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

FORM 10-Q

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

For the quarterly period ended March 31, 2021
OR

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

For the transition period from to .
Commission File Number 001-34571

PEBBLEBROOK HOTEL TRUST

(Exact Name of Registrant as Specified in Its Charter)

Maryland	**27-1055421**
(State of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
4747 Bethesda Avenue Suite 1100 Bethesda, Maryland	**20814**
(Address of Principal Executive Offices)	**(Zip Code)**

(240) 507-1300
(Registrant's telephone number, including area code)

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 Shares, $0.01 par value per share	PEB	New York Stock Exchange
6.50% Series C Cumulative Redeemable Preferred Shares	PEB-PC	New York Stock Exchange
6.375% Series D Cumulative Redeemable Preferred Shares	PEB-PD	New York Stock Exchange
6.375% Series E Cumulative Redeemable Preferred Shares	PEB-PE	New York Stock Exchange
6.30% Series F Cumulative Redeemable Preferred Shares	PEB-PF	New York Stock Exchange

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☑ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☑ Yes ☐ No

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

Large accelerated filer	☑	Accelerated filer	☐
Non-accelerated filer	☐ (do not check if a smaller reporting company)	Smaller reporting company	☐
		Emerging growth company	☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☑ No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding at April 22, 2021
Common shares of beneficial interest ($0.01 par value per share)	131,385,258

Pebblebrook Hotel Trust

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements.

Pebblebrook Hotel Trust
Consolidated Balance Sheets
(In thousands, except share and per-share data)

	March 31, 2021 (Unaudited)	December 31, 2020
ASSETS		
Investment in hotel properties, net	$ 5,731,727	$ 5,882,022
Hotel held for sale	90,384	—
Cash and cash equivalents	113,338	124,274
Restricted cash	11,294	12,026
Hotel receivables (net of allowance for doubtful accounts of $539 and $183, respectively)	16,647	10,225
Prepaid expenses and other assets	45,519	47,819
Total assets	$ 6,008,909	$ 6,076,366
LIABILITIES AND EQUITY		
Debt	$ 2,433,980	$ 2,280,471
Accounts payable, accrued expenses and other liabilities	239,278	226,446
Lease liabilities - operating leases	254,831	255,106
Deferred revenues	41,202	36,057
Accrued interest	9,087	4,653
Liabilities related to hotel held for sale	2,293	—
Distribution payable	9,082	9,307
Total liabilities	2,989,753	2,812,040
Commitments and contingencies (Note 11)		
Shareholders' equity:		
Preferred shares of beneficial interest, $.01 par value (liquidation preference $510,000 at March 31, 2021 and December 31, 2020), 100,000,000 shares authorized; 20,400,000 shares issued and outstanding at March 31, 2021 and December 31, 2020	204	204
Common shares of beneficial interest, $.01 par value, 500,000,000 shares authorized; 130,812,917 shares issued and outstanding at March 31, 2021 and 130,673,300 shares issued and outstanding at December 31, 2020	1,308	1,307
Additional paid-in capital	4,038,860	4,169,870
Accumulated other comprehensive income (loss)	(43,917)	(60,071)
Distributions in excess of retained earnings	(983,771)	(853,973)
Total shareholders' equity	3,012,684	3,257,337
Non-controlling interests	6,472	6,989
Total equity	3,019,156	3,264,326
Total liabilities and equity	$ 6,008,909	$ 6,076,366

The accompanying notes are an integral part of these financial statements.

Pebblebrook Hotel Trust
Consolidated Statements of Operations and Comprehensive Income
(In thousands, except share and per-share data)
(Unaudited)

	For the three months ended March 31,	
	2021	**2020**
Revenues:		
Room	$ 53,463	$ 177,141
Food and beverage	14,809	67,092
Other operating	15,371	24,874
Total revenues	83,643	269,107
Expenses:		
Hotel operating expenses:		
Room	16,710	54,125
Food and beverage	10,743	51,859
Other direct and indirect	45,228	95,470
Total hotel operating expenses	72,681	201,454
Depreciation and amortization	55,443	55,828
Real estate taxes, personal property taxes, property insurance, and ground rent	28,590	29,766
General and administrative	7,646	22,577
Transaction costs	111	36
Impairment loss	14,856	20,570
(Gain) loss on sale of hotel properties	—	(117,448)
(Gain) loss and other operating expenses	451	1,433
Total operating expenses	179,778	214,216
Operating income (loss)	(96,135)	54,891
Interest expense	(25,331)	(23,591)
Other	29	24
Income (loss) before income taxes	(121,437)	31,324
Income tax (expense) benefit	(3)	10,744
Net income (loss)	(121,440)	42,068
Net income (loss) attributable to non-controlling interests	(858)	119
Net income (loss) attributable to the Company	(120,582)	41,949
Distributions to preferred shareholders	(8,139)	(8,139)
Net income (loss) attributable to common shareholders	$ (128,721)	$ 33,810
Net income (loss) per share available to common shareholders, basic	$ (0.98)	$ 0.26
Net income (loss) per share available to common shareholders, diluted	$ (0.98)	$ 0.26
Weighted-average number of common shares, basic	130,775,873	130,555,846
Weighted-average number of common shares, diluted	130,775,873	130,678,908

Pebblebrook Hotel Trust
Consolidated Statements of Operations and Comprehensive Income - Continued
(In thousands, except share and per-share data)
(Unaudited)

	For the three months ended March 31,	
	2021	**2020**
Comprehensive Income:		
Net income (loss)	$ (121,440)	$ 42,068
Other comprehensive income (loss):		
Change in fair value of derivative instruments	9,736	(57,474)
Amounts reclassified from other comprehensive income	6,418	3,209
Comprehensive income (loss)	(105,286)	(12,197)
Comprehensive income (loss) attributable to non-controlling interests	(752)	(35)
Comprehensive income (loss) attributable to the Company	$ (104,534)	$ (12,162)

The accompanying notes are an integral part of these financial statements.

Pebblebrook Hotel Trust
Consolidated Statements of Equity
(In thousands, except share data)
(Unaudited)

	Preferred Shares		Common Shares		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Distributions in Excess of Retained Earnings	Total Shareholders' Equity	Non-Controlling Interests	Total Equity
	Shares	Amount	Shares	Amount						
Balance at December 31, 2019	20,400,000	$ 204	130,484,956	$ 1,305	$ 4,069,410	$ (24,715)	$ (424,996)	$ 3,621,208	$ 10,728	$ 3,631,936
Issuance of shares, net of offering costs	—	—	—	—	(85)	—	—	(85)	—	(85)
Issuance of common shares for Board of Trustees compensation	—	—	23,528	1	636	—	—	637	—	637
Repurchase of common shares	—	—	(47,507)	(1)	(1,254)	—	—	(1,255)	—	(1,255)
Share-based compensation	—	—	102,249	1	7,020	—	—	7,021	10,616	17,637
Distributions on common shares/units	—	—	—	—	—	—	(764)	(764)	(4)	(768)
Distributions on preferred shares	—	—	—	—	—	—	(8,139)	(8,139)	—	(8,139)
Other comprehensive income (loss):										
Change in fair value of derivative instruments	—	—	—	—	—	(57,474)	—	(57,474)	—	(57,474)
Amounts reclassified from other comprehensive income	—	—	—	—	—	3,209	—	3,209	—	3,209
Net income (loss)	—	—	—	—	—	—	41,949	41,949	119	42,068
Balance at March 31, 2020	20,400,000	$ 204	130,563,226	$ 1,306	$ 4,075,727	$ (78,980)	$ (391,950)	$ 3,606,307	$ 21,459	$ 3,627,766

	Preferred Shares		Common Shares		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Distributions in Excess of Retained Earnings	Total Shareholders' Equity	Non-Controlling Interests	Total Equity
	Shares	Amount	Shares	Amount						
Balance at December 31, 2020	20,400,000	$ 204	130,673,300	$ 1,307	$ 4,169,870	$ (60,071)	$ (853,973)	$ 3,257,337	$ 6,989	$ 3,264,326
Issuance of shares, net of offering costs	—	—	—	—	(10)	—	—	(10)	—	(10)
Issuance of common shares for Board of Trustees compensation	—	—	27,711	1	515	—	—	516	—	516
Repurchase of common shares	—	—	(38,310)	(1)	(719)	—	—	(720)	—	(720)
Share-based compensation	—	—	150,216	1	3,278	—	—	3,279	349	3,628
Distributions on common shares/units	—	—	—	—	—	—	(1,077)	(1,077)	(8)	(1,085)
Distributions on preferred shares	—	—	—	—	—	—	(8,139)	(8,139)	—	(8,139)
Cumulative effect adjustment from adoption of new accounting standard	—	—	—	—	(113,099)	—	—	(113,099)	—	(113,099)
Purchases of capped calls in connection with convertible senior notes	—	—	—	—	(20,975)	—	—	(20,975)	—	(20,975)
Other comprehensive income (loss):										
Change in fair value of derivative instruments	—	—	—	—	—	9,736	—	9,736	—	9,736
Amounts reclassified from other comprehensive income	—	—	—	—	—	6,418	—	6,418	—	6,418
Net income (loss)	—	—	—	—	—	—	(120,582)	(120,582)	(858)	(121,440)
Balance at March 31, 2021	20,400,000	$ 204	130,812,917	$ 1,308	$ 4,038,860	$ (43,917)	$ (983,771)	$ 3,012,684	$ 6,472	$ 3,019,156

The accompanying notes are an integral part of these financial statements.

Pebblebrook Hotel Trust
Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	For the three months ended March 31,	
	2021	**2020**
Operating activities:		
Net income (loss)	$ (121,440)	$ 42,068
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	55,443	55,828
Share-based compensation	2,182	17,637
Amortization of deferred financing costs, non-cash interest and mortgage loan premiums	4,744	3,594
(Gain) loss on sale of hotel properties	—	(117,448)
Impairment loss	14,856	20,570
Non-cash ground rent	1,521	1,574
Other	69	146
Changes in assets and liabilities:		
Hotel receivables	(6,800)	23,386
Prepaid expenses and other assets	1,686	(5,200)
Accounts payable and accrued expenses	35,110	(26,326)
Deferred revenues	5,493	(14,337)
Net cash provided by (used in) operating activities	(7,136)	1,492
Investing activities:		
Improvements and additions to hotel properties	(9,623)	(50,099)
Proceeds from sales of hotel properties	—	320,036
Purchase of corporate office equipment, software, and furniture	(47)	—
Net cash provided by (used in) investing activities	(9,670)	269,937
Financing activities:		
Payment of offering costs — common and preferred shares	(10)	(85)
Payment of deferred financing costs	(9,576)	—
Borrowings under revolving credit facilities	—	760,115
Repayments under revolving credit facilities	(40,000)	(281,947)
Proceeds from debt	263,750	—
Repayments of debt	(177,000)	—
Purchases of capped calls for convertible senior notes	(20,975)	—
Repurchases of common shares	(720)	(1,255)
Distributions — common shares/units	(1,312)	(50,027)
Distributions — preferred shares	(8,139)	(8,139)
Repayments of refundable membership deposits	(880)	(198)
Net cash provided by (used in) financing activities	5,138	418,464
Net change in cash and cash equivalents and restricted cash	(11,668)	689,893
Cash and cash equivalents and restricted cash, beginning of year	136,300	56,875
Cash and cash equivalents and restricted cash, end of period	$ 124,632	$ 746,768

The accompanying notes are an integral part of these financial statements.

PEBBLEBROOK HOTEL TRUST
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1. Organization

Pebblebrook Hotel Trust (the "Company") was formed as a Maryland real estate investment trust in October 2009 to opportunistically acquire and invest in hotel properties located primarily in major United States cities, with an emphasis on major gateway coastal markets.

As of March 31, 2021, the Company owned 53 hotels with a total of 13,236 guest rooms. The hotels are located in the following markets: Boston, Massachusetts; Chicago, Illinois; Key West, Florida; Miami (Coral Gables), Florida; Los Angeles, California (Beverly Hills, Santa Monica, and West Hollywood); Naples, Florida; New York, New York; Philadelphia, Pennsylvania; Portland, Oregon; San Diego, California; San Francisco, California; Seattle, Washington; Stevenson, Washington; and Washington, D.C.

Substantially all of the Company's assets are held by, and all of the Company's operations are conducted through, Pebblebrook Hotel, L.P. (the "Operating Partnership"). The Company is the sole general partner of the Operating Partnership. At March 31, 2021, the Company owned 99.3% of the common limited partnership units issued by the Operating Partnership ("common units"). The remaining 0.7% of the common units are owned by the other limited partners of the Operating Partnership. For the Company to maintain its qualification as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986, as amended (the "Code"), it cannot operate the hotels it owns. Therefore, the Operating Partnership and its subsidiaries lease the hotel properties to subsidiaries of Pebblebrook Hotel Lessee, Inc. (collectively with its subsidiaries, "PHL"), a taxable REIT subsidiary ("TRS"), which in turn engage third-party eligible independent contractors to manage the hotels. PHL is consolidated into the Company's financial statements.

