[one] [three] [six]** month(s).

The Committed Borrowing, if any, requested herein complies with the proviso to the first sentence in each of Section 2.01(a) and Section 2.01(b) of the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Committed Loan Notice as of the date first written above.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By: _____
Name:
Title:

**EXHIBIT B**

**[RESERVED]**

**EXHIBIT C**

**[RESERVED]**

**EXHIBIT D-1**

**FORM OF TERM A-1 NOTE**

Date: _____, ____

FOR VALUE RECEIVED, the undersigned, HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), hereby promises to pay to [____] or its registered permitted assigns (the "Lender"), in accordance with the provisions of the Term Loan Agreement (as hereinafter defined), the principal amount of each Term A-1 Loan from time to time made by the Lender to the Borrower under that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Term Loan Agreement"; the terms defined therein being used herein as therein defined), among the Borrower, HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Term A-1 Loan owed to the Lender from the date of such Term A-1 Loan until such principal amount of such Term A-1 Loan is paid in full, at such interest rates and at such times as provided in the Term Loan Agreement. All such payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Same Day Funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand in accordance with the terms of the Term Loan Agreement, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Term Loan Agreement.

This Term A-1 Note is one of the Term A-1 Notes referred to in the Term Loan Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Term Loan Agreement, all amounts then remaining unpaid on this Term A-1 Note shall become, or may be declared to be, immediately due and payable, all as provided in the Term Loan Agreement. Term A-1 Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Term A-1 Note and endorse thereon the date, amount and maturity of its Term A-1 Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term A-1 Note.

[Signature Page Follows]

THIS TERM A-1 NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By: _____
Name:
Title:

**TERM A-1 LOANS AND PAYMENTS WITH RESPECT THERETO**

| Date | Type of Term A-1 Loan Made | Amount of Term A-1 Loan Made | End of Interest Period on Term A-1 Loan | Amount of Principal or Interest Paid on Term A-1 Loan This Date | Outstanding Principal Balance of Term A-1 Loan This Date | Notation Made By |
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**EXHIBIT D-2**

**FORM OF TERM A-2 NOTE**

Date: _____, ____

FOR VALUE RECEIVED, the undersigned, HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), hereby promises to pay to [___] or its registered permitted assigns (the "Lender"), in accordance with the provisions of the Term Loan Agreement (as hereinafter defined), the principal amount of each Term A-2 Loan from time to time made by the Lender to the Borrower under that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Term Loan Agreement"; the terms defined therein being used herein as therein defined), among the Borrower, HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent.

The Borrower promises to pay interest on the unpaid principal amount of each Term A-2 Loan owed to the Lender from the date of such Term A-2 Loan until such principal amount of such Term A-2 Loan is paid in full, at such interest rates and at such times as provided in the Term Loan Agreement. All such payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Same Day Funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand in accordance with the terms of the Term Loan Agreement, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Term Loan Agreement.

This Term A-2 Note is one of the Term A-2 Notes referred to in the Term Loan Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein.

Upon the occurrence and during the continuation of one or more of the Events of Default specified in the Term Loan Agreement, all amounts then remaining unpaid on this Term A-2 Note shall become, or may be declared to be, immediately due and payable, all as provided in the Term Loan Agreement. Term A-2 Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Term A-2 Note and endorse thereon the date, amount and maturity of its Term A-2 Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term A-2 Note.

[Signature Page Follows]

THIS TERM A-2 NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**HEALTHPEAK OP, LLC**

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member

By: _____
Name:
Title:

**TERM A-2 LOANS AND PAYMENTS WITH RESPECT THERETO**

| Date | Type of Term A-2 Loan Made | Amount of Term A-2 Loan Made | End of Interest Period of Term A-2 Loan | Amount of Principal or Interest Paid on Term A-2 Loan This Date | Outstanding Principal Balance of Term A-2 Loan This Date | Notation Made By |
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**EXHIBIT E**

**FORM OF COMPLIANCE CERTIFICATE**

For the Fiscal Quarter/Fiscal Year ended: _____ (the "Statement Date")

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation ("Parent Guarantor"), the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent.

The Borrower hereby certifies as of the date hereof that the Responsible Officer executing this Compliance Certificate is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to the Administrative Agent on behalf of the Borrower, and not in an individual capacity, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. The Borrower has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of the Parent Guarantor ended as of the above referenced Statement Date, together with the report and opinion of an independent certified public accountant required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. The Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of the Parent Guarantor ended as of the above referenced Statement Date. Such financial statements fairly present the consolidated financial condition of the Group as at such Statement Date and their results of operations for such period in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

2. A review of the activities of the Loan Parties during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period covered by such financial statements the Loan Parties performed and observed all their respective Obligations under the Loan Documents, and

***[select one:]***

[to the best knowledge of the undersigned during such fiscal period, no Default has occurred and is continuing as of the date hereof.]

***-or-***

[the following is a list of each such Default and its nature and status:]

3. The financial covenant analyses and information set forth on Schedule 1 and Annex 1 attached hereto are true and accurate on and as of the Statement Date referred to thereon.

[4. As of December 31 of the calendar year of the Parent Guarantor most recently ended prior to the delivery of this Compliance Certificate to the Administrative Agent (such year, the "Specified Test Year"), the Sustainability Metric for the Specified Test Year [satisfied the Sustainability Metric Election Threshold] [did not satisfy the Sustainability Metric Election Threshold].

5. The analyses and information set forth on Schedule 2 attached hereto are true and accurate as of December 31 of the Specified Test Year (using the Rolling Base Year Methodology).

6. The Borrower hereby elects that the Applicable Rate be based on the Sustainability Metric Pricing Grid, to be effective commencing on the date that is five (5) Business Days following the date this Compliance Certificate has been delivered to the Administrative Agent.

7. [Attached hereto is a copy of the Sustainability Metric Report for the Specified Test Year.][The Sustainability Metric Report for the Specified Test Year has been published at the following Internet or intranet website to which each Lender and the Administrative Agent has or has been granted access free of charge: [https://www.healthpeak.com/esg/].]]1

[Signature Page Follows]

[1] Certifications with respect to the Sustainability Metric to be included at the Borrower's election.

*IN WITNESS WHEREOF,* the undersigned has executed this Compliance Certificate as of _____, 202_____.