COVID-19 Operations and Liquidity Update

In March 2020, the World Health Organization declared the novel coronavirus ("COVID-19") to be a global pandemic and the virus has continued to spread throughout the United States and the world. As a result of this pandemic and subsequent government mandates, health official recommendations, corporate policy changes and individual responses, hotel demand was dramatically reduced. In response, the Company implemented significant cost controls, salary reductions and temporarily suspended operations at 47 of its hotels and resorts. As demand has returned over the past year, the Company reopened the majority of its hotels and resorts. As of March 31, 2021, 40 of the Company's hotels and resorts were open, with operations at the remaining 13 hotels listed below still temporarily suspended. The Company anticipates reopening additional hotels as demand returns.

	Property		Location
1.	Argonaut Hotel	(1)	San Francisco, CA
2.	Harbor Court Hotel San Francisco	(1)	San Francisco, CA
3.	Hotel Vitale		San Francisco, CA
4.	Hotel Zelos San Francisco	(1)	San Francisco, CA
5.	Hotel Zephyr Fisherman's Wharf	(1)	San Francisco, CA
6.	Hotel Zeppelin San Francisco	(1)	San Francisco, CA
7.	Hotel Zoe Fisherman's Wharf	(1)	San Francisco, CA
8.	The Marker San Francisco	(1)	San Francisco, CA
9.	Sir Francis Drake	(2)	San Francisco, CA
10.	Villa Florence San Francisco on Union Square		San Francisco, CA
11.	Revere Hotel Boston Common	(1)	Boston, MA
12.	The Westin Michigan Avenue Chicago		Chicago, IL
13.	The Roger New York		New York, NY

(1) Hotel reopened in April 2021.
(2) Hotel was sold in April 2021.

The COVID-19 pandemic has had a significant negative impact on the Company's operations and financial results to date and the Company expects that it will continue to have a significant negative impact on the Company's results of operations, financial position and cash flow in 2021. The Company cannot estimate when travel demand will fully recover.

In February 2021, the Company issued, at a 5.5% premium to par, an additional $250.0 million aggregate principal amount of its convertible notes originally issued in December 2020. In connection with the pricing of the convertible notes, the Company entered into privately negotiated capped call transactions with certain of the underwriters, their respective affiliates and/or other counterparties. The Company used the net proceeds to reduce amounts outstanding under the Company's senior unsecured revolving credit facility and unsecured term loans, and for general corporate purposes.

In February 2021, the Company amended the agreements governing its existing credit facilities, term loan facilities and senior notes to, among other items, waive financial covenants through the end of the first quarter of 2022, except for the minimum fixed charge coverage and minimum unsecured interest coverage ratio which were extended through December 31, 2021, and to increase the interest rate spread. Refer to "Note 5. Debt" for additional information regarding these amendments and the convertible notes. Based on these amendments and expense and cash burn rate reductions, the Company believes that it has sufficient liquidity to meet its obligations for the next twelve months.

The Company adopted a staggered return-to-work policy and other physical distancing policies at its corporate office and does not anticipate these policies to have any adverse impact on its ability to continue to operate its business. Transitioning to a hybrid remote-work environment has not had a material adverse impact on the Company's financial reporting system, internal controls or disclosure controls and procedures.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited interim consolidated financial statements and related notes have been prepared in accordance with U.S. GAAP and in conformity with the rules and regulations of the U.S. Securities and Exchange Commission ("SEC") applicable to interim financial information. As such, certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been omitted in accordance with the rules and regulations of the SEC. These unaudited consolidated financial statements include all adjustments considered necessary for a fair presentation of the consolidated balance sheets, consolidated statements of operations and comprehensive income, consolidated statements of equity and consolidated statements of cash flows for the periods presented. Interim results are not necessarily indicative of full-year performance, as a result of the impact of seasonal and other short-term variations and the acquisitions and or dispositions of hotel properties. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2020.

The Company and its subsidiaries are separate legal entities and maintain records and books of account separate and apart from each other. The consolidated financial statements include all of the accounts of the Company and its subsidiaries and are presented in accordance with U.S. GAAP. All significant intercompany balances and transactions have been eliminated in consolidation.

Certain reclassifications have been made to the prior period's financial statements to conform to the current year presentation.

Use of Estimates

The preparation of the financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and revenues and expenses. These estimates are prepared using management's best judgment, after considering past, current and expected events and economic conditions. Actual results could differ from these estimates.

Fair Value Measurements

A fair value measurement is based on the assumptions that market participants would use in pricing an asset or liability in an orderly transaction. The hierarchy for inputs used in measuring fair value are as follows:

1. Level 1 – Inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities.
2. Level 2 – Inputs include quoted prices in active markets for similar assets and liabilities, quoted prices for identical or similar assets or liabilities in markets that are not active, and model-derived valuations whose inputs are observable.
3. Level 3 – Model-derived valuations with unobservable inputs.

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for disclosure purposes, the level within which the fair value measurement is categorized is based on the lowest level input that is significant to the fair value measurement.

The Company's financial instruments include cash and cash equivalents, restricted cash, accounts payable and accrued expenses. Due to their short maturities, the carrying amounts of these assets and liabilities approximate fair value. See Note 5 to the accompanying consolidated financial statements for disclosures on the fair value of debt and derivative instruments.

Investment in Hotel Properties

Upon acquiring a business or hotel property, the Company measures and recognizes the fair value of the acquired land, land improvements, building, furniture, fixtures and equipment, identifiable intangible assets or liabilities, other assets and assumed liabilities. Identifiable intangible assets or liabilities typically arise from contractual arrangements in connection with the transaction, including terms that are above or below market compared to an estimated market agreement at the acquisition date. Acquisition-date fair values of assets and assumed liabilities are determined using a combination of the market, cost and income approaches. These valuation methodologies are based on significant Level 2 and Level 3 inputs in the fair value hierarchy, such as estimates of future income growth, capitalization rates, discount rates, capital expenditures and cash flow projections, including hotel revenues and net operating income, at the respective hotel properties.

Transaction costs related to business combinations are expensed as incurred and included on the consolidated statements of operations and comprehensive income.

Hotel renovations and replacements of assets that improve or extend the life of the asset are recorded at cost and depreciated over their estimated useful lives. Furniture, fixtures and equipment under finance leases are recorded at the present value of the minimum lease payments. Repair and maintenance costs are expensed as incurred.

Hotel properties are recorded at cost and depreciated using the straight-line method over an estimated useful life of 10 to 40 years for buildings, land improvements, and building improvements and 1 to 10 years for furniture, fixtures and equipment. Leasehold improvements are amortized over the shorter of the lease term or the useful lives of the related assets. Intangible assets arising from contractual arrangements are typically amortized over the life of the contract. The Company is required to make subjective assessments as to the useful lives and classification of properties for purposes of determining the amount of depreciation expense to reflect each year with respect to the assets. These assessments may impact the Company’s results of operations.

The Company reviews its investments in hotel properties for impairment whenever events or changes in circumstances indicate that the carrying value of the hotel properties may not be recoverable. Events or circumstances that may cause a review include, but are not limited to, when a hotel property experiences a current or projected loss from operations, when it becomes more likely than not that a hotel property will be sold before the end of its useful life, adverse changes in the demand for lodging at the properties due to declining national or local economic conditions and/or new hotel construction in markets where the hotels are located. When such conditions exist, the Company performs an analysis to determine if the estimated undiscounted future cash flows from operations and the proceeds from the ultimate disposition of a hotel exceed its carrying value. If the estimated undiscounted future cash flows are less than the carrying value of the asset, an adjustment to reduce the carrying value to the related hotel’s estimated fair market value is recorded and an impairment loss is recognized. In the evaluation of impairment of its hotel properties, the Company makes many assumptions and estimates including projected cash flows both from operations and eventual disposition, expected useful life and estimated holding period, future required capital expenditures, and fair values, including consideration of expected terminal capitalization rates, discount rates, and comparable selling prices. The Company will adjust its assumptions with respect to the remaining useful life of the hotel property when circumstances change or it is more likely than not that the hotel property will be sold prior to its previously expected useful life.

The Company will classify a hotel as held for sale and will cease recording depreciation expense when a binding agreement to sell the property has been signed under which the buyer has committed a significant amount of nonrefundable cash, approval of the Company's board of trustees (the "Board of Trustees") has been obtained, no significant financing contingencies exist, and the sale is expected to close within one year. If the fair value less costs to sell is lower than the carrying value of the hotel, the Company will record an impairment loss. The Company will classify the loss as continuing or discontinuing operations on the consolidated statements of operations and comprehensive income and classify the assets and related liabilities as held for sale on the consolidated balance sheets.

The Company will report a disposed or held for sale hotel property or group of hotel properties in discontinued operations only if the disposal represents a strategic shift that has, or will have, a major effect on its operations and financial results. All other disposed hotel properties will have their operating results reflected within continuing operations on the Company's consolidated statements of operations and comprehensive income for all periods presented.

Revenue Recognition

Revenue consists of amounts derived from hotel operations, including the sales of rooms, food and beverage, and other ancillary services. Room revenue is recognized over the length of a customer's hotel stay. Revenue from food and beverage and other ancillary services is generated when a customer chooses to purchase goods or services separately from a hotel room and revenue is recognized on these distinct goods and services at the point in time or over the time period that goods or services are

provided to the customer. Certain ancillary services are provided by third parties and the Company assesses whether it is the principal or agent in these arrangements. If the Company is the agent, revenue is recognized based upon the commission earned from the third party. If the Company is the principal, the Company recognizes revenue based upon the gross sales price. Some contracts for rooms or food and beverage services require an upfront deposit which is recorded as deferred revenues (or contract liabilities) and recognized once the performance obligations are satisfied.

The Company recognizes revenue related to nonrefundable membership initiation fees and refundable membership initiation deposits over the expected life of an active membership. For refundable membership initiation deposits, the difference between the amount paid by the member and the present value of the refund obligation is deferred and recognized as other operating revenues on the consolidated statements of operations and comprehensive income over the expected life of an active membership. The present value of the refund obligation is recorded as a membership initiation deposit liability in the consolidated balance sheets and accretes over the nonrefundable term using the effective interest method using the Company's incremental borrowing rate. The accretion is included in interest expense.

Certain of the Company's hotels have retail spaces, restaurants or other spaces which the Company leases to third parties. When collection of substantially all lease payments during the lease term is considered probable, lease revenue is recognized on a straight-line basis over the life of the lease. When collection of substantially all lease payments during the lease term is not considered probable, revenue is recognized as the lesser of the amount under straight-line basis or cash received. Lease revenue is included in other operating revenues in the Company's consolidated statements of operations and comprehensive income.

The Company collects sales, use, occupancy and similar taxes at its hotels which are presented on a net basis on the consolidated statements of operations and comprehensive income. Accounts receivable primarily represents receivables from hotel guests who occupy hotel rooms and utilize hotel services. The Company maintains an allowance for doubtful accounts sufficient to cover estimated potential credit losses.

Income Taxes

To qualify as a REIT for federal income tax purposes, the Company must meet a number of organizational and operational requirements, including a requirement that it currently distribute at least 90 percent of its REIT taxable income (determined without regard to the deduction for dividends paid and excluding net capital gains) to its shareholders. As a REIT, the Company generally is not subject to federal corporate income tax on that portion of its taxable income that is currently distributed to shareholders. The Company is subject to certain state and local taxes on its income and property, and to federal income and excise taxes on its undistributed taxable income. In addition, the Company's TRS lessees are subject to federal and state income taxes. The Company accounts for income taxes using the asset and liability method under which deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Valuation allowances are provided if, based upon the weight of the available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

Share-based Compensation

The Company has adopted an equity incentive plan that provides for the grant of common share options, share awards, share appreciation rights, performance units and other equity-based awards. Equity-based compensation is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the vesting period. Share-based compensation awards that contain a performance condition are reviewed at least quarterly to assess the achievement of the performance condition. Compensation expense will be adjusted when a change in the assessment of achievement of the specific performance condition level is determined to be probable. The determination of fair value of these awards is subjective and involves estimates and assumptions including expected volatility of the Company's shares, expected dividend yield, expected term and assumptions of whether these awards will achieve parity with other operating partnership units or achieve performance thresholds.

Earnings Per Share

Basic earnings per share (“EPS”) is computed by dividing the net income (loss) available to common shareholders by the weighted-average number of common shares outstanding for the period. Diluted EPS is computed by dividing net income (loss) available to common shareholders, as adjusted for dilutive securities, by the weighted-average number of common shares outstanding plus dilutive securities. Any anti-dilutive securities are excluded from the diluted per-share calculation.

Recent Accounting Standards

During the first quarter of 2020, the Financial Accounting Standards Board (" FASB") issued ASU 2020-04, *Reference Rate Reform (Topic 848)*. ASU 2020-04 contains practical expedients for reference rate reform related activities that impact debt, leases, derivatives and other contracts. The guidance in ASU 2020-04 is optional and may be elected over time as reference rate reform activities occur. During the first quarter of 2020, the Company has elected to apply the hedge accounting

expedients related to probability and the assessments of effectiveness for future LIBOR-indexed cash flows to assume that the index upon which future hedged transactions will be based matches the index on the corresponding derivatives. Application of these expedients preserves the presentation of derivatives consistent with past presentation. The Company continues to evaluate the impact of the guidance and may apply other elections as applicable as additional changes in the market occur.

In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40),* which, among other things, simplifies the accounting for convertible instruments by eliminating the requirement to separate conversion features from the host contract. The new guidance eliminates the beneficial conversion and cash conversion accounting models for convertible instruments. As a result, in more cases, convertible debt will be accounted for as a single instrument. The guidance also removes certain conditions for equity classification related to contracts in an entity's own equity and requires the application of the if-converted method for calculating diluted earnings per share. Early adoption is permitted for fiscal years beginning after December 15, 2020, including interim periods. The Company early adopted ASU 2020-06 on January 1, 2021. As such, on January 1, 2021, the Company reclassified its equity component of the convertible debt to the liability. Convertible debt is now recorded entirely as a single liability with no portion of the proceeds from the issuance of the convertible debt instrument recorded as attributable to the conversion feature. In addition, the Company ceased recording non-cash interest expense associated with amortization of the debt discount and calculates earnings per share using the if-converted method to the extent those shares are not anti-dilutive.

Note 3. Acquisition and Disposition of Hotel Properties

There were no acquisitions of hotel properties during the three months ended March 31, 2021 and 2020.

As of March 31, 2021, the Company had entered into an agreement to sell the Sir Francis Drake for $157.6 million. This hotel was designated as held for sale as it met all of the Company's held for sale criteria. Accordingly, the Company classified all of the assets and liabilities related to this hotel as assets and liabilities held for sale in the accompanying consolidated balance sheets and ceased depreciating the assets. On April 1, 2021, the Company completed the sale of the Sir Francis Drake.

There were no dispositions of hotel properties during the three months ended March 31, 2021. During the three months ended March 31, 2020, the Company sold two hotel properties in a single transaction for an aggregate sales price of $331.0 million. For the three months ended March 31, 2020, the Company recognized a gain on its dispositions of $117.4 million, which is included in (gain) loss on sale of hotel properties in the accompanying consolidated statements of operations and comprehensive income. For the three months ended March 31, 2020, the accompanying consolidated statements of operations and comprehensive income included operating income of $4.3 million related to the hotel properties sold.

The sales of the hotel properties described above did not represent a strategic shift that had a major effect on the Company's operations and financial results, and therefore, did not qualify as discontinued operations.

Note 4. Investment in Hotel Properties

Investment in hotel properties as of March 31, 2021 and December 31, 2020 consisted of the following (in thousands):

	March 31, 2021	December 31, 2020
Land	$ 947,263	$ 973,848
Buildings and improvements	4,759,264	4,849,644
Furniture, fixtures and equipment	499,810	515,975
Finance lease asset	114,835	114,835
Construction in progress	4,546	5,443
	$ 6,325,718	$ 6,459,745
Right-of-use asset, operating leases	318,944	320,564
Investment in hotel properties	$ 6,644,662	$ 6,780,309
Less: Accumulated depreciation	(912,935)	(898,287)
Investment in hotel properties, net	$ 5,731,727	$ 5,882,022

The Company reviews its investment in hotel properties for impairment whenever events or circumstances indicate potential impairment. As a result of the ongoing effects of the COVID-19 pandemic on its expected future operating cash flows and estimated hold periods for certain properties, the Company determined certain impairment triggers had occurred and therefore, the Company assessed its investment in hotel properties for recoverability. Based on the analyses performed, for the three months ended March 31, 2021, the Company recognized an impairment loss of $14.9 million related to one hotel as a result of the fair value being lower than its carrying value. The impairment loss was determined using Level 2 inputs under authoritative guidance for fair value measurements using information from current marketing efforts for this property. For the three months ended March 31, 2020, the Company recognized an impairment loss of $20.6 million related to a retail

component of a hotel as a result of the fair value being lower than its carrying value. The impairment loss was determined using Level 2 inputs under authoritative guidance for fair value measurements.

The Company recognized right-of-use assets and related liabilities related to its ground leases, all of which are operating leases. Since most of the Company's leases do not provide an implicit rate, the Company used incremental borrowing rates, which ranged from 5.5% to 7.6%. All of these ground leases have long terms, ranging from 10 years to 88 years and the Company included the exercise of options to extend when it is reasonably certain the Company will exercise such option. See Note 11 for additional information about the ground leases. The right-of-use assets and liabilities are amortized to ground rent expense over the term of the underlying lease agreements. As of March 31, 2021, the Company's lease liabilities consisted of operating lease liabilities of $254.8 million and financing lease liabilities of $46.5 million. As of December 31, 2020, the Company's lease liabilities consisted of operating lease liabilities of $255.1 million and financing lease liabilities of $46.4 million. The financing lease liabilities are included in accounts payable, accrued expenses and other liabilities on the Company's accompanying consolidated balance sheets.

Note 5. Debt

On February 18, 2021, the Company amended its credit agreements and related documents governing its unsecured revolving credit facilities, term loan agreements and senior notes, which:

- extended the waiver period for financial covenants through the end of the first quarter of 2022 except for the minimum fixed charge coverage and the minimum unsecured interest coverage ratio which are extended through December 31, 2021. The covenants are substantially less restrictive through a phase-in period;
- extended the majority of the remaining balance of the Company's Sixth Term Loan 2021 tranche, from November 2021 to November 2022;
- increased the spread on the unsecured revolving credit facility to LIBOR plus 2.4% and unsecured term loans to LIBOR plus 2.35%;
- increased the fixed rate on the Senior Unsecured Notes by 0.45% during the waiver period; and
- extended other terms through the waiver period.

The Company's debt consisted of the following as of March 31, 2021 and December 31, 2020 (dollars in thousands):

	Interest Rate		Maturity Date	Balance Outstanding as of March 31, 2021	Balance Outstanding as of December 31, 2020
Revolving credit facilities					
Senior unsecured credit facility	Floating	(1)	January 2022	$ —	$ 40,000
PHL unsecured credit facility	Floating	(2)	January 2022	—	—
Total revolving credit facilities				$ —	$ 40,000
Unsecured term loans					
First Term Loan	Floating	(3)	January 2023	300,000	300,000
Second Term Loan	Floating	(3)	April 2022	45,000	65,000
Fourth Term Loan	Floating	(3)	October 2024	110,000	110,000
Sixth Term Loan					
Tranche 2021	Floating	(3)	November 2021 (4)	6,720	40,966
Tranche 2021 Extended	Floating	(3)	November 2022	140,280	173,034
Tranche 2022	Floating	(3)	November 2022	196,000	286,000
Tranche 2023	Floating	(3)	November 2023	400,000	400,000
Tranche 2024	Floating	(3)	January 2024	400,000	400,000
Total Sixth Term Loan				1,143,000	1,300,000
Total term loans at stated value				1,598,000	1,775,000
Deferred financing costs, net				(8,248)	(8,455)
Total term loans				$ 1,589,752	$ 1,766,545
Convertible senior notes					
Convertible senior notes	1.75%		December 2026	750,000	500,000
Debt premium (discount), net				13,360	(113,099)
Deferred financing costs, net				(18,645)	(12,568)
Total convertible senior notes				$ 744,715	$ 374,333
Senior unsecured notes					
Series A Notes	5.15%	(5)	December 2023	60,000	60,000
Series B Notes	5.38%	(6)	December 2025	40,000	40,000
Total senior unsecured notes at stated value				100,000	100,000
Deferred financing costs, net				(487)	(407)
Total senior unsecured notes				$ 99,513	$ 99,593
Total debt				$ 2,433,980	$ 2,280,471

(1) Borrowings bear interest at floating rates equal to, at the Company's option, either (i) LIBOR plus an applicable margin or (ii) an Adjusted Base Rate (as defined in the applicable credit agreement) plus an applicable margin.

(2) Borrowings bear interest at floating rates equal to, at the Company's option, either (i) LIBOR plus an applicable margin or (ii) an Eurocurrency Rate (as defined in the applicable credit agreement) plus an applicable margin.

(3) Borrowings under the term loan facilities bear interest at floating rates equal to, at the Company's option, either (i) LIBOR plus an applicable margin or (ii) a Base Rate plus an applicable margin. As of March 31, 2021, $1.4 billion of the borrowings under the term loan facilities bore an effective weighted-average fixed interest rate of 4.13%, after taking into account interest rate swap agreements, and $168.0 million bore an effective weighted-average floating interest rate of 2.62%. As of December 31, 2020, $1.4 billion of the borrowings under the term loan facilities bore a weighted-average fixed interest rate of 4.19%, after taking into account interest rate swap agreements, and $345.0 million bore a weighted-average floating interest rate of 2.46%.

(4) In February 2021, the majority of the remaining balance was extended to November 2022.

[5] In February 2021, the interest rate increased from 4.70% to 5.15%. The increased interest rate is effective through the end of the waiver period.

[6] In February 2021, the interest rate increased from 4.93% to 5.38%. The increased interest rate is effective through the end of the waiver period.

Unsecured Revolving Credit Facilities

The Company has a $650.0 million senior unsecured revolving credit facility maturing in January 2022, with options to extend the maturity date to January 2023, pursuant to certain terms and conditions and payment of an extension fee. As of March 31, 2021, the Company had no outstanding borrowings, $6.8 million of outstanding letters of credit and borrowing capacity of $643.2 million remaining on its senior unsecured credit facility. Interest is paid on the periodic advances under the senior unsecured revolving credit facility at varying rates, based upon either LIBOR or the alternate base rate, plus an additional margin amount, or spread. The Company has the ability to further increase the aggregate borrowing capacity under the credit agreement up to $1.3 billion, subject to lender approval. Borrowings on the revolving credit facility bear interest at LIBOR plus 1.45% to 2.25%, depending on the Company's leverage ratio. As a result of the amendments to the credit agreements and related documentation described above, the spread on the borrowings is fixed at 2.40% during the waiver period. Additionally, the Company is required to pay an unused commitment fee at an annual rate of 0.20% or 0.30% of the unused portion of the revolving credit facility, depending on the amount of borrowings outstanding. The credit agreement contains certain financial covenants, including a maximum leverage ratio, a minimum fixed charge coverage ratio, and a maximum percentage of secured debt to total asset value.

The Company also has a $25.0 million unsecured revolving credit facility (the "PHL Credit Facility") to be used for PHL's working capital and general corporate purposes. This credit facility has substantially similar terms as the Company's senior unsecured revolving credit facility and matures in January 2022. Borrowings on the PHL Credit Facility bear interest at LIBOR plus 1.45% to 2.25%, depending on the Company's leverage ratio. As a result of the amendments described above, the spread of the borrowings is fixed at 2.40% during the waiver period. The PHL Credit Facility is subject to debt covenants substantially similar to the covenants under the Company's credit agreement that governs the Company's senior unsecured revolving credit facility. As of March 31, 2021, the Company had no borrowings under the PHL Credit Facility and had $25.0 million borrowing capacity remaining available under the PHL Credit Facility.

Under the terms of the credit agreement for the unsecured revolving credit facility, one or more standby letters of credit, up to a maximum aggregate outstanding balance of $30.0 million, may be issued on behalf of the Company by the lenders under the unsecured revolving credit facility. The Company will incur a fee that shall be agreed upon with the issuing bank. Any outstanding standby letters of credit reduce the available borrowings on the senior unsecured revolving credit facility by a corresponding amount. Standby letters of credit of $6.8 million were outstanding as of March 31, 2021 and December 31, 2020.

As of March 31, 2021, the Company was in compliance with all debt covenants of the credit agreements that govern the unsecured revolving credit facilities.

Unsecured Term Loan Facilities

The Company has senior unsecured term loans with different maturities. Each unsecured term loan bears interest at a variable rate of a benchmark interest rate plus an applicable margin, depending on the Company's leverage ratio. Each of the term loan facilities is subject to debt covenants substantially similar to the covenants under the credit agreement that governs the revolving credit facility. Upon completion of the convertible notes offering in February 2021, the Company repaid $177.0 million of the Company's second and sixth term loans. As of March 31, 2021, the Company was in compliance with all debt covenants of its term loan facilities. The Company entered into interest rate swap agreements to fix the LIBOR rate on a portion of these unsecured term loan facilities. See Derivative and Hedging Activities below.

Convertible Senior Notes

In December 2020, the Company issued $500.0 million aggregate principal amount of 1.75% Convertible Senior Notes due December 2026 (the "Convertible Notes"). The net proceeds from this offering of the Convertible Notes were approximately $487.3 million after deducting the underwriting fees and other expenses paid by the Company.

In February 2021, the Company issued an additional $250.0 million aggregate principal amount of Convertible Notes. These additional Convertible Notes were sold at a 5.5% premium to par and generated net proceeds of approximately $257.2 million after deducting the underwriting fees and other expenses paid by the Company of $6.5 million, which was offset by a premium received in the amount of $13.8 million.

The Convertible Notes are governed by an indenture (the "Base Indenture") between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee. The Convertible Notes bear interest at a rate of 1.75% per annum, payable semi-annually in arrears on June 15th and December 15th of each year, beginning on June 15, 2021. The Convertible Notes will

mature on December 15, 2026. The Company recorded coupon interest expense of $2.8 million for the three months ended March 31, 2021.