Name:
Title:

**SCHEDULE 1**
to the Compliance Certificate
($ in 000's)

For the Fiscal Quarter/Fiscal Year ended_____("Statement Date")

**I. Section 7.10(a) — Leverage Ratio.**

A. Enterprise Total Indebtedness on the Statement Date:

1. Indebtedness of the Group on a consolidated basis outstanding on the Statement Date: $_____

2. Borrower's Pro Rata Share of Indebtedness of each Mtaterial Joint Venture outstanding on the Statement Date: $_____

3. Enterprise Total Indebtedness (Line I.A.1 plus Line I.A.2 (without duplication))[2]: $_____

B. Enterprise Gross Asset Value on the Statement Date:

1. Gross Asset Value of the Group on a consolidated basis: $_____

2. Borrower's Pro Rata Share of Gross Asset Value of each Material Joint Venture: $_____

3. Enterprise Gross Asset Value on the Statement Date (Line I.B.1 + Line I.B.2 (without duplication)):3 $_____

C. Leverage Ratio (Line I.A.3 ÷ Line I.B.3): ____ to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.60 to 1.00

Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the Parent Guarantor shall be permitted to increase the maximum Leverage Ratio to 0.65 to

[2] For purposes of calculating the Leverage Ratio, (x) Line I.A.1. shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of the Group and (ii) escrow and other deposits to the extent available on the Statement Date for the repayment of any of the Indebtedness included in the calculation of Line I.A.1. up to an amount in the aggregate for this clause (x) not to exceed the aggregate amount of Indebtedness reflected in Line I.A.1. maturing in the immediately succeeding 24 months and (y) Line 1.A.2. shall be reduced by the aggregate amount of (i) all unrestricted cash and cash equivalents of each such applicable Material Joint Venture and (ii) escrow and other deposits to the extent available on the Statement Date for the repayment of any of the Indebtedness included in the calculation of Line 1.A.2. up to an amount in the aggregate for this clause (y) not to exceed the aggregate amount of Indebtedness reflected in Line 1.A.2. maturing in the immediately succeeding 24 months. Enterprise Total Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

[3] Enterprise Gross Asset Value shall not include the aggregate amount of unrestricted cash and cash equivalents deducted in the calculation of Enterprise Total Indebtedness pursuant to the immediately preceding footnote.

1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

**II. Section 7.10(b) — Secured Debt Ratio.**

A. Enterprise Secured Debt outstanding on the Statement Date: $_____

B. Enterprise Gross Asset Value on the Statement Date (Line I.B.3): $_____

C. Secured Debt Ratio (Line II.A ÷ Line II.B): [4] ___to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.40 to 1.00

**III. Section 7.10(c) — Fixed Charge Coverage Ratio.**

A. Enterprise EBITDA for the twelve-month period ended on the Statement Date (See Annex 1):

1. EBITDA of the Group on a consolidated basis (From Annex 1): $_____

2. Borrower's Pro Rata Share of EBITDA of each Material Joint Venture (From Annex 1): $_____

3. Enterprise EBITDA (Line III.A.1 + Line III.A.2 (without duplication)): $_____

B. Enterprise Fixed Charges for the twelve-month period ended on the Statement Date:

1. Enterprise Interest Expense paid in cash during such period:

a. Interest Expense of the Group on a consolidated basis paid in cash during such period: $_____

b. Borrower's Pro Rata Share of Interest Expense of each Material Joint Venture paid in cash during such period: $_____

c. Enterprise Interest Expense paid in cash during such period (Line III.B.1.a + Line III.B.1.b (without duplication)): $_____

[4] For purposes of calculating the Secured Debt Ratio, the aggregate amount of all unrestricted cash and cash equivalents on the Statement Date deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Unsecured Leverage Ratio as of the Statement Date.

2. Scheduled Principal Payments during such period: $_____

a. Regularly scheduled principal payments during such period by the Parent Guarantor and its Subsidiaries with respect to Indebtedness of the Parent Guarantor and its Subsidiaries (other than payments due at final maturity of any tranche of Indebtedness): $_____

b. Borrower's Pro Rata Share of all regularly scheduled principal payments during such period with respect to the Indebtedness (other than payments due at final maturity of any tranche of Indebtedness) of each Material Joint Venture: $_____

c. Scheduled Principal Payments (Line III.B.2.a + Line III.B.2.b (without duplication)):[5] $_____

3. Cash dividends and distributions during such period in respect of preferred stock of the Group (excluding (i) redemption payments or charges in connection with the redemption of preferred stock and (ii) amounts paid to the Parent Guarantor, the Borrower or any of their respective Subsidiaries): $_____

4. Enterprise Fixed Charges (Line III.B.1.c + Line III.B.2.c + Line III.B.3 (without duplication))[6]: $_____

C. Fixed Charge Coverage Ratio (Line III.A.3 ÷ Line III.B.4): _____to 1.00

*Minimum requirement as of the end of any fiscal quarter:* 1.50 to 1.00

**IV. Section 7.10(d) — Unsecured Leverage Ratio.**

A. Enterprise Unsecured Debt outstanding on the Statement Date: $_____

B. Enterprise Unencumbered Asset Value on the Statement Date: $_____

1. Unencumbered Asset Value of the Group on a consolidated basis: $_____

2. The Borrower's Pro Rata Share of Unencumbered Asset Value of each Material Joint Venture: $_____

3. Enterprise Unencumbered Asset Value (Line IV.B.1 + Line IV.B.2 (without duplication)): $_____

[5] For purposes of determining Scheduled Principal Payments, Indebtedness shall not include accounts payable, intracompany debt, dividends and distributions declared but not payable, security deposits, accrued liabilities or prepaid rent, each as defined in accordance with GAAP.

[6] Enterprise Fixed Charges shall not include (i) any amounts with respect to any Intercompany Indebtedness, (ii) gains and losses from unwinding or break-funding of Swap Contracts, (iii) write-offs of unamortized deferred financing fees, (iv) prepayment fees, premiums and penalties, and (v) other unusual or non-recurring items as are reasonably acceptable to the Administrative Agent and the Required Lenders.

C. Unsecured Leverage Ratio (Line IV.A ÷ Line IV.B.3): [7] ____to 1.00

*Maximum Permitted as of the end of any fiscal quarter:* 0.60 to 1.00

Notwithstanding the foregoing, in connection with the consummation of a Significant Acquisition, the Parent Guarantor shall be permitted to increase the maximum Unsecured Leverage Ratio to 0.65 to 1.00 for any fiscal quarter in which a Significant Acquisition occurs and for the three (3) consecutive full fiscal quarters immediately thereafter; provided that, solely in the case of any increase pursuant to this sentence, in no event shall the Unsecured Leverage Ratio exceed 0.65 to 1.00 as of the end of any fiscal quarter or exceed 0.60 to 1.00 for more than four (4) consecutive fiscal quarters in any consecutive five (5) fiscal quarter period.

**V. Section 7.10(e) — Consolidated Tangible Net Worth.**

A. Consolidated Tangible Net Worth on the Statement Date

1. Consolidated Shareholders' Equity: $_____

2. Accumulated depreciation and amortization, determined on a consolidated basis in accordance with GAAP: $_____

3. Consolidated Intangible Assets: $_____

4. Consolidated Tangible Net Worth (Line V.A.1 plus Line V.A.2 minus Line V.A.3): $_____

*Minimum required as of the end of any fiscal quarter:* $7,700,000,000

[7] For purposes of calculating the Unsecured Leverage Ratio, the aggregate amount of all unrestricted cash and cash equivalents on the Statement Date deducted from Enterprise Unsecured Debt pursuant to the definition of "Enterprise Total Indebtedness" shall exclude the aggregate amount of all unrestricted cash and cash equivalents deducted from Enterprise Secured Debt pursuant to the definition of "Enterprise Total Indebtedness" for the purpose of determining the Secured Debt Ratio as of the Statement Date.