The Company separated the Convertible Notes issued in December 2020 into liability and equity components. The initial carrying amount of the liability component was $386.1 million and was calculated using a discount rate of 6.25%. The discount rate was based on the terms of debt instruments that were similar to the Convertible Notes. The carrying amount of the equity component representing the conversion option was determined by deducting the fair value of the liability component from the principal amount of such Convertible Notes, or $113.9 million. The amount recorded in equity was not subject to remeasurement or amortization. The $113.9 million also represented the initial discount recorded on the Convertible Notes. The Company early adopted ASU 2020-06 on January 1, 2021. As a result, the Convertible Notes are now recorded as a single liability with no portion recorded in equity. The Company also ceased recording non-cash interest expense associated with amortization of the debt discount.

Prior to June 15, 2026, the Convertible Notes will be convertible only upon certain circumstances. On and after June 15, 2026, holders may convert any of their Convertible Notes into the Company's common shares of beneficial interest ("common shares") at the applicable conversion rate at any time at their election two days prior to the maturity date. The initial conversion rate is 39.2549 common shares per $1,000 principal amount of Convertible Notes, which represents an initial conversion price of approximately $25.47 per share. The conversion rate is subject to adjustment in certain circumstances. As of March 31, 2021 and December 31, 2020, the if-converted value of the Convertible Notes did not exceed the principal amount.

The Company may redeem for cash all or a portion of the Convertible Notes, at its option, on or after December 20, 2023 upon certain circumstances. The redemption price will be equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. If certain make-whole fundamental changes occur, the conversion rate for the Convertible Notes may be increased.

In connection with the Convertible Notes issuances, the Company entered into privately negotiated capped call transactions (the "Capped Call Transactions") with certain of the underwriters of the offerings of the Convertible Notes or their respective affiliates and other financial institutions (the "Capped Call Counterparties"). The Capped Call Transactions initially cover, subject to anti-dilution adjustments substantially similar to those applicable to the Convertible Notes, the number of common shares underlying the Convertible Notes. The Capped Call Transactions are expected generally to reduce the potential dilution to holders of common shares upon conversion of the Convertible Notes and/or offset the potential cash payments that the Company could be required to make in excess of the principal amount of any converted Convertible Notes upon conversion thereof, with such reduction and/or offset subject to a cap. The upper strike price of the Capped Call Transactions is $33.0225 per share. The cost of the Capped Call Transactions entered into in December 2020 and February 2021 was $38.3 million and $21.0 million, respectively, and was recorded within additional paid-in capital.

Senior Unsecured Notes

The Company has $60.0 million of senior unsecured notes outstanding bearing a fixed interest rate of 4.70% per annum and maturing in December 2023 (the "Series A Notes") and $40.0 million of senior unsecured notes outstanding bearing a fixed interest rate of 4.93% per annum and maturing in December 2025 (the "Series B Notes"). As a result of the amendments described above, the interest rates of the Series A Notes and the Series B Notes are fixed at 5.15% and 5.38%, respectively, for the duration of the waiver period. The debt covenants of the Series A Notes and the Series B Notes are substantially similar to those of the Company's senior unsecured revolving credit facility. As of March 31, 2021, the Company was in compliance with all such debt covenants.

Interest Expense

The components of the Company's interest expense consisted of the following (in thousands):

	For the three months ended March 31,	
	2021	2020
Unsecured revolving credit facilities	$ 561	$ 2,305
Unsecured term loan facilities	15,909	17,152
Convertible senior notes	2,819	—
Senior unsecured notes	1,252	1,198
Amortization of deferred financing fees	2,659	1,190
Other	2,131	1,746
Total interest expense	$ 25,331	$ 23,591

The Company estimates the fair value of its fixed rate debt by discounting the future cash flows of each instrument at estimated market rates, taking into consideration general market conditions and maturity of the debt with similar credit terms

and is classified within Level 2 of the fair value hierarchy. The estimated fair value of the Company's fixed rate debt (unsecured senior notes and convertible senior notes) as of March 31, 2021 and December 31, 2020 was $684.3 million and $491.8 million, respectively.

Derivative and Hedging Activities

The Company enters into interest rate swap agreements to hedge against interest rate fluctuations. All of the Company's interest rate swaps are cash flow hedges. All unrealized gains and losses on these hedging instruments are reported in accumulated other comprehensive income (loss) and are subsequently reclassified into earnings in the period that the hedged forecasted transaction affects earnings.

The Company's interest rate swaps at March 31, 2021 and December 31, 2020 consisted of the following (dollars in thousands):

Hedge Type	Interest Rate	Maturity	Notional Value as of March 31, 2021	Notional Value as of December 31, 2020
Swap - cash flow	1.74%	January 2021	—	75,000
Swap - cash flow	1.75%	January 2021	—	50,000
Swap - cash flow	1.53%	January 2021	—	37,500
Swap - cash flow	1.53%	January 2021	—	37,500
Swap - cash flow	1.46%	January 2021	—	100,000
Swap - cash flow	1.47%	January 2021	—	47,500
Swap - cash flow	1.47%	January 2021	—	47,500
Swap - cash flow	1.47%	January 2021	—	47,500
Swap - cash flow	1.47%	January 2021	—	47,500
Swap - cash flow	2.60%	October 2021	55,000	55,000
Swap - cash flow	2.60%	October 2021	55,000	55,000
Swap - cash flow	1.78%	January 2022	100,000	100,000
Swap - cash flow	1.78%	January 2022	50,000	50,000
Swap - cash flow	1.79%	January 2022	30,000	30,000
Swap - cash flow	1.68%	April 2022	25,000	25,000
Swap - cash flow	1.68%	April 2022	25,000	25,000
Swap - cash flow	1.64%	April 2022	25,000	25,000
Swap - cash flow	1.64%	April 2022	25,000	25,000
Swap - cash flow	0.17%	January 2023	100,000	—
Swap - cash flow	0.17%	January 2023	50,000	—
Swap - cash flow	0.17%	January 2023	25,000	—
Swap - cash flow	0.17%	January 2023	25,000	—
Swap - cash flow	1.99%	November 2023	85,000	85,000
Swap - cash flow	1.99%	November 2023	85,000	85,000
Swap - cash flow	1.99%	November 2023	50,000	50,000
Swap - cash flow	1.99%	November 2023	30,000	30,000
Swap - cash flow	2.60%	January 2024	75,000	75,000
Swap - cash flow	2.60%	January 2024	50,000	50,000
Swap - cash flow	2.60%	January 2024	25,000	25,000
Swap - cash flow	2.60%	January 2024	75,000	75,000
Swap - cash flow	2.60%	January 2024	75,000	75,000
Swap - cash flow	1.43%	February 2026	150,000	—
Swap - cash flow	1.44%	February 2026	50,000	—
Swap - cash flow	1.44%	February 2026	50,000	—
Swap - cash flow	1.44%	February 2026	40,000	—
Total			$ 1,430,000	$ 1,430,000

During the three months ended March 31, 2021, the Company had interest rates swaps for an aggregate notional amount of $490.0 million that became effective as other interest rate swaps matured. As of March 31, 2021, there are no additional interest rate swaps outstanding that will become effective in the future. The Company records all derivative instruments at fair value in the accompanying consolidated balance sheets. Fair values of interest rate swaps are determined using the standard market methodology of netting the discounted future fixed cash receipts/payments and the discounted expected variable cash payments/receipts. Variable interest rates used in the calculation of projected receipts and payments on the swaps are based on an expectation of future interest rates derived from observable market interest rate curves (Overnight Index Swap curves) and volatilities (Level 2 inputs). Derivatives expose the Company to credit risk in the event of non-performance by the

counterparties under the terms of the interest rate hedge agreements. The Company incorporates these counterparty credit risks in its fair value measurements. The Company believes it minimizes the credit risk by transacting with major creditworthy financial institutions.

As of March 31, 2021, the Company's derivative instruments were in both asset and liability positions, with aggregate asset and liability fair values of $0.1 million and $42.6 million, which are included in prepaid expenses and other assets and accounts payable, accrued expenses and other liabilities, respectively, in the accompanying consolidated balance sheets. The Company expects approximately $22.7 million will be reclassified from accumulated other comprehensive income (loss) to interest expense within the next 12 months.

Note 6. Revenue

The Company presents revenue on a disaggregated basis in the accompanying consolidated statements of operations and comprehensive income. The following table presents revenues by geographic location for the three months ended March 31, 2021 and 2020 (in thousands):

	For the three months ended March 31,	
	2021	2020
Southern FL	$ 35,244	$ 35,191
San Diego, CA	14,678	41,679
Boston, MA	9,757	35,942
Los Angeles, CA	8,040	34,788
Portland, OR	5,782	15,648
Other(1)	2,975	20,311
San Francisco, CA	2,953	60,040
Washington, D.C.	1,902	10,909
Chicago, IL	1,824	10,273
Seattle, WA	488	4,326
	$ 83,643	$ 269,107

(1) Other includes: Atlanta (Buckhead), GA, Nashville, TN, New York, NY, Philadelphia, PA and Santa Cruz, CA.

Payments from customers are primarily made when services are provided. Due to the short-term nature of the Company's contracts and the almost simultaneous receipt of payment, almost all of the contract liability balance at the beginning of the period is expected to be recognized as revenue over the following 12 months.

Note 7. Equity

Common Shares

The Company is authorized to issue up to 500,000,000 common shares of beneficial interest, $0.01 par value per share (“common shares”). Each outstanding common share entitles the holder to one vote on each matter submitted to a vote of shareholders. Holders of the Company’s common shares are entitled to receive dividends when authorized by the Company's Board of Trustees.

On February 22, 2016, the Company announced that the Board of Trustees authorized a share repurchase program of up to $150.0 million of the Company's outstanding common shares. Under this program, the Company may repurchase its common shares from time to time in transactions on the open market or by private agreement. The Company may suspend or discontinue this program at any time. Upon repurchase by the Company, common shares cease to be outstanding and become authorized but unissued common shares. For the three months ended March 31, 2021, the Company had no repurchases under this program and as of March 31, 2021, $56.6 million of common shares remained available for repurchase under this program.

On July 27, 2017, the Company announced that the Board of Trustees authorized a new share repurchase program of up to $100.0 million of the Company's outstanding common shares. Under this program, the Company may repurchase its common shares from time to time in transactions on the open market or by private agreement. The Company may suspend or discontinue this program at any time. This $100.0 million share repurchase program will commence upon completion of the Company's $150.0 million share repurchase program.

Common Dividends

The Company declared the following dividends on common shares/units for the three months ended March 31, 2021:

Dividend per Share/Unit	For the Quarter Ended	Record Date	Payable Date
$ 0.01	March 31, 2021	March 31, 2021	April 15, 2021

Preferred Shares

The Company is authorized to issue up to 100,000,000 preferred shares of beneficial interest, $0.01 par value per share ("preferred shares").

The following Preferred Shares were outstanding as of March 31, 2021 and December 31, 2020:

Security Type	March 31, 2021	December 31, 2020
6.50% Series C	5,000,000	5,000,000
6.375% Series D	5,000,000	5,000,000
6.375% Series E	4,400,000	4,400,000
6.30% Series F	6,000,000	6,000,000
	20,400,000	20,400,000

The Series C Preferred Shares, Series D Preferred Shares, Series E Preferred Shares and Series F Preferred Shares (collectively, the "Preferred Shares") rank senior to the common shares and on parity with each other with respect to payment of distributions. The Preferred Shares are cumulative redeemable preferred shares, do not have any maturity date and are not subject to mandatory redemption. The Company could not redeem the Series C Preferred Shares prior to March 18, 2018, may not redeem the Series D Preferred Shares prior to June 9, 2021, could not redeem the Series E Preferred Shares prior to March 4, 2018 and may not redeem the Series F Preferred Shares prior to May 25, 2021, except in limited circumstances relating to the Company's continuing qualification as a REIT or as discussed below. On or after May 25, 2021 and June 9, 2021, the Company may, at its option, redeem the Series F Preferred Shares and Series D Preferred Shares, respectively, and at any time the Company may, at its option, redeem the Series C Preferred Shares or the Series E Preferred Shares, or both, in each case in whole or from time to time in part, by payment of $25.00 per share, plus any accumulated, accrued and unpaid distributions through the date of redemption. Upon the occurrence of a change of control, as defined in the Company's declaration of trust, the result of which the Company's common shares and the common securities of the acquiring or surviving entity are not listed on the New York Stock Exchange, the NYSE MKT or NASDAQ, or any successor exchanges, the Company may, at its option, redeem the Preferred Shares in whole or in part within 120 days following the change of control by paying $25.00 per share, plus any accrued and unpaid distributions through the date of redemption. If the Company does not exercise its right to redeem the Preferred Shares upon a change of control, the holders of the Preferred Shares have the right to convert some or all of their shares into a number of the Company's common shares based on defined formulas subject to share caps. The share cap on each Series C Preferred Share is 2.0325 common shares, on each Series D Preferred Share is 1.9794 common shares, on each Series E Preferred Share is 1.9372 common shares and on each Series F Preferred Share is 2.0649 common shares.