**ANNEX 1**
to the Compliance Certificate

For the Fiscal Quarter/Fiscal Year ended_____, _____

**EBITDA of the Group on a consolidated basis**

| **EBITDA of the Group** | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended | Year Ended |
|---|---|---|---|---|---|
| Net Income (without duplication) | | | | | |
| + Interest Expense of the Group | | | | | |
| + provision for taxes on or measured by income (whether or not payable during such period) | | | | | |
| + depreciation and amortization expense | | | | | |
| + non-cash expenses | | | | | |
| - items increasing Net Income which do not represent a cash receipt | | | | | |
| - any addition to EBITDA under "provision for taxes on or measured by income" above taken or payable during such period to the extent added to EBITDA in any prior or future period | | | | | |
| = EBITDA of the Group on a consolidated basis | | | | | |

**Borrower's Pro Rata Share of EBITDA of Material Joint Ventures**

| **Borrower's Pro Rata Share of EBITDA of Material Joint Ventures** | Quarter Ended | Quarter Ended | Quarter Ended | Quarter Ended | Year Ended |
|---|---|---|---|---|---|
| Net Income (without duplication) | | | | | |
| + Borrower's Pro Rata Share of Interest Expense of Material Joint Ventures | | | | | |
| + provision for taxes on or measured by income | | | | | |
| (whether or not payable during such period) | | | | | |
| + depreciation and amortization expense | | | | | |
| + non-cash expenses | | | | | |
| - items increasing Net Income which do not represent a cash receipt | | | | | |
| - any addition to EBITDA under "provision for taxes on or measured by income" above taken or payable during such period to the extent added to EBITDA in any prior or future period | | | | | |
| = Borrower's Pro Rata Share of EBITDA of Material Joint Ventures | | | | | |

**SCHEDULE 2**
to the Compliance Certificate

For the calendar year ended: December 31, _____[8] (such year, the "Specified Test Year")

**I. Rolling Base Year Percentage* for (x) the Specified Test Year and (y) each preceding calendar year ended on or after December 31, 2021.[9]**

**A. Rolling Base Year Percentage for calendar year ended December 31, 2021 (percentage change** of Line I.A.1. relative to Line I.A.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2020: _____ $tCO_2e$

**B. Rolling Base Year Percentage for calendar year ended December 31, 2022 (percentage change** of Line I.B.1. relative to Line I.B.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

**C. Rolling Base Year Percentage for calendar year ended December 31, 2023 (percentage change** of Line I.C.1. relative to Line I.C.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

**D. Rolling Base Year Percentage for calendar year ended December 31, 2024 (percentage change** of Line I.D.1. relative to Line I.D.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

**E. Rolling Base Year Percentage for calendar year ended December 31, 2025 (percentage change** of Line I.E.1. relative to Line I.E.2.):** _____%

8 To be the calendar year most recently ended.

9 Delete the rows for any calendar year ending after the Specified Test Year or leave such rows blank.

1. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

**F. Rolling Base Year Percentage for calendar year ended December 31, 2026 (percentage change** of Line I.F.1. relative to Line I.F.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

**G. Rolling Base Year Percentage for calendar year ended December 31, 2027 (percentage change** of Line I.G.1. relative to Line I.G.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2027: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

*The Rolling Base Year Percentage for a particular calendar year has been determined and calculated using the Rolling Base Year Methodology, which means that the Sustainability Metric Components for that particular calendar year have been compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of that particular calendar year.

**For the avoidance of doubt, such percentage change for a particular calendar year is expressed as a negative percentage in the event the Sustainability Metric Components for such calendar year are less than the Sustainability Metric Components for the immediately preceding calendar year.

**II. Sustainability Metric & Sustainability Metric Election Threshold for the Specified Test Year.**

**A.** Sustainability Metric for the Specified Test Year (which shall equal the sum of (x) the Rolling Base Year Percentage for such Specified Test Year (see Part I above) and (y) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021 (see Part I above)): _____%

**B.** Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement): _____%[10]

[10] For the Specified Test Year ended: (a) December 31, 2022, insert -2.00%; (b) December 31, 2023, insert -3.00%; (c) December 31, 2024, insert -4.00%; and (d) December 31, 2025 or thereafter, insert -5.00%.

**C.** Does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Sustainability Metric Election Threshold (Line II.B.)? _____ (*Yes/No*)

**EXHIBIT F**

**FORM OF ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the] [each][1] Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each][2] Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors] [and] [the Assignees][3] hereunder are several and not joint.][4] Capitalized terms used but not defined herein shall have the meanings given to them in the Term Loan Agreement identified below (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Term Loan Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Term Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Term Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Term Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

---

[1] For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

[2] For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

[3] Select as appropriate.

[4] Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: _____

_____

2. Assignee[s]: _____

_____

[for each Assignee, indicate [Affiliate] [Approved Fund] of *[identify Lender]]*, which is a Lender

3. Borrower: Healthpeak OP, LLC

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Term Loan Agreement

5. Term Loan Agreement: Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the Lenders party thereto from time to time, and BANK OF AMERICA, N.A., as Administrative Agent.

6. Assigned Interest[s]:

| Assignor[s] | Assignee[s] | Class/Facility Assigned[5] | Aggregate Amount of Unused Commitments & Outstanding Loans of all Lenders under relevant Class/Facility[6] | Amount of Unused Commitment Assigned under relevant Class/Facility | Amount of Outstanding Loans Assigned under relevant Class/Facility | Percentage Assigned of Unused Commitments & Outstanding Loans under relevant Class/Facility[7] | CUSIP Number |
|---|---|---|---|---|---|---|---|
| | | | $ | $ | | % | |
| | | | $ | $ | | % | |
| | | | $ | $ | | % | |

[5] Fill in the appropriate terminology for the types of Facilities (or, if applicable, Class of Loans) under the Term Loan Agreement that are being assigned under this Assignment and Assumption (i.e., "Term A-1 Facility," "Term A-2 Facility" or a specific tranche of Incremental Term Loans).

[6] Amounts in this column and in the two columns immediately to the right to be adjusted by the counterparties to take into account any reduction of Commitment, any Borrowings, and any payments or prepayments of Loans, in each case, under relevant Class or Facility made between the Trade Date and the Effective Date.

[7] Set forth, to at least 9 decimals, as a percentage of the Commitments/Loans of all Lenders under relevant Class or Facility.

7. Trade Date: _____]8

Effective Date:_____, 20____[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

8 To be completed if the relevant Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

**ASSIGNOR[S]:**[9]

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

**ASSIGNEE[S]:**[10]

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[Consented to and][11] Accepted:

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

By: _____
Name:
Title:

[Consented to:][12]

[HEALTHPEAK OP, LLC, as the Borrower]

By: HEALTHPEAK PROPERTIES, INC.
Its: Managing Member]

[9] Add additional signature blocks as needed.