Preferred Dividends

The Company declared the following dividends on preferred shares for the three months ended March 31, 2021:

Security Type	Dividend per Share/Unit	For the Quarter Ended	Record Date	Payable Date
6.50% Series C	$ 0.41	March 31, 2021	March 31, 2021	April 15, 2021
6.375% Series D	$ 0.40	March 31, 2021	March 31, 2021	April 15, 2021
6.375% Series E	$ 0.40	March 31, 2021	March 31, 2021	April 15, 2021
6.30% Series F	$ 0.39	March 31, 2021	March 31, 2021	April 15, 2021

Non-controlling Interest of Common Units in Operating Partnership

Holders of Operating Partnership units have certain redemption rights that enable the unit holders to cause the Operating Partnership to redeem their units in exchange for, at the Company's option, cash per unit equal to the market price of the Company's common shares at the time of redemption or the Company's common shares on a one-for-one basis. The number of shares issuable upon exercise of the redemption rights will be adjusted upon the occurrence of share splits, mergers, consolidations or similar pro-rata share transactions, which otherwise would have the effect of diluting the ownership interests of the Operating Partnership's limited partners or the Company's shareholders.

As of March 31, 2021, the Operating Partnership had two classes of long-term incentive partnership units ("LTIP") units, LTIP Class A units and LTIP Class B units. All of the outstanding LTIP units are held by officers of the Company.

On February 12, 2020, the Board of Trustees granted 415,818 LTIP Class B units to executive officers of the Company. These LTIP units were to vest ratably on January 1, 2023, 2024, 2025 and 2026. In March 2020, the Company cancelled this grant and as a result accelerated and recognized the full expense of $10.5 million.

On July 24, 2020, 109,240 LTIP Class B units were converted to common shares.

On February 18, 2021, the Board of Trustees granted an aggregate of 600,097 LTIP Class B units to executive officers of the Company. These LTIP units will vest ratably on January 1, 2023, 2024, 2025 and 2026 contingent upon continued employment with the Company.

As of March 31, 2021 and December 31, 2020, the Operating Partnership had 727,208 and 127,111 LTIP units outstanding, respectively. Of the 727,208 LTIP units outstanding at March 31, 2021, 127,111 LTIP units have vested. Only vested LTIP units may be converted to common units of the Operating Partnership, which in turn can be tendered for redemption as described above.

On November 30, 2018, in connection with the merger with LaSalle Hotel Properties ("LaSalle"), the Company issued 133,605 OP units in the Operating Partnership to third-party limited partners of LaSalle's operating partnership. As of March 31, 2021 and December 31, 2020, the Operating Partnership had 133,605 OP units held by third parties, excluding LTIP units.

Note 8. Share-Based Compensation Plan

The Company maintains the 2009 Equity Incentive Plan, as amended and restated (as amended, the "Plan"), to attract and retain independent trustees, executive officers and other key employees and service providers. The Plan provides for the grant of options to purchase common shares, share awards, share appreciation rights, performance units and other equity-based awards. Share awards under the Plan vest over a period determined by the Board of Trustees, generally over three to five years. The Company pays or accrues for dividends on share-based awards. All share awards are subject to full or partial accelerated vesting upon a change in control and upon death or disability or certain other employment termination events as set forth in the award agreements. As of March 31, 2021, there were 130,439 common shares available for issuance under the Plan.

Service Condition Share Awards

From time to time, the Company awards restricted common shares under the Plan to members of the Board of Trustees, officers and employees. These shares generally vest over three to five years based on continued service or employment.

The following table provides a summary of service condition restricted share activity as of March 31, 2021:

	Shares	Weighted-Average Grant Date Fair Value
Unvested at December 31, 2020	242,727	$ 24.94
Granted	410,838	$ 22.69
Vested	(80,758)	$ 30.39
Forfeited	(466)	$ 28.17
Unvested at March 31, 2021	572,341	$ 22.55

The fair value of each of these service condition restricted share awards is determined based on the closing price of the Company's common shares on the grant date and compensation expense is recognized on a straight-line basis over the vesting period. In March 2020, the Company cancelled the February 2020 service condition share award (retention grant) and as a result accelerated and recognized an expense of $5.5 million. For the three months ended March 31, 2021 and 2020, the Company recognized approximately $0.8 million and $6.1 million, respectively, of share-based compensation expense related to these service condition restricted shares in the accompanying consolidated statements of operations and comprehensive income. As of March 31, 2021, there was $12.1 million of total unrecognized share-based compensation expense related to unvested restricted shares. The unrecognized share-based compensation expense is expected to be recognized over the weighted-average remaining vesting period of 3.6 years.

Performance-Based Equity Awards

On December 13, 2013, the Board of Trustees approved a target award of 252,088 performance-based equity awards to officers and employees of the Company that were eligible for vesting in January 2016, 2017, 2018, 2019 and 2020. The actual number of common shares that vested was based on the two performance criteria defined in the award agreements for the period of performance beginning on the grant date and ending on the applicable vesting date. Based upon the extent to which the performance criteria had been met, the Company issued 25,134, 12,285, 72,236, 35,471 and 27,881 common shares in January 2016, 2017, 2018, 2019 and 2020, respectively.

On February 10, 2016, the Board of Trustees approved a target award of 100,919 performance-based equity awards to officers and employees of the Company. In January 2019, these awards vested and the Company issued 142,173 and 31,146 common shares to officers and employees, respectively. The actual number of common shares that vested was based on the three performance criteria defined in the award agreements for the period of performance from January 1, 2016 through December 31, 2018.

On February 15, 2017, the Board of Trustees approved a target award of 81,939 performance-based equity awards to officers and employees of the Company. In January 2020, these awards vested and the Company issued 1,972 and 405 common shares to officers and employees, respectively. The actual number of common shares that vested was based on the two performance criteria defined in the award agreements for the period of performance from January 1, 2017 through December 31, 2019.

On February 14, 2018, the Board of Trustees approved a target award of 78,918 performance-based equity awards to officers and employees of the Company. In January 2021, none of these awards vested and the Company issued no common shares to officers or employees. The actual number of common shares that vested was based on the two performance criteria defined in the award agreements for the period of performance from January 1, 2018 through December 31, 2020.

On February 13, 2019, the Board of Trustees approved a target award of 126,891 performance-based equity awards to officers and employees of the Company. These awards will vest, if at all, in 2022. The actual number of common shares that ultimately vest will be from 0% to 200% of the target award and will be determined in 2022 based on the two performance criteria defined in the award agreements for the period of performance from January 1, 2019 through December 31, 2021.

On February 12, 2020, the Board of Trustees approved a target award of 161,777 performance-based equity awards to officers and employees of the Company. These awards will vest, if at all, in 2023. The actual number of common shares that ultimately vest will be from 0% to 200% of the target award and will be determined in 2023 based on the performance criteria defined in the award agreements for the period of performance from January 1, 2020 through December 31, 2022.

On February 18, 2021, the Board of Trustees approved a target award of 189,348 performance-based equity awards to officers and employees of the Company. These awards will vest, if at all, in 2024. The actual number of common shares that

ultimately vest will be from 0% to 200% of the target award and will be determined in 2024 based on the performance criteria defined in the award agreements for the period of performance from January 1, 2021 through December 31, 2023.

The grant date fair value of the performance awards, with market conditions, were determined using a Monte Carlo simulation method with the following assumptions (dollars in millions):

Performance Award Grant Date	Percentage of Total Award	Grant Date Fair Value by Component	Volatility	Interest Rate	Dividend Yield
December 13, 2013					
Relative Total Shareholder Return	50.00%	$4.7	29.00%	0.34% - 2.25%	2.40%
Absolute Total Shareholder Return	50.00%	$2.9	29.00%	0.34% - 2.25%	2.40%
February 10, 2016					
Relative Total Shareholder Return	70.00%	$1.6	25.00%	0.71%	3.00%
Absolute Total Shareholder Return	15.00%	$0.2	25.00%	0.71%	3.00%
EBITDA Comparison	15.00%	$0.4	25.00%	0.71%	3.00%
February 15, 2017					
Relative and Absolute Total Shareholder Return	65.00% / 35.00%	$2.7	28.00%	1.27%	5.60%
February 14, 2018					
Relative and Absolute Total Shareholder Return	65.00% / 35.00%	$3.5	28.00%	2.37%	4.70%
February 13, 2019					
Relative and Absolute Total Shareholder Return	65.00% / 35.00%	$4.5	26.00%	2.52%	4.20%
February 12, 2020					
Relative Total Shareholder Return	100.00%	$4.9	23.40%	1.41%	—%
February 18, 2021					
Relative Total Shareholder Return	100.00%	$6.0	56.00%	0.19%	—%

In the table above, the Relative Total Shareholder Return and Absolute Total Shareholder Return components are market conditions as defined by ASC 718. The EBITDA Comparison component is a performance condition as defined by ASC 718, and, therefore, compensation expense related to this component will be reassessed at each reporting date based on the Company's estimate of the probable level of achievement, and the accrual of compensation expense will be adjusted as appropriate.

Dividends on unvested performance-based equity awards accrue over the vesting period and will be paid on the actual number of shares that vest at the end of the applicable period. The Company recognizes compensation expense on a straight-line basis through the vesting date. As of March 31, 2021, there was approximately $9.7 million of unrecognized compensation expense related to these performance-based equity awards which will be recognized over the weighted-average remaining vesting period of 2.2 years. For the three months ended March 31, 2021 and 2020, the Company recognized approximately $1.0 million and $0.9 million, respectively, in expense related to these awards.

Long-Term Incentive Partnership Units

LTIP units, which are also referred to as profits interest units, may be issued to eligible participants for the performance of services to or for the benefit of the Operating Partnership. LTIP units are a class of partnership unit in the Operating Partnership and receive, whether vested or not, the same per-unit profit distributions as the other outstanding units in the Operating

Partnership, which equal per-share distributions on common shares. LTIP units are allocated their pro-rata share of the Company's net income (loss). Vested LTIP units may be converted by the holder, at any time, into an equal number of common Operating Partnership units and thereafter will possess all of the rights and interests of a common Operating Partnership unit, including the right to redeem the common Operating Partnership unit for a common share in the Company or cash, at the option of the Operating Partnership.

As of March 31, 2021, the Operating Partnership had two classes of LTIP units, LTIP Class A units and LTIP Class B units. All of the outstanding LTIP units are held by officers of the Company.

On December 13, 2013, the Board of Trustees approved a grant of 226,882 LTIP Class B units to executive officers of the Company. These LTIP units were subject to time-based vesting in five equal annual installments beginning January 1, 2016 and ending on January 1, 2020. The fair value of each award was determined based on the closing price of the Company’s common shares on the grant date of $29.19 per unit. The aggregate grant date fair value of the LTIP Class B units was $6.6 million.

On February 12, 2020, the Board of Trustees granted 415,818 LTIP Class B units to executive officers. These LTIP units were to vest ratably on January 1, 2023, 2024, 2025 and 2026. In March 2020, the Company cancelled this grant and as a result accelerated and recognized the full expense of $10.5 million.

On July 24, 2020, 109,240 LTIP Class B units were redeemed for common shares.

On February 18, 2021, the Board of Trustees granted 600,097 LTIP Class B units to executive officers of the Company. These LTIP units vest ratably on January 1, 2023, 2024, 2025 and 2026. The fair value of each award was determined based on the closing price of the Company’s common shares on the grant date of $22.69 per unit. The aggregate grant date fair value of the LTIP Class B units was $13.6 million.

As of March 31, 2021 and December 31, 2020, the Operating Partnership had 727,208 and 127,111 LTIP units outstanding, respectively. Of the 727,208 LTIP units outstanding at March 31, 2021, 127,111 LTIP units have vested. Only vested LTIP units may be converted to common units of the Operating Partnership, which in turn can be tendered for redemption as described above.

For the three months ended March 31, 2021 and 2020, the Company recognized approximately $0.3 million and $10.6 million, respectively, in expense related to these LTIP units. As of March 31, 2021, there was $13.3 million of unrecognized share-based compensation expense related to LTIP units. The aggregate expense related to the LTIP unit grants is presented as non-controlling interest in the Company’s accompanying consolidated balance sheets.

Note 9. Income Taxes

PHL is subject to federal and state corporate income taxes at statutory tax rates. Given the continued negative impact of the COVID-19 pandemic on the Company's financial results and uncertainties about the Company's ability to utilize its net operating loss in future years, the Company has recorded a valuation allowance on its income tax benefit for the three months ended March 31, 2021 and has recorded a valuation allowance on all deferred tax assets.

The Company files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Company is subject to examination by federal, state and local jurisdictions, where applicable. As of March 31, 2021 and December 31, 2020, the statute of limitations remains open for all major jurisdictions for tax years dating back to 2016.

Note 10. Earnings Per Share

The following is a reconciliation of basic and diluted earnings per common share (in thousands, except share and per-share data):

	For the three months ended March 31,	
	2021	2020
Numerator:		
Net income (loss) attributable to common shareholders	$ (128,721)	$ 33,810
Less: dividends paid on unvested share-based compensation	(12)	(2)
Undistributed earnings attributable to share-based compensation	—	(48)
Net income (loss) available to common shareholders	$ (128,733)	$ 33,760
Denominator:		
Weighted-average number of common shares — basic	130,775,873	130,555,846
Effect of dilutive share-based compensation	—	123,062
Weighted-average number of common shares — diluted	130,775,873	130,678,908
Net income (loss) per share available to common shareholders — basic	$ (0.98)	$ 0.26
Net income (loss) per share available to common shareholders — diluted	$ (0.98)	$ 0.26

For the three months ended March 31, 2021 and 2020, 1,041,130 and 203,152, respectively, of unvested service condition restricted shares and performance-based equity awards were excluded from diluted weighted-average common shares, as their effect would have been anti-dilutive. For the three months ended March 31, 2021, 29,441,175 shares underlying the Convertible Notes have been excluded from diluted shares as their effect would have been anti-dilutive. The LTIP and OP units held by the non-controlling interest holders have been excluded from the denominator of the diluted earnings per share as there would be no effect on the amounts since the limited partners' share of income (loss) would also be added or subtracted to derive net income (loss) available to common shareholders.

Note 11. Commitments and Contingencies

Management Agreements

The Company’s hotel properties are operated pursuant to management agreements with various management companies. The terms of these management agreements range from 1 year to 22 years, not including renewals, and 1 year to 52 years, including renewals. The majority of the Company’s management agreements are terminable at will by the Company upon paying a termination fee and some are terminable by the Company upon sale of the property, with, in some cases, the payment of termination fees. Most of the agreements also provide the Company the ability to terminate based on failure to achieve defined operating performance thresholds. Termination fees range from zero to up to six times the annual base management and incentive management fees, depending on the agreement and the reason for termination. Certain of the Company’s management agreements are non-terminable except upon the manager’s breach of a material representation or the manager’s failure to meet performance thresholds as defined in the management agreement.

The management agreements require the payment of a base management fee generally between 1% and 4% of hotel revenues. Under certain management agreements, the management companies are also eligible to receive an incentive management fee if hotel operating income, cash flows or other performance measures, as defined in the agreements, exceed certain performance thresholds. The incentive management fee is generally calculated as a percentage of hotel operating income after the Company has received a priority return on its investment in the hotel. For the three months ended March 31, 2021 and 2020, combined base and incentive management fees were $2.3 million and $6.9 million, respectively. Base and incentive management fees are included in other direct and indirect expenses in the Company's accompanying consolidated statements of operations and comprehensive income.

Reserve Funds

Certain of the Company's agreements with its hotel managers, franchisors, ground lessors and lenders have provisions for the Company to provide funds, typically 4.0% of hotel revenues, sufficient to cover the cost of (a) certain non-routine repairs and maintenance to the hotels and (b) replacements and renewals to the hotels' furniture, fixtures and equipment.

Restricted Cash

At March 31, 2021 and December 31, 2020, the Company had $11.3 million and $12.0 million, respectively, in restricted cash, which consisted of reserves for replacement of furniture and fixtures or reserves to pay for real estate taxes or property insurance under certain hotel management agreements or loan agreements.

Ground and Hotel Leases

As of March 31, 2021, the following hotels were subject to leases as follows:

Lease Properties	Lease Type	Lease Expiration Date	
Hotel Monaco Washington DC	Operating lease	November 2059	
Argonaut Hotel	Operating lease	December 2059	
Hotel Zelos San Francisco	Operating lease	June 2097	
Hotel Zephyr Fisherman's Wharf	Operating lease	February 2062	
Hotel Palomar Los Angeles Beverly Hills	Operating lease	January 2107	(1)
Restaurant at Southernmost Beach Resort	Operating lease	April 2029	
Hyatt Regency Boston Harbor	Operating lease	April 2077	
San Diego Mission Bay Resort	Operating lease	July 2068	
Paradise Point Resort & Spa	Operating lease	May 2050	
Hotel Vitale	Operating lease	March 2070	(2)
Viceroy Santa Monica Hotel	Operating lease	September 2065	
The Westin Copley Place, Boston	Operating lease	December 2077	(3)
The Liberty, A Luxury Collection Hotel, Boston	Operating lease	May 2080	
Hotel Zeppelin San Francisco	Operating and finance lease	June 2089	(4)
Harbor Court Hotel San Francisco	Finance lease	August 2052	
The Roger New York	Finance lease	December 2044	

(1) The expiration date assumes the exercise of all 19 five-year extension options.
(2) The expiration date assumes the exercise of a 14-year extension option.
(3) No payments are required through maturity.
(4) The expiration date assumes the exercise of a 30-year extension option.

The Company's leases may require minimum fixed rent payments, percentage rent payments based on a percentage of revenues in excess of certain thresholds or rent payments equal to the greater of a minimum fixed rent or percentage rent. Minimum fixed rent may be adjusted annually by increases in consumer price index ("CPI") and may be subject to minimum and maximum increases. Some leases also contain certain restrictions on modifications that can be made to the hotel structures due to their status as national historic landmarks.

The Company records expense on a straight-line basis for leases that provide for minimum rental payments that increase in pre-established amounts over the remaining terms of the leases. Ground rent expense is included in real estate taxes, personal property taxes, property insurance and ground rent in the Company's accompanying consolidated statements of operations and comprehensive income. The components of ground rent expense for the three months ended March 31, 2021 and 2020 are as follows (in thousands):

	For the three months ended March 31,	
	2021	2020
Fixed ground rent	$ 4,313	$ 4,289
Variable ground rent	1,496	2,048
Total ground lease rent	$ 5,809	$ 6,337

Future maturities of lease liabilities for the Company's operating leases at March 31, 2021 were as follows (in thousands):

2021	$ 13,903
2022	18,849
2023	18,034
2024	18,119
2025	18,203
Thereafter	1,127,864
Total lease payments	$ 1,214,972
Less: Imputed interest	(960,141)
Present value of lease liabilities	$ 254,831

Litigation

The nature of the operations of hotels exposes the Company's hotels, the Company and the Operating Partnership to the risk of claims and litigation in the normal course of their business. The Company has insurance to cover certain potential material losses. The Company is not presently subject to any material litigation nor, to the Company's knowledge, is any material litigation threatened against the Company.

Note 12. Supplemental Information to Statements of Cash Flows

	For the three months ended March 31,	
	2021	2020
	(in thousands)	
Interest paid, net of capitalized interest	$ 17,438	$ 20,300
Interest capitalized	$ —	$ 680
Income taxes paid (refunded)	$ (21)	$ (4)
Non-Cash Investing and Financing Activities:		
Convertible debt discount adjustment	$ 113,099	$ —
Distributions payable on common shares/units	$ 1,524	$ 1,746
Distributions payable on preferred shares	$ 7,558	$ 7,558
Issuance of common shares for Board of Trustees compensation	$ 516	$ 637
Issuance of common shares for executive and employee bonuses	$ 1,446	$ —
Accrued additions and improvements to hotel properties	$ 1,242	$ 7,124
Write-off of deferred financing costs	$ 2,817	$ —

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis should be read in conjunction with the consolidated financial statements and related notes included elsewhere in this report. Pebblebrook Hotel Trust is a Maryland real estate investment trust that conducts its operations so as to qualify as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986, as amended (the "Code"). Substantially all of the operations are conducted through Pebblebrook Hotel, L.P. (our "Operating Partnership"), a Delaware limited partnership of which Pebblebrook Hotel Trust is the sole general partner. In this report, we use the terms "the Company", "we" or "our" to refer to Pebblebrook Hotel Trust and its subsidiaries, unless the context indicates otherwise.

FORWARD-LOOKING STATEMENTS

This report, together with other statements and information publicly disseminated by us, contains certain "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and include this statement for purposes of complying with these safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words "may", "will", "should", "potential", "could", "seek", "assume", "forecast", "believe", "expect", "intend", "anticipate", "estimate", "project" or similar expressions. Forward-looking statements in this report include, among others, statements about our business strategy, including acquisition and development strategies, industry trends, estimated revenues and expenses, estimated costs and durations of renovation or restoration projects, estimated insurance recoveries, our ability to realize deferred tax assets and expected liquidity needs and sources (including capital expenditures and our ability to obtain financing or raise capital). You should not rely on forward-looking statements since they involve known and unknown risks, uncertainties and other factors that are, in some cases, beyond our control and which could materially affect actual results, performance or achievements. These factors include, but are not limited to, the following:

- the COVID-19 pandemic has had, and is expected to continue to have, a significant impact on our financial condition and operations, which impacts our ability to obtain acceptable financing to fund resulting reductions in cash from operations. The current and uncertain future impact of the COVID-19 pandemic, including its effect on the ability or desire of people to travel, is expected to continue to impact our results, operations, outlooks, plans, goals, growth, reputation, cash flows, liquidity and share price;
- as a result of the COVID-19 pandemic, we suspended operations at some of our hotels and resorts, and if we are unable to recommence operations in the near-term, we may become out of compliance with maintenance covenants in certain of our debt facilities;
- world events impacting the ability or desire of people to travel may lead to a decline in demand for hotels;
- risks associated with the hotel industry, including competition, changes in visa and other travel policies by the U.S. government making it less convenient, more difficult or less desirable for international travelers to enter the U.S., increases in employment costs, energy costs and other operating costs, or decreases in demand caused by events beyond our control including, without limitation, actual or threatened terrorist attacks, natural disasters, cyber attacks, any type of flu or disease-related pandemic, or downturns in general and local economic conditions;
- the availability and terms of financing and capital and the general volatility of securities markets;
- our dependence on third-party managers of our hotels, including our inability to implement strategic business decisions directly;
- risks associated with the U.S. and global economies, the cyclical nature of hotel properties and the real estate industry, including environmental contamination and costs of complying with new or existing laws, including the Americans with Disabilities Act and similar laws;
- interest rate increases;
- our possible failure to qualify as a REIT under the Code and the risk of changes in laws affecting REITs;
- the timing and availability of potential hotel acquisitions and our ability to identify and complete hotel acquisitions and our ability to complete hotel dispositions in accordance with our business strategy;
- the possibility of uninsured losses;
- risks associated with redevelopment and repositioning projects, including delays and cost overruns; and

- the other factors discussed under the heading "Risk Factors" in this Quarterly Report on Form 10-Q and our Annual Report on Form 10-K for the year ended December 31, 2020.

Accordingly, there is no assurance that our expectations will be realized. Except as otherwise required by the federal securities laws, we disclaim any obligations or undertaking to publicly release any updates or revisions to any forward-looking statement contained herein (or elsewhere) to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based.

Overview

In March 2020, the World Health Organization declared the novel coronavirus ("COVID-19") to be a global pandemic and the virus has continued to spread throughout the United States and the world. As a result of this pandemic and subsequent government mandates, health official recommendations, corporate policy changes and individual responses, hotel demand was dramatically reduced. In response, we implemented significant cost controls and salary reductions, and temporarily suspended operations at 47 of our hotels and resorts. As demand has returned over the past year, we have reopened the majority of our hotels and resorts. As of March 31, 2021, 40 of our hotels and resorts were open, with operations at the remaining 13 hotels still temporarily suspended. In April 2021, we reopened an additional eight hotels and we anticipate reopening additional hotels as demand returns.

In February 2021, we issued, at a 5.5% premium to par, an additional $250.0 million aggregate principal amount of our 1.75% Convertible Senior Notes due 2026, which we initially issued in December 2020. In connection with the pricing of the notes, we entered into privately negotiated capped call transactions with certain of the underwriters, their respective affiliates and/or other counterparties. We used the net proceeds to reduce amounts outstanding under our senior unsecured revolving credit facility, unsecured term loans, and for general corporate purposes.

In February 2021, we amended the agreements governing our existing credit facilities, term loan facilities and senior notes to, among other things, increase the interest rate spread and waive financial covenants through the end of the first quarter of 2022 except for the minimum fixed charge coverage and minimum unsecured interest coverage ratio, which were extended through December 31, 2021. Refer to "Note 5. Debt" for additional information regarding these amendments and our convertible notes. Based on these amendments and expense and cash burn rate reductions, we believe that we will have sufficient liquidity to meet our obligations for the next twelve months.

While we do not operate our hotel properties, both our asset management team and our executive management team monitor and work cooperatively with our hotel managers by advising and making recommendations in all aspects of our hotels' operations, including property positioning and repositioning, revenue and expense management, operations analysis, physical design, renovation and capital improvements, guest experience and overall strategic direction. Through these efforts, we seek to improve property efficiencies, lower costs, maximize revenues and enhance property operating margins, which we expect will enhance returns to our shareholders.

Key Indicators of Financial Condition and Operating Performance

We measure hotel results of operations and the operating performance of our business by evaluating financial and non-financial metrics such as room revenue per available room ("RevPAR"); total revenue per available room ("Total RevPAR"); average daily rate ("ADR"); occupancy rate ("Occupancy"); funds from operations ("FFO"); earnings before interest, income taxes, depreciation and amortization ("EBITDA"); and EBITDA for real estate ("EBITDA*re*"*)*. We evaluate individual hotel and company-wide performance with comparisons to budgets, prior periods and competing properties. ADR, occupancy and RevPAR may be impacted by macroeconomic factors as well as regional and local economies and events. See "Non-GAAP Financial Matters" for further discussion of FFO, EBITDA and EBIDTA*re*.

Hotel Operating Statistics

The following table represents the key same-property hotel operating statistics for our hotels for the three months ended March 31, 2021 and 2020.