[10] Add additional signature blocks as needed.

[11] To be added only if the consent of the Administrative Agent is required by the terms of the Term Loan Agreement.

[12] To be added only if the consent of the Borrower is required by the terms of the Term Loan Agreement.

By: _____

Name:

Title:

**STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1. Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Term Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Term Loan Agreement, (ii) it meets all the requirements to be an assignee under Sections 10.06(b)(iii), (v), (vi), (vii) and (viii) of the Term Loan Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Term Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Term Loan Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Term Loan Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements referred to in Section 5.05 thereof or delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Term Loan Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind with respect to [the][the relevant] Assigned Interest from and after the Effective Date to [the][the relevant] Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption.

THIS ASSIGNMENT AND ASSUMPTION SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**EXHIBIT G**

**FORM OF SUSTAINABILITY METRIC ANNUAL CERTIFICATE**

For the calendar year ended: December 31,____[13] (such year, the "Specified Test Year")

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement, dated as of August 22, 2022 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement"; the terms defined therein being used herein as therein defined), among HEALTHPEAK OP, LLC, a Maryland limited liability company (the "Borrower"), HEALTHPEAK PROPERTIES, INC., a Maryland corporation, the lending institutions party thereto from time to time (each, a "Lender" and collectively, the "Lenders"), and BANK OF AMERICA, N.A., as Administrative Agent.

The Borrower hereby certifies as of the date hereof that the Responsible Officer executing this Sustainability Metric Annual Certificate is the _____ of the Borrower, and that, as such, he/she is authorized to execute and deliver this Sustainability Metric Annual Certificate to the Administrative Agent on behalf of the Borrower, and not in an individual capacity, and that:

1. As of December 31 of the Specified Test Year, the Sustainability Metric for the Specified Test Year [satisfied the Sustainability Metric Election Threshold][did not satisfy the Sustainability Metric Election Threshold].

2. The analyses and information set forth on Schedule 1 attached hereto are true and accurate as of December 31 of the Specified Test Year (using the Rolling Base Year Methodology).

3. The Borrower hereby elects that the Applicable Rate be based on the Sustainability Metric Pricing Grid, to be effective commencing on the date that is five (5) Business Days following the date this Sustainability Metric Annual Certificate has been delivered to the Administrative Agent.

4. [Attached hereto is a copy of the Sustainability Metric Report for the Specified Test Year.][The Sustainability Metric Report for the Specified Test Year has been published at the following Internet or intranet website to which each Lender and the Administrative Agent has or has been granted access free of charge: [https://www.healthpeak.com/esg/].]

[Signature Page Follows]

[13] To be the calendar year most recently ended.

*IN WITNESS WHEREOF,* the undersigned has executed this Sustainability Metric Annual Certificate as of _____, 202___ .

_____

Name:
Title:

**SCHEDULE 1**
to the Sustainability Metric Annual Certificate

For the calendar year ended: December 31, _____[14] (such year, the "Specified Test Year")

**I. Rolling Base Year Percentage* for (x) the Specified Test Year and (y) each preceding calendar year ended on or after December 31, 2021.[15]**

**A. Rolling Base Year Percentage for calendar year ended December 31, 2021 (percentage change** of Line I.A.1. relative to Line I.A.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2020: _____ $tCO_2e$

**B. Rolling Base Year Percentage for calendar year ended December 31, 2022 (percentage change** of Line I.B.1. relative to Line I.B.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2021: _____ $tCO_2e$

**C. Rolling Base Year Percentage for calendar year ended December 31, 2023 (percentage change** of Line I.C.1. relative to Line I.C.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2022: _____ $tCO_2e$

**D. Rolling Base Year Percentage for calendar year ended December 31, 2024 (percentage change** of Line I.D.1. relative to Line I.D.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2023: _____ $tCO_2e$

[14] To be the calendar year most recently ended.

[15] Delete the rows for any calendar year ending after the Specified Test Year or leave such rows blank.

**E. Rolling Base Year Percentage for calendar year ended December 31, 2025 (percentage change** of Line I.E.1. relative to Line I.E.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2024: _____ $tCO_2e$

**F. Rolling Base Year Percentage for calendar year ended December 31, 2026 (percentage change** of Line I.F.1. relative to Line I.F.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2025: _____ $tCO_2e$

**G. Rolling Base Year Percentage for calendar year ended December 31, 2027 (percentage change** of Line I.G.1. relative to Line I.G.2.):** _____%

1. Sustainability Metric Components for calendar year ended December 31, 2027: _____ $tCO_2e$

2. Sustainability Metric Components for calendar year ended December 31, 2026: _____ $tCO_2e$

*The Rolling Base Year Percentage for a particular calendar year has been determined and calculated using the Rolling Base Year Methodology, which means that the Sustainability Metric Components for that particular calendar year have been compared year-over-year to the Sustainability Metric Components for the immediately preceding calendar year using a like-for-like rolling baseline year reflecting the Boundary Properties that the Borrower has owned and that were in service for the period of two (2) full consecutive calendar years ending on the last day of that particular calendar year.

**For the avoidance of doubt, such percentage change for a particular calendar year is expressed as a negative percentage in the event the Sustainability Metric Components for such calendar year are less than the Sustainability Metric Components for the immediately preceding calendar year.

**II. Sustainability Metric & Sustainability Metric Election Threshold for the Specified Test Year.**

**A.** Sustainability Metric for the Specified Test Year (which shall equal the sum of (x) the Rolling Base Year Percentage for such Specified Test Year (see Part I above) and (y) the Rolling Base Year Percentage for each preceding calendar year ended on or after December 31, 2021 (see Part I above)): _____%

**B.** Sustainability Metric Election Threshold for the Specified Test Year (as set forth in the definition of "Sustainability Metric Election Threshold" in the Agreement): _____%[16]

[16] For the Specified Test Year ended: (a) December 31, 2022, insert -2.00%; (b) December 31, 2023, insert -3.00%; (c) December 31, 2024, insert -4.00%; and (d) December 31, 2025 or thereafter, insert -5.00%.

**C.** Does the Sustainability Metric for the Specified Test Year (Line II.A.) satisfy the Sustainability Metric Election Threshold (Line II.B.)? _____ (*Yes/No*)

**Exhibit 10.4**

**OMNIBUS ASSIGNMENT, ASSUMPTION AND AMENDMENT**

This Omnibus Assignment, Assumption and Amendment (this "***Agreement***") is made by and between Healthpeak Properties, Inc., a Maryland corporation ("***Assignor***"), and New Healthpeak, Inc., a Maryland corporation ("***Assignee***"), dated as of February 7, 2023 and effective as of the effective time (the "***Effective Time***") of the Merger (as defined herein).