	For the three months ended March 31,	
	2021	2020
Same-Property Occupancy	18.8 %	56.7 %
Same-Property ADR	$ 240.27	$ 249.64
Same-Property RevPAR	$ 45.28	$ 141.43
Same-Property Total RevPAR	$ 70.83	$ 213.13

While the operations of many of our hotels were temporarily suspended beginning in March 2020, the above schedule of hotel results for the three months ended March 31, 2020 includes information from all hotels owned as of March 31, 2021, except for Hotel Zena Washington DC (formerly Donovan Hotel) for the first quarter in both 2021 and 2020, because it was closed for renovations in the first quarter of 2020.

Non-GAAP Financial Measures

Non-GAAP financial measures are measures of our historical or future financial performance that are different from measures calculated and presented in accordance with U.S. GAAP. We report FFO, EBITDA and EBITDA*re*, which are non-GAAP financial measures that we believe are useful to investors as key measures of our operating performance.

We calculate FFO in accordance with standards established by Nareit, formerly known as the National Association of Real Estate Investment Trusts, which defines FFO as net income (calculated in accordance with U.S. GAAP), excluding real estate related depreciation and amortization, gains (losses) from sales of real estate, impairments of real estate assets (including impairment of real estate related joint ventures), the cumulative effect of changes in accounting principles and adjustments for unconsolidated partnerships and joint ventures. Historical cost accounting for real estate assets implicitly assumes that the value of real estate assets diminishes predictably over time. Since real estate values instead have historically risen or fallen with market conditions, most industry investors consider presentations of operating results for real estate companies that use historical cost accounting to be insufficient by themselves. By excluding the effect of real estate related depreciation and amortization including our share of the joint venture depreciation and amortization, gains (losses) from sales of real estate and impairments of real estate assets (including impairment of real estate related joint ventures), all of which are based on historical cost accounting and which may be of lesser significance in evaluating current performance, we believe that FFO provides investors a useful financial measure to evaluate our operating performance.

The following table reconciles net income (loss) to FFO and FFO available to common share and unit holders for the three months ended March 31, 2021 and 2020 (in thousands):

	For the three months ended March 31,	
	2021	2020
Net income (loss)	**$ (121,440)**	**$ 42,068**
Adjustments:		
Depreciation and amortization	55,333	55,717
(Gain) loss on sale of hotel properties	—	(117,448)
Impairment loss	14,856	20,570
FFO	**$ (51,251)**	**$ 907**
Distribution to preferred shareholders	(8,139)	(8,139)
FFO available to common share and unit holders	**$ (59,390)**	**$ (7,232)**

EBITDA is defined as earnings before interest, income taxes, depreciation and amortization. The white paper issued by Nareit entitled “Earnings Before Interest, Taxes, Depreciation and Amortization for Real Estate” defines EBITDA*re* as net income or loss (computed in accordance with U.S. GAAP), excluding interest expense, income tax, depreciation and amortization, gains or losses on the disposition of depreciated property (including gains or losses on change of control), impairment write-downs of depreciated property and of investments in unconsolidated affiliates caused by a decrease in value of depreciated property in the affiliate, and after comparable adjustments for our portion of these items related to unconsolidated affiliates. We believe that EBITDA and EBITDA*re* provide investors useful financial measures to evaluate our operating performance, excluding the impact of our capital structure (primarily interest expense) and our asset base (primarily depreciation and amortization).

The following table reconciles net income (loss) to EBITDA and EBITDA*re* for the three months ended March 31, 2021 and 2020 (in thousands):

	For the three months ended March 31,	
	2021	2020
Net income (loss)	**$ (121,440)**	**$ 42,068**
Adjustments:		
Interest expense	25,331	23,591
Income tax expense (benefit)	3	(10,744)
Depreciation and amortization	55,443	55,828
EBITDA	**$ (40,663)**	**$ 110,743**
(Gain) loss on sale of hotel properties	—	(117,448)
Impairment loss	14,856	20,570
EBITDA*re*	**$ (25,807)**	**$ 13,865**

FFO, EBITDA and EBITDA*re* do not represent cash generated from operating activities as determined by U.S. GAAP and should not be considered as alternatives to U.S. GAAP net income (loss), as indications of our financial performance, or to U.S. GAAP cash flow from operating activities, as measures of liquidity. In addition, FFO, EBITDA and EBITDA*re* are not indicative of funds available to fund cash needs, including the ability to make cash distributions.

Results of Operations

At March 31, 2021 and 2020, we had 53 and 54, respectively, wholly owned properties and leasehold interests. All properties owned during these periods have been included in our results of operations during the respective periods since their dates of acquisition and through the dates of disposition, as applicable. Based on when a property was acquired or disposed, operating results for certain properties are not comparable for the three months ended March 31, 2021 and 2020. The properties listed in the table below are hereinafter referred to as "non-comparable properties" for the periods indicated and all other properties are referred to as "comparable properties":

Property	Location	Disposition Date
InterContinental Buckhead Atlanta	Buckhead, GA	March 6, 2020
Sofitel Washington DC Lafayette Square	Washington, D.C.	March 6, 2020
Union Station Hotel Nashville, Autograph Collection	Nashville, TN	July 29, 2020

Comparison of the three months ended March 31, 2021 to the three months ended March 31, 2020

Revenues — Total hotel revenues decreased by $185.5 million, of which $16.2 million was due to the non-comparable properties and the remaining decline was due to the decline in demand which began in March 2020 as a result of the COVID-19 pandemic. The decline was partially offset by increases at Southermost Beach Resort, The Marker Key West Harbor Resort and Chaminade Resort & Spa and an increase at Hotel Zena Washington DC (formerly Donovan Hotel), which was closed during the first quarter of 2020 for renovation.

Hotel operating expenses — Total hotel operating expenses decreased by $128.8 million, of which $10.9 million was due to the non-comparable properties and the remaining decline was due to the decline in demand which began in March 2020 as a result of the COVID-19 pandemic. The decline was partially offset by increases at Southermost Beach Resort, The Marker Key West Harbor Resort and Chaminade Resort & Spa and an increase at Hotel Zena Washington DC (formerly Donovan Hotel), which was closed during the first quarter of 2020 for renovation.

Depreciation and amortization — Depreciation and amortization expense decreased by $0.4 million due primarily to a decrease in assets resulting from the sales of three hotels in 2020, partially offset by an increase in depreciation and amortization expense related to recently renovated hotels.

Real estate taxes, personal property taxes, property insurance and ground rent — Real estate taxes, personal property taxes, property insurance and ground rent decreased by $1.2 million primarily due to the sales of three hotels in 2020 and a decline in percentage ground rent which is based on a percentage of revenues.

General and administrative — General and administrative expenses decreased by $14.9 million primarily due to $16.0 million in share-based compensation costs relating to the cancellation of the retention LTIP unit awards and time-based service

condition awards in 2020. General and administrative expenses consist of employee compensation costs, legal and professional fees, insurance and other expenses.

Transaction costs — Transaction costs remained consistent compared to the prior year.

Impairment loss — Impairment loss decreased by $5.7 million. For the three months ended March 31, 2021, we recognized an impairment loss of $14.9 million related to one hotel. For the three months ended March 31, 2020, we recognized an impairment loss of $20.6 million related to a retail component of a hotel.

(Gain) loss on sale of hotel properties — Gain on sale of hotel properties was $117.4 million in 2020 as a result of the sale of the InterContinental Buckhead Atlanta and Sofitel Washington DC Lafayette Square hotels in the first quarter of 2020. There were no property sales in the first quarter of 2021.

(Gain) loss and other operating expenses — (Gain) loss and other operating expenses decreased $1.0 million primarily due to reductions in pre-opening and hotel management transition expenses.

Interest expense — Interest expense increased by $1.7 million primarily due to an increase in the effective interest rate and the increase in amortization of deferred financing costs associated with unsecured term loans.

Other — Other income remained consistent compared to the prior year.

Income tax (expense) benefit — Income tax (expense) benefit decreased from a benefit of $10.7 million in 2020 to an immaterial expense in 2021 as a result of the valuation allowance recognized resulting from the uncertainty of utilizing net operating losses in future periods.

Non-controlling interests — Non-controlling interests represent the allocation of income or loss of our Operating Partnership to the common units held by the LTIP and OP unit holders.

Critical Accounting Policies

Our consolidated financial statements have been prepared in conformity with U.S. GAAP, which requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of our financial statements and the reported amounts of revenues and expenses during the reporting period. While we do not believe the reported amounts would be materially different, application of these policies involves the exercise of judgment and the use of assumptions as to future uncertainties and, as a result, actual results could differ from these estimates. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on experience and on various other assumptions that are believed to be reasonable under the circumstances. All of our significant accounting policies, including certain critical accounting policies, are disclosed in our Annual Report on Form 10-K for the year ended December 31, 2020.

Recent Accounting Standards

See Note 2, “Summary of Significant Accounting Policies,” to our consolidated interim financial statements for additional information relating to recently issued accounting pronouncements.

New Accounting Pronouncements Not Yet Implemented

See Note 2, “Summary of Significant Accounting Policies,” to our consolidated financial statements for additional information relating to recently issued accounting pronouncements.

Liquidity and Capital Resources

In March 2020, the World Health Organization declared COVID-19 to be a global pandemic and the virus has continued to spread throughout the United States and the world. As a result of this pandemic and subsequent government mandates, health official recommendations corporate travel policy changes and individual responses, hotel demand was dramatically reduced. As of March 31, 2021, 40 of our hotels and resorts were open with operations of the remaining 13 hotels still temporarily suspended. This has had a material impact on the Company's liquidity. In April 2021, we reopened an additional eight hotels and we anticipate reopening additional hotels as demand returns. As of March 31, 2021, we had liquidity of $767.8 million, which includes cash and cash equivalents, restricted cash and the amount available on our revolving credit facility. On April 1, 2021, we sold the Sir Francis Drake Hotel and received net proceeds from the sale of $157.6 million which further improved our liquidity. Refer to the Overview in Item 7., "Management’s Discussion and Analysis of Financial Condition and Results of Operations," for additional information.

Our debt consisted of the following as of March 31, 2021 and December 31, 2020 (dollars in thousands):

	Interest Rate		Maturity Date	Balance Outstanding as of March 31, 2021	Balance Outstanding as of December 31, 2020
Revolving credit facilities					
Senior unsecured credit facility	Floating	(1)	January 2022	$ —	$ 40,000
PHL unsecured credit facility	Floating	(2)	January 2022	—	—
Total revolving credit facilities				$ —	$ 40,000
Unsecured term loans					
First Term Loan	Floating	(3)	January 2023	300,000	300,000
Second Term Loan	Floating	(3)	April 2022	45,000	65,000
Fourth Term Loan	Floating	(3)	October 2024	110,000	110,000
Sixth Term Loan:					
Tranche 2021	Floating	(3)	November 2021 (4)	6,720	40,966
Tranche 2021 Extended	Floating	(3)	November 2022	140,280	173,034
Tranche 2022	Floating	(3)	November 2022	196,000	286,000
Tranche 2023	Floating	(3)	November 2023	400,000	400,000
Tranche 2024	Floating	(3)	January 2024	400,000	400,000
Total Sixth Term Loan				1,143,000	1,300,000
Total term loans at stated value				1,598,000	1,775,000
Deferred financing costs, net				(8,248)	(8,455)
Total term loans				$ 1,589,752	$ 1,766,545
Convertible senior notes					
Convertible senior notes	1.75%		December 2026	750,000	500,000
Debt premium (discount), net				13,360	(113,099)
Deferred financing costs, net				(18,645)	(12,568)
Total convertible senior notes				$ 744,715	$ 374,333
Senior unsecured notes					
Series A Notes	5.15%	(5)	December 2023	60,000	60,000
Series B Notes	5.38%	(6)	December 2025	40,000	40,000
Total senior unsecured notes at stated value				100,000	100,000
Deferred financing costs, net				(487)	(407)
Total senior unsecured notes				$ 99,513	$ 99,593
Total debt				$ 2,433,980	$ 2,280,471

(1) Borrowings bear interest at floating rates equal to, at our option, either (i) LIBOR plus an applicable margin or (ii) an Adjusted Base Rate (as defined in the applicable credit agreement) plus an applicable margin.

(2) Borrowings bear interest at floating rates equal to, at our option, either (i) LIBOR plus an applicable margin or (ii) a Eurocurrency Rate (as defined in the applicable credit agreement) plus an applicable margin.

(3) Borrowings under the term loan facilities bear interest at floating rates equal to, at our option, either (i) LIBOR plus an applicable margin or (ii) a Base Rate plus an applicable margin. As of March 31, 2021, approximately $1.4 billion of the borrowings under the term loan facilities bore an effective weighted-average fixed interest rate of 4.13%, after taking into account interest rate swap agreements, and approximately $168.0 million bore a weighted-average floating interest rate of 2.62%. As of December 31, 2020, approximately $1.4 billion of the borrowings under the term loan facilities bore an effective weighted-average fixed interest rate of 4.19%, after taking into account interest rate swap agreements, and approximately $345.0 million bore a weighted-average floating interest rate of 2.46%.

(4) In February 2021, the majority of the remaining balance was extended to November 2022.

[5] In February 2021, the interest rate increased from 4.70% to 5.15%. The increased interest rate is effective through the end of the waiver period.

[6] In February 2021, the interest rate increased from 4.93% to 5.38%. The increased interest rate is effective through the end of the waiver period.