Pursuant to the Agreement and Plan of Merger dated as of February 7, 2023 (the "***Merger Agreement***"), among Assignor, Assignee and Healthpeak Merger Sub, Inc., a Maryland corporation ("***Merger Sub***"), Merger Sub will be merged with and into Assignor, with Assignor being the surviving entity and becoming a subsidiary of Assignee (the "***Merger***"). Effective immediately after the Effective Time, Assignee will change its name to "Healthpeak Properties, Inc." In the Merger, each share of Assignor's common stock that is issued and outstanding immediately prior to the Effective Time will be converted into a share of common stock of Assignee at the Effective Time. Following the Merger, Assignor will convert to a Maryland limited liability company named "Healthpeak OP, LLC." In connection with the Merger, Assignor has agreed to assign to Assignee, and Assignee has agreed to assume from Assignor and modify as necessary, all of the agreements, plans, policies and other commitments listed in Paragraphs 2, 5 and 6 below.

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which are acknowledged by the parties hereto, the parties, intending to be legally bound, agree as follows:

**1. Defined Terms**. Capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings assigned to them in the Amended and Restated Healthpeak Properties, Inc. 2014 Performance Incentive Plan, as amended from time to time (the "***2014 Plan***").

**2. Assignment**. Assignor hereby assigns to Assignee the following (collectively, the "***Assumed Obligations***"):

(a) all of its rights and obligations under the 2014 Plan, together with all Awards and award agreements thereunder, other than any future rights and obligations with respect to LTIP Units (as may be defined in the Operating Agreement of Healthpeak OP, LLC, as amended from time to time);

(b) all of its rights and obligations under the Healthpeak Properties, Inc. Non-Employee Directors Stock-for-Fees Program;

(c) all of its rights and obligations under the Healthpeak Properties, Inc. Executive Severance Plan;

(d) all of its rights and obligations under the Healthpeak Properties, Inc. Executive Change in Control Severance Plan;

(e) all of its rights and obligations under the Healthpeak Properties, Inc. Non-Executive Change in Control Severance Plan;

(f) all of its rights and obligations under the Healthpeak Properties, Inc. 2006 Performance Incentive Plan, as amended from time to time (the "***2006 Plan***"), together with all awards and award agreements thereunder;

(g) all of its rights and obligations under the HCP, Inc. Second Amended and Restated Director Deferred Compensation Plan;

(h) all of its rights and obligations under the Healthpeak Properties, Inc. Dividend Reinvestment and Stock Purchase Plan;

(i) all of its rights and obligations under the Healthpeak Properties, Inc. 2022 Short-Term Incentive Plan, together with all award opportunities thereunder;

(j) all of its rights and obligations under any other plans, policies, agreements and commitments of Assignor in effect as of immediately before the Effective Time with respect to the issuance of shares of capital stock of Assignor, as compensation or otherwise, to employees, directors or other persons; and

(k) all of its obligations with respect to the payment of an amount equal to the aggregate amount of any and all dividends or other distributions payable to Assignor's stockholders that have been authorized and declared by Assignor but not paid prior to the Effective Time.

**3. Assumption**. Assignee hereby assumes all of the rights and obligations of Assignor under the Assumed Obligations and agrees to abide by and perform all terms, covenants and conditions of Assignor under such Assumed Obligations. In consideration of the assumption by Assignee of all of the rights and obligations of Assignor under the Assumed Obligations, Assignor agrees to pay: (a) all expenses incurred by Assignee in connection with the assumption of the Assumed Obligations and (b) all expenses incurred by Assignee in connection with the registration on Form S-8 of the shares of common stock of Assignee, including, without limitation, registration fees imposed by the Securities and Exchange Commission.

**4. Amendments.** From and after the Effective Time, all documentation pertaining to the Assumed Obligations shall each be deemed amended as necessary to provide that references to Assignor in such agreements shall be read to refer to Assignee. Without limiting the generality of the foregoing, each of the Assumed Obligations shall be amended as follows:

(a) All references to the "Board" or "Board of Directors" shall mean and refer to the Board of Directors of Assignee or any successor thereto, and all references to "Director" shall mean and refer to any member of the Board of Directors of Assignee or any successor thereto.

(b) All references to the "Company," "Healthpeak," "Healthpeak Properties," "PEAK," "HCP," "HCP, Inc.," "Health Care Property Investors, Inc." and "Healthpeak Properties, Inc.," shall mean and refer to Assignee or any successor thereto.

(c) All references to the "Committee," "Compensation Committee" or "Compensation and Human Capital Committee" shall mean and refer to the Compensation and Human Capital Committee of the Board of Directors of Assignee or any successor thereto.

(d) All references to the shares of common stock of Assignor shall mean and refer to the shares of common stock of Assignee.

**5. DownREITs**.

(a) Assignment and Assumption. Assignor and Assignee acknowledge that Assignor has certain obligations under (a) the limited liability company agreements governing the following entities: (i) HCPI/Utah, LLC, a Delaware limited liability company; (ii) HCPI/Utah II, LLC, a Delaware limited liability company; (iii) HCPI/Tennessee, LLC, a Delaware limited liability company; (iv) HCP DR MCD, LLC, a Delaware limited liability company; (v) HCP DR California II, LLC, a Delaware limited liability company; (vi) HCP DR California III, LLC, a Delaware limited liability company; and (vii) SH DR California IV, LLC, a Delaware limited liability company (collectively, the "***LLC Agreements***"), in each case to fulfill the Redemption Rights or Exchange Rights (as applicable) of any Non-Managing Member, including pursuant to any HCP Guarantee, and (b) certain registration rights agreements entered into in connection with the LLC Agreements (collectively, the "***Specified DownREIT Obligations***"). Capitalized terms used in this Paragraph 5 and not otherwise defined shall have the meanings assigned to them in the applicable LLC Agreement. As a result of the Merger and other transactions described in the recitals hereto, Assignor will no longer be able to fulfill such Specified DownREIT Obligations because Assignor will no longer be the publicly traded REIT (as hereinafter defined) parent entity. As a result, Assignor hereby assigns to Assignee, and Assignee hereby assumes, all of the Specified DownREIT Obligations and agrees to perform such obligations as the new publicly traded REIT parent entity. For the avoidance of doubt, all other obligations, and all rights, of Assignor under the LLC Agreements (if any), whether as managing member (if applicable) or otherwise, shall be retained by Assignor and shall not be assumed by Assignee. In consideration of the assumption by Assignee of the rights and obligations of Assignor described in this Paragraph 5, Assignor agrees to pay: (a) all expenses incurred by Assignee in connection with the assumption of such rights and obligations and (b) all expenses incurred by Assignee in connection with the registration on Form S-3 of the shares of common stock of Assignee that may be issued or that are subject to registration rights pursuant to the assumption of the rights and obligations of Assignor described in this Paragraph 5, including, without limitation, registration fees imposed by the Securities and Exchange Commission.

(b) Amendments.

i. With respect to the limited liability company agreements for (i) HCPI/Utah, LLC, a Delaware limited liability company, (ii) HCPI/Utah II, LLC, a Delaware limited liability company, (iii) HCPI/Tennessee, LLC, a Delaware limited liability company, (iv) HCP DR MCD, LLC, a Delaware limited liability company, and (v) HCP DR California II, LLC, a Delaware limited liability company, the applicable redemption or exchange provisions, as applicable, of each agreement shall be amended to provide that in the event Assignor, as the managing member of each limited liability company, elects to issue shares of Assignee's common stock upon redemption or exchange, as applicable, of units of the applicable limited liability company, upon the applicable redemption date or exchange date, as applicable, Assignor will acquire the tendered units and will issue to Assignee an equal number of Assignor's common units in exchange for Assignee issuing shares of its common stock to the tendering unitholder.

ii. With respect to the limited liability company agreements for (i) HCP DR California III, LLC, a Delaware limited liability company, and (ii) SH DR California IV, LLC, a Delaware limited liability company, the applicable redemption provisions of each agreement shall be amended to provide that in the event the managing member of such limited liability company elects to issue shares of Assignee's common stock upon redemption of units of the applicable limited liability company, upon the applicable redemption date, (A) the managing member will acquire the tendered units and will issue to Assignor an equal number of such managing member's common units, (B) Assignor will issue to Assignee an equal number of Assignor's common units and (C) Assignee will issue shares of its common stock to the tendering unitholder.

**6. REIT Protective Provisions**. Assignor and Assignee acknowledge that (a) Assignor and/or its subsidiaries are parties to various agreements providing certain protections for Assignor as a real estate investment trust, within the meaning of Sections 856 through 860 of the Internal Revenue Code of 1986, as amended and in effect from time to time or any successor statute thereto, as interpreted by the applicable regulations thereunder (a "***REIT***," and such protections, the "***REIT Protective Provisions***"), and (b) the Merger and other transactions described in the recitals hereto result in a mere change in form, with Assignee as the successor to Assignor for federal income tax purposes. For the avoidance of doubt, (i) Assignor hereby assigns to Assignee all of Assignor's rights under the REIT Protective Provisions and the parties intend that Assignee be the REIT and the party entitled to all protections under such REIT Protective Provisions from and after the date hereof, and (ii) Assignor retains all other obligations of Assignor (if any) pursuant to any agreements containing such REIT Protective Provisions.

**7. Further Assurances**. Subject to the terms of this Agreement, the parties hereto shall take all reasonable and lawful action, and shall execute, deliver and perform all agreements, instruments and other documents, as may be necessary or appropriate to cause the intent of this Agreement to be carried out, including, without limitation, and in their discretion, entering into amendments to, or other modifications of, all documentation pertaining to the Assumed Obligations, the LLC Agreements and the REIT Protective Provisions and notifying the other parties thereto of such assignment and assumption.

**8. Successors and Assigns**. This Agreement shall be binding upon Assignor and Assignee, and their respective successors and assigns. The terms and conditions of this Agreement shall survive the consummation of the Merger.

**9. Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflicts of laws principles.

**10. Entire Agreement**. This Agreement, together with the Merger Agreement, constitute the entire agreement and supersede all other agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof. This Agreement may not be modified or amended except by a writing executed by the parties hereto. In the event of any inconsistency, conflict or ambiguity as to the rights and obligations of the parties under this Agreement and the Merger Agreement, the terms of the Merger Agreement shall control and supersede any such inconsistency, conflict or ambiguity.

**11. Unassignable Matters**. To the extent that any Assumed Obligation is not capable of being assigned to Assignee without the waiver or consent of any third person (including a government or governmental unit), or if such assignment or attempted assignment would constitute a breach thereof or a violation of any law or regulation, then this Agreement shall not constitute an assignment or an attempted assignment of such Assumed Obligation. With respect to any Assumed Obligation where such required waivers or consents have not been obtained prior to the Effective Time, this Agreement, to the extent permitted by law, shall constitute an equitable assignment by Assignor to Assignee of all of Assignor's rights, benefits, title and interest in and to such Assumed Obligation, and where necessary or appropriate, Assignee shall complete, fulfill and discharge all of Assignor's rights and liabilities arising after the Effective Time under such Assumed Obligation. Assignor shall use its commercially reasonable efforts at Assignee's cost to provide Assignee with the benefits of such Assumed Obligation (including, without limitation, permitting Assignee at Assignee's cost to enforce any rights of Assignor arising under such Assumed Obligation), and Assignee shall, to the extent Assignee is provided with the benefits of such Assumed Obligation, assume, perform and in due course pay and discharge all debts, obligations and liabilities of Assignor under such Assumed Obligation which arise or accrue after the Effective Time.

**12. Severability**. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

**13. Third Party Beneficiaries**. Except as amended by this Agreement, all of the Assumed Obligations shall remain in full force and effect. Further, Grantees under the 2014 Plan and the 2006 Plan are intended to be third-party beneficiaries to this Agreement.

**14. Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

(*Remainder of the page intentionally left blank*)

* * * * *

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and effective as of the Effective Time.

**HEALTHPEAK PROPERTIES, INC.**,
as Assignor

/s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

**NEW HEALTHPEAK, INC.**,
as Assignee

/s/ Peter A. Scott
Name: Peter A. Scott
Title: Chief Financial Officer

[*Signature Page to Omnibus Assignment, Assumption and Amendment Agreement*]

**Exhibit 10.5**

**FIRST AMENDMENT TO**
**AMENDED AND RESTATED HEALTHPEAK PROPERTIES, INC. 2014 PERFORMANCE INCENTIVE PLAN (AS AMENDED AND RESTATED OCTOBER 24, 2019)**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED HEALTHPEAK PROPERTIES, INC. 2014 PERFORMANCE INCENTIVE PLAN (AS AMENDED AND RESTATED OCTOBER 24, 2019) (this "First Amendment"), is made and adopted by the Board of Directors (the "Board") of Healthpeak Properties, Inc., a Maryland corporation (the "Company"), on February 10, 2023. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan (as defined below).

**RECITALS**

WHEREAS, the Company maintains the Healthpeak Properties, Inc. 2014 Performance Incentive Plan (As Amended And Restated October 24, 2019) (as amended, the "Plan");

WHEREAS, pursuant to Section 8.6.2 of the Plan, the Board may, at any time, amend, modify, or suspend the Plan in whole or in part; and

WHEREAS, the Company desires to amend the Plan as set forth herein.

NOW, THEREFORE, BE IT RESOLVED, that the Plan is hereby amended as set forth herein.

**AMENDMENT**

1. Section 3.1. Section 3.1 of the Plan is hereby deleted and replaced in its entirety with the following:

"*The Administrator*. This Plan shall be administered by and all awards under this Plan shall be authorized by the Administrator. The "Administrator" means the Board or one or more committees appointed by the Board or another committee (within its delegated authority) to administer all or certain aspects of this Plan. Any such committee shall be comprised solely of one or more directors or such number of directors as may be required under applicable law. A committee may delegate some or all of its authority to another committee so constituted. The Board or a committee comprised solely of directors may also delegate, to the extent permitted by applicable law, to one or more officers of the Corporation, its powers under this Plan (a) to designate the officers and employees of the Corporation and its Subsidiaries who will receive grants of awards under this Plan, and (b) to determine the number of shares or LTIP Units (as defined herein) subject to, and the other terms and conditions of, such awards. The Board may delegate different levels of authority to different committees with administrative and grant authority under this Plan."

2. Section 3.2. Clauses (e) and (g) of Section 3.2 of the Plan are hereby deleted and replaced in their entirety with the following:

(e) cancel, modify, or waive the Corporation's or its Subsidiaries' rights with respect to, or modify, discontinue, suspend, or terminate any or all outstanding awards, subject to any required consent under Section 8.6.5;

(g) adjust the number of shares of Common Stock, LTIP Units or other securities subject to any award, adjust the price of any or all outstanding awards or otherwise change previously imposed terms and conditions, in such circumstances as the Administrator may deem appropriate, in each case subject to Sections 4 and 8.6 (subject to the no repricing provision below);

3. Section 4.2. Section 4.2 of the Plan is hereby amended by adding the following new paragraph after clause (d) in such section:

"Each LTIP Unit subject to an award under the Plan shall be treated as a share of Common Stock (or, for purposes of applying the Full-Value Award ratio described above, 1.5 shares of Common Stock) for purposes of calculating the aggregate number of shares of Common Stock available for issuance under the Plan as set forth in this Section 5.1 and for purposes of calculating the other award limits set forth in this Section 5.1."

4. Section 4.3. The first sentence of Section 4.3 of the Plan is hereby deleted and replaced in its entirety with the following:

"To the extent that an award is settled in cash or a form other than shares of Common Stock or LTIP Units, the shares that would have been delivered had there been no such cash or other settlement shall not be counted against the shares available for issuance under this Plan."

5. Section 5.1.4. The following new Section 5.1.4 is hereby added to the Plan and the following sections are renumbered accordingly:

"***LTIP Units Awards***. An LTIP Unit is an "LTIP Unit" of Healthpeak OP, LLC (the "Partnership") (as defined in that certain Agreement of Limited Partnership of Healthpeak OP, LLC (as it may be amended from time to time, the "Partnership Agreement")) that is intended to constitute a "profits interest" within the meaning of the Code, including, to the extent applicable, Revenue Procedure 93-27, 1993-2 C.B. 343 and Revenue Procedure 2001-43, 2001-2 C.B. 191. The Administrator is authorized to grant LTIP Units in such amount and subject to such terms and conditions as may be determined by the Administrator; *provided*, *however*, that LTIP Units may only be issued to an Eligible Person for the performance of services to or for the benefit of the Partnership (a) in the Eligible Person's capacity as a partner or member of the Partnership, (b) in anticipation of the Eligible Person becoming a partner or member of the Partnership, or (c) as otherwise determined by the Administrator; *provided*, that the LTIP Units are intended to constitute "profits interests" within the meaning of the Code. The Administrator shall specify the conditions and dates upon which the LTIP Units shall vest and become nonforfeitable. LTIP Units shall be subject to the terms and conditions of the Partnership Agreement and such other restrictions, including restrictions on transferability, as the Administrator may impose. These restrictions may lapse separately or in combination at such times, pursuant to such circumstances, in such instalments, or otherwise, as the Administrator determines at the time of the grant of the award or thereafter."

6. Section 7.3(a). Clause (B) of the proviso in Section 7.3(a) of the Plan is hereby deleted and replaced in its entirety with the following:

"(B) any acquisition by the Corporation or the Partnership,"

7. Section 8.1. The first sentence of Section 8.1 of the Plan is hereby deleted and replaced in its entirety with the following:

"***Compliance with Laws***. This Plan, the granting and vesting of awards under this Plan, the offer, issuance and delivery of shares of Common Stock and/or LTIP Units, and/or the payment of money under this Plan or under awards are subject to compliance with all applicable federal and state laws, rules and regulations (including but not limited to state and federal securities law, federal margin requirements) and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Corporation, be necessary or advisable in connection therewith."

8. This First Amendment shall be and is hereby incorporated in and forms a part of the Plan.

9. Except as expressly provided herein, all terms and provisions of the Plan shall remain in full force and effect.

[*Signature Page Follows*]

I hereby certify that the foregoing First Amendment was duly adopted by the Board of Directors of Healthpeak Properties, Inc. on February 10, 2023.

Executed on this 10th day of February, 2023.

/s/ Scott A. Graziano

By: Scott A. Graziano
Its: Senior Vice President –
Deputy General Counsel and
Corporate Secretary

**Exhibit 99.1**

**Healthpeak Announces Closing of Holding Company Reorganization**

DENVER, Feb. 10, 2023 /PRNewswire/ -- Healthpeak Properties, Inc. (NYSE: PEAK) (the "Company") today announced the completion of its holding company reorganization (the "Reorganization"), which restructured the Company as an Umbrella Partnership Real Estate Investment Trust, or UPREIT.

The Reorganization provides additional flexibility for the Company to efficiently acquire properties in a tax-deferred manner and aligns the Company's corporate structure with other publicly traded U.S. real estate investment trusts. The UPREIT structure allows owners to contribute property on a tax-deferred basis, subject to applicable tax requirements.

As part of the Reorganization, a new holding company ("New Healthpeak") became the publicly traded parent company by way of an intercompany merger (the "Merger"), assuming the existing name of "Healthpeak Properties, Inc.," while the prior corporation ("Old Healthpeak") converted to a limited liability company called "Healthpeak OP, LLC" ("Healthpeak OP") controlled by the publicly traded parent company (the "Conversion").

The Reorganization is not anticipated to have any material impact on the Company's financial position and is not expected to result in any material changes to the Company's consolidated financial statements, outstanding debt securities, material debt facilities, or business operations. All shares of common stock of Old Healthpeak automatically converted into identical shares of the Company as part of the Reorganization, and the Reorganization will not impact the payment of the dividends declared by the Company's board of directors and payable to stockholders of record in accordance with previously announced dividend payment dates in respect of the Company's common stock.

The Reorganization was effective as of February 10, 2023. The Company's shares of common stock continue to trade on the NYSE under the symbol "PEAK". The Merger did not require stockholder approval under Maryland law and the Merger is expected to qualify as a tax-free reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended, meaning that Healthpeak's stockholders are not expected to recognize a gain or loss for federal income tax purposes as a result of the Merger.

For more information on the Reorganization, please see the Form 8-K12B that is expected to be filed by the Company with the Securities and Exchange Commission on February 10, 2023. A set of FAQs is also available on the Company's website at https://ir.healthpeak.com/faqs.

**ABOUT HEALTHPEAK PROPERTIES**

Healthpeak Properties, Inc. is a fully integrated real estate investment trust (REIT) and S&P 500 company. Healthpeak owns and develops high-quality real estate in the three private-pay healthcare asset classes of Life Science, Medical Office and CCRC. At Healthpeak, we pair our deep understanding of the healthcare real estate market with a strong vision for long-term growth. For more information regarding Healthpeak, visit www.healthpeak.com.

**FORWARD LOOKING STATEMENTS**

Statements contained in this press release that are not historical facts are “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include, among other things, statements regarding our and our officers' intent, belief or expectation as identified by the use of words such as “may,” “will,” “project,” “expect,” “believe,” “intend,” “anticipate,” “seek,” “target,” “forecast,” “plan,” “potential,” “estimate,” “could,” “would,” “should” and other comparable and derivative terms or the negatives thereof. Forward-looking statements, including, but not limited to, statements regarding the impacts of the reorganization on Healthpeak’s financial condition, business operations and financial statements and Healthpeak’s ability to realize the expected benefits of reorganization, are not guarantees of future performance and involve risks and uncertainties that may cause Healthpeak’s actual results to differ materially from Healthpeak’s expectations discussed in the forward-looking statements. This may be a result of various factors, including, but not limited to, those factors discussed in Healthpeak’s reports filed from time to time with the Securities Exchange Commission. Moreover, other risks and uncertainties of which Healthpeak is not currently aware may also affect the forward-looking statements contained herein and may cause actual results and the timing of events to differ materially from those anticipated. The forward-looking statements made in this communication are made only as of the date hereof or as of the dates indicated in the forward-looking statements, even if they are subsequently made available by Healthpeak on its website or otherwise. Healthpeak undertakes no obligation to update or revise publicly any forward-looking statements, whether because of new information, future events or otherwise, or to update the reasons why actual results could differ from those projected in any forward-looking statements.

**CONTACT**

Andrew Johns, CFA
Senior Vice President – Investor Relations
720-428-5050

**Exhibit 99.2**

**Frequently Asked Questions About the Reorganization into an UPREIT Structure**

**February 2023**

1. What is Healthpeak doing?

Healthpeak has completed a holding company reorganization that resulted in a new company becoming the publicly traded parent company ("New Healthpeak"). The prior publicly traded company ("Old Healthpeak") merged with a subsidiary of New Healthpeak and then converted to a Maryland limited liability company (the "LLC Conversion") named Healthpeak OP, LLC ("Healthpeak OP"), which is controlled by New Healthpeak. New Healthpeak (the publicly traded parent company) changed its name to Healthpeak Properties, Inc. and is expected to qualify as a real estate investment trust ("REIT") for federal income tax purposes. Following these transactions, New Healthpeak's common stock continues to trade on the New York Stock Exchange ("NYSE") under the trading symbol "PEAK".

2. Where can I find detailed information?

Details of the reorganization can be found in the press release and the Current Report on Form 8-K12B filed with the Securities and Exchange Commission. We recommend that you review these documents to obtain a complete understanding of the reorganization.

3. When did this happen?

The merger and the LLC Conversion became effective on February 10, 2023.

4. Did this impact my rights as a stockholder?

No. All of the voting rights and other rights with respect to your shares remain the same.

5. Why did Healthpeak do this?

The reorganization resulted in restructuring Healthpeak as an Umbrella Partnership REIT ("UPREIT"). Healthpeak believes the UPREIT structure will improve the company's ability to acquire properties in a tax-deferred manner and also align the company's corporate structure with the majority of other REITs.

6. What happened to my shares in Healthpeak?

As part of the reorganization, each issued and outstanding share of Old Healthpeak common stock immediately prior to the effective time of the merger was converted automatically into one corresponding issued and outstanding share of New Healthpeak common stock. For example, if you owned 100 shares of Old Healthpeak common stock on February 9, 2023, you owned 100 shares of New Healthpeak common stock after the reorganization with all of the same rights and benefits. You do not have to do anything with your Healthpeak shares because of the reorganization.

7. Will this impact dividend payments?

No, the reorganization did not and will not impact the payment of dividends declared by the company's Board of Directors and payable in respect of the company's shares of common stock.

8. Are my shares still be traded on the NYSE?

Yes. There was no change to ticker symbols or trading for shares in New Healthpeak after the reorganization, and all shares of common stock of New Healthpeak continue to trade on the NYSE under the ticker symbol "PEAK".

9. Will this reorganization impact my US taxes?

No. The reorganization is expected to qualify as a tax-free reorganization for federal income tax purposes, meaning that Healthpeak's stockholders are not expected to recognize gain or loss for federal income tax purposes.

10. What is the name of the new public company?

The new public company is known as Healthpeak Properties, Inc. The predecessor publicly traded company (i.e., Old Healthpeak) became a limited liability company named Healthpeak OP, LLC, and is the operating partnership in the UPREIT structure.

11. Who will be running New Healthpeak?

The Board of Directors of New Healthpeak is exactly the same as the Board of Directors of Old Healthpeak that the stockholders elected in April 2022. The management team of New Healthpeak remains unchanged from the management team of Old Healthpeak prior to the reorganization. It is still headed by Scott Brinker as President and Chief Executive Officer with his current management team and employees.

12. Will the reorganization have an impact on Healthpeak's financial condition?

No. Other than costs necessary to effectuate the reorganization, which we do not expect to be material, we do not expect the reorganization to have any material impact on the consolidated financial statements, cash flow, or results of operation of Healthpeak, or on its outstanding debt securities.

13. Will there be any changes to the assets owned by Healthpeak?

No. Substantially all of the assets owned by Old Healthpeak and its subsidiaries prior to the reorganization continue to be owned by Healthpeak OP and its subsidiaries today. New Healthpeak generally will not hold any assets directly other than its ownership interest in Healthpeak OP and certain de minimis assets that may be held for certain administrative functions. In addition, all indebtedness of Old Healthpeak immediately prior to the reorganization remains the indebtedness of Healthpeak OP after the reorganization.

14. What if I still have questions about the reorganization?

If you have questions about the reorganization that have not been answered, please contact our Investor Relations department at investorrelations@healthpeak.com.

Forward-Looking Statements

Statements contained in this FAQ that are not historical facts are "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include, among other things, statements regarding our and our officers' intent, belief or expectation as identified by the use of words such as "may," "will," "project," "expect," "believe," "intend," "anticipate," "seek," "target," "forecast," "plan," "potential," "estimate," "could," "would," "should" and other comparable and derivative terms or the negatives thereof. Forward-looking statements, including, but not limited to, statements regarding the impacts of the reorganization on Healthpeak's financial condition, business operations and financial statements and Healthpeak's ability to realize the expected benefits of reorganization, are not guarantees of future performance and involve risks and uncertainties that may cause Healthpeak's actual results to differ materially from Healthpeak's expectations discussed in the forward-looking statements. This may be a result of various factors, including, but not limited to, those factors discussed in Healthpeak's reports filed from time to time with the Securities Exchange Commission. Moreover, other risks and uncertainties of which Healthpeak is not currently aware may also affect the forward-looking statements contained herein and may cause actual results and the timing of events to differ materially from those anticipated. The forward-looking statements made in this communication are made only as of the date hereof or as of the dates indicated in the forward-looking statements, even if they are subsequently made available by Healthpeak on its website or otherwise. Healthpeak undertakes no obligation to update or revise publicly any forward-looking statements, whether because of new information, future events or otherwise, or to update the reasons why actual results could differ from those projected in any forward-looking statements.