Unsecured Revolving Credit Facilities

We are party to a $650.0 million senior unsecured revolving credit facility maturing in January 2022, with options to extend the maturity date to January 2023, pursuant to certain terms and conditions and payment of an extension fee. As of March 31, 2021, we had no outstanding borrowings and borrowing capacity of $643.2 million remaining on our senior unsecured revolving credit facility. Interest is paid on the periodic advances under the senior unsecured revolving credit facility at varying rates, based upon either LIBOR or the alternate base rate, plus an additional margin amount, or spread. The interest rate depends upon our leverage ratio pursuant to the provisions of the credit facility agreement. As a result of the amendments described in Note 5. "Debt," the spread on the borrowings is fixed at 2.40% during the waiver period. We have the ability to increase the aggregate borrowing capacity of our senior unsecured revolving credit facility up to $1.3 billion, subject to lender approval. We intend to repay indebtedness incurred under the senior unsecured revolving credit facility from time to time out of cash flows from operations and, as market conditions permit, from the net proceeds of issuances of additional equity and debt securities and from the net proceeds of dispositions of hotel properties.

We also have a $25.0 million unsecured revolving credit facility (the "PHL Credit Facility") to be used for PHL's working capital and general corporate purposes. This credit facility has substantially similar terms as our senior unsecured revolving credit facility and matures in January 2022. Borrowings under the PHL Credit Facility bear interest at LIBOR plus an applicable margin, depending on our leverage ratio. As a result of the amendments described in Note 5. "Debt," the spread on the borrowings is fixed at 2.40% during the waiver period. As of March 31, 2021, we had no borrowings under the PHL Credit Facility.

Unsecured Term Loan Facilities

We are party to senior unsecured term loans with different maturities. Each unsecured term loan bears interest at a variable rate of a benchmark interest rate plus an applicable margin, depending on our leverage ratio. We entered into interest rate swap agreements to fix the LIBOR rate on a portion of these unsecured term loans. Information about our senior unsecured term loans is found in the table above and Note 5. "Debt" to the accompanying consolidated financial statements.

Convertible Senior Notes

In December 2020, the Company issued $500.0 million aggregate principal amount of 1.75% Convertible Senior Notes due December 2026 (the "Convertible Notes"). The net proceeds from this offering of the Convertible Notes were approximately $487.3 million after deducting the underwriting fees and other expenses paid by the Company.

In February 2021, the Company issued an additional $250.0 million aggregate principal amount of Convertible Notes. These additional Convertible Notes were sold at a 5.5% premium to par and generated net proceeds of approximately $257.2 million after deducting the underwriting fees and other expenses paid by the Company of $6.5 million, which was offset by a premium received in the amount of $13.8 million.

The Convertible Notes are governed by an indenture (the “Base Indenture”) between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee. The Convertible Notes bear interest at a rate of 1.75% per annum, payable semi-annually in arrears on June 15th and December 15th of each year, beginning on June 15, 2021. The Convertible Notes will mature on December 15, 2026. The Company recorded coupon interest expense of $2.8 million for the three months ended March 31, 2021.

Prior to June 15, 2026, the Convertible Notes will be convertible only upon certain circumstances. On and after June 15, 2026, holders may convert any of their Convertible Notes into the Company’s common shares of beneficial interest (“common shares”) at the applicable conversion rate at any time at their election two days prior to the maturity date. The initial conversion rate is 39.2549 common shares per $1,000 principal amount of Convertible Notes, which represents an initial conversion price of approximately $25.47 per share. The conversion rate is subject to adjustment in certain circumstances. As of March 31, 2021 and December 31, 2020, the if-converted value of the Convertible Notes did not exceed the principal amount.

The Company may redeem for cash all or a portion of the Convertible Notes, at its option, on or after December 20, 2023 upon certain circumstances. The redemption price will be equal to 100% of the principal amount of the Convertible Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. If certain make-whole fundamental changes occur, the conversion rate for the Convertible Notes may be increased.

In connection with the Convertible Notes issuances, the Company entered into privately negotiated capped call transactions (the “Capped Call Transactions”) with certain of the underwriters of the offerings of the Convertible Notes or their respective affiliates and other financial institutions (the “Capped Call Counterparties”). The Capped Call Transactions initially cover,

subject to anti-dilution adjustments substantially similar to those applicable to the Convertible Notes, the number of common shares underlying the Convertible Notes. The Capped Call Transactions are expected generally to reduce the potential dilution to holders of common shares upon conversion of the Convertible Notes and/or offset the potential cash payments that the Company could be required to make in excess of the principal amount of any converted Convertible Notes upon conversion thereof, with such reduction and/or offset subject to a cap. The upper strike price of the Capped Call Transactions is $33.0225 per share. The cost of the Capped Call Transactions entered into in December 2020 and February 2021 was $38.3 million and $21.0 million, respectively, and was recorded within additional paid-in capital.

Senior Unsecured Notes

The Company has $60.0 million of senior unsecured notes outstanding bearing a fixed interest rate of 4.70% per annum and maturing in December 2023 (the "Series A Notes") and $40.0 million of senior unsecured notes outstanding bearing a fixed interest rate of 4.93% per annum and maturing in December 2025 (the "Series B Notes"). As a result of the amendments described above, the interest rates of the Series A Notes and the Series B Notes are fixed at 5.15% and 5.38%, respectively, for the duration of the waiver period. The debt covenants of the Series A Notes and the Series B Notes are substantially similar to those of the Company's senior unsecured revolving credit facility. As of March 31, 2021, the Company was in compliance with all such debt covenants.

Issuance of Shares of Beneficial Interest

On February 22, 2016, we announced that our board of trustees authorized a share repurchase program of up to $150.0 million of the Company's outstanding common shares. Under this program, we may repurchase common shares from time to time in transactions on the open market or by private agreement. We may suspend or discontinue this program at any time. No common shares were repurchased by the Company under the share repurchase program during the three months ended March 31, 2021. As of March 31, 2021, $56.6 million of common shares remained available for repurchase under this program.

On July 27, 2017, we announced that our board of trustees authorized a new share repurchase program of up to $100.0 million of the Company's outstanding common shares. Under this program, we may repurchase common shares from time to time in transactions on the open market or by private agreement. We may suspend or discontinue this program at any time. This $100.0 million share repurchase program will commence upon the completion of our $150.0 million share repurchase program.

Sources and Uses of Cash

Our principal sources of cash are cash from operations, borrowings under mortgage financings and other debt, draws on our credit facilities, proceeds from offerings of our equity securities, debt securities and hotel property sales. Our principal uses of cash are asset acquisitions, debt service, capital investments, operating costs, corporate expenses and dividends.

Cash (Used in) and Provided by Operations. Our cash used in operating activities was $7.1 million for the three months ended March 31, 2021. Our cash from operations includes the operating activities of the 53 hotels we owned as of March 31, 2021, offset by corporate expenses. The negative cash flow from operations during the quarter and decline from the prior year is due to the reduced operations at our hotels as a result of COVID-19, including carrying costs on hotels that are temporarily suspended. Our cash provided by operating activities was $1.5 million for the three months ended March 31, 2020. Our cash from operations includes the operating activities of the 54 hotels we owned as of March 31, 2020, offset by corporate expenses.

Cash (Used in) and Provided by Investing Activities. Our cash used in investing activities was $9.7 million for the three months ended March 31, 2021. During the three months ended March 31, 2021, we invested $9.6 million in improvements to our hotel properties. Our cash provided by investing activities was $269.9 million for the three months ended March 31, 2020. During the three months ended March 31, 2020, we invested $50.1 million in improvements to our hotel properties and received $320.0 million from sales of hotel properties.

Cash Provided by Financing Activities. Our cash provided by financing activities was $5.1 million for the three months ended March 31, 2021. During the three months ended March 31, 2021, we repaid $40.0 million under the revolving credit facilities, received proceeds from the issuance of convertible notes of $263.8 million, repaid $177.0 million in other debt, purchased $21.0 million in Capped Call Transactions, repurchased $0.7 million of common shares for tax withholding purposes in connection with vested share-based equity awards, paid $9.5 million in distributions, paid $9.6 million in financing fees, and paid $0.9 million in other transactions. For the three months ended March 31, 2020, cash provided by financing activities was $418.5 million. During the three months ended March 31, 2020, we borrowed $760.1 million under the revolving credit facilities, repaid $281.9 million under the revolving credit facilities, repurchased $1.3 million of common shares for tax withholding purposes in connection with vested share-based equity awards, paid $58.2 million in distributions and paid $0.2 million in other transactions.

Capital Investments

We maintain and intend to continue maintaining all of our hotels, including each hotel that we acquire in the future, in good repair and condition and in conformity with applicable laws and regulations and when applicable, in accordance with the franchisor's standards and the agreed-upon requirements in our management agreements. Routine capital investments will be administered by the hotel management companies. However, we maintain approval rights over the capital investments as part of the annual budget process and as otherwise required from time to time.

From time to time, certain of our hotel properties may undergo renovations as a result of our decision to upgrade portions of the hotels, such as guestrooms, meeting space and restaurants, in order to better compete with other hotels in our markets. In addition, after we acquire a hotel property, we are often required by the franchisor or brand manager, if there is one, to complete a property improvement plan ("PIP") in order to bring the hotel property up to the franchisor's or brand's standards. Generally, we expect to fund renovations and improvements with available cash, restricted cash, borrowings under our credit facility or proceeds from new debt or equity offerings.

For the three months ended March 31, 2021, we invested $9.6 million in capital investments to reposition and improve our properties primarily the renovation of the L'Auberge Del Mar.

Depending on market conditions, we expect to invest an additional $60.0 million to $80.0 million in capital investments during the remainder of 2021. However, as fundamentals improve, we will evaluate commencing additional previously planned major renovations and repositioning projects later in 2021.

Contractual Obligations and Off-Balance Sheet Arrangements

The table below summarizes our contractual obligations as of March 31, 2021 and the effect such obligations are expected to have on our liquidity and cash flow in future periods (in thousands):

	Payments due by period				
	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Term loans [2]	$ 1,732,527	$ 67,896	$ 1,552,924	$ 111,707	$ —
Convertible senior notes [1]	828,739	13,114	26,250	26,250	763,125
Unsecured notes [1]	118,957	5,167	69,846	43,944	—
Borrowings under credit facilities [3]	—	—	—	—	—
Hotel and ground leases [4]	1,240,360	17,240	34,639	35,012	1,153,469
Finance lease obligation	64,702	1,337	2,733	2,825	57,807
Refundable membership initiation deposits [5]	28,380	203	—	—	28,177
Purchase commitments [6]	3,683	3,683	—	—	—
Corporate office leases	15,262	1,840	3,153	2,330	7,939
Total	**$ 4,032,610**	**$ 110,480**	**$ 1,689,545**	**$ 222,068**	**$ 2,010,517**

(1) Amounts include principal and interest.

(2) Amounts include principal and interest. Borrowings under the term loan facilities bear interest at floating rates equal to, at our option, either (i) LIBOR plus an applicable margin or (ii) a Base Rate plus an applicable margin.

(3) Amounts include principal and interest under the two revolving credit facilities. Interest expense is calculated based on the weighted-average interest rate for all outstanding credit facility borrowings as of March 31, 2021. It is assumed that the outstanding borrowings will be repaid upon maturity with fixed interest-only payments until then.

(4) Our leases may require minimum fixed rent payments, percentage rent payments based on a percentage of revenues in excess of certain thresholds or rent payments equal to the greater of a minimum fixed rent or percentage rent. Minimum fixed rent may be adjusted annually by increases in consumer price index ("CPI") and may be subject to minimum and maximum increases. The table above reflects only minimum fixed rent for all periods presented and does not include assumptions for CPI adjustments.

(5) Represents refundable initiation membership deposits from club members at LaPlaya Beach Resort and Club.

(6) Amounts represent purchase orders and contracts that have been executed for renovation projects at the properties. We are committed to these purchase orders and contracts and anticipate making similar arrangements in the future with the existing properties or any future properties that we may acquire.

Off-Balance Sheet Arrangements

As of March 31, 2021, we had no off-balance sheet arrangements.

Inflation

We rely on the performance of the hotels to increase revenues to keep pace with inflation. Generally, our hotel operators possess the ability to adjust room rates daily, except for group or corporate rates contractually committed to in advance, although competitive pressures may limit the ability of our operators to raise rates faster than inflation or even at the same rate.

Seasonality

Demand in the lodging industry is affected by recurring seasonal patterns which are greatly influenced by overall economic cycles, geographic locations, weather and customer mix at the hotels. Generally, our hotels have lower revenue, operating income and cash flow in the first quarter of each year and higher revenue, operating income and cash flow in the third quarter of each year. The historical trend has been disrupted as a result of COVID-19.

Derivative Instruments

In the normal course of business, we are exposed to the effects of interest rate changes. We may enter into derivative instruments including interest rate swaps, caps and collars to manage or hedge interest rate risk. Derivative instruments are subject to fair value reporting at each reporting date and the increase or decrease in fair value is recorded in net income (loss) or accumulated other comprehensive income (loss), based on the applicable hedge accounting guidance. Derivatives expose the Company to credit risk in the event of non-performance by the counter parties under the terms of the interest rate hedge agreements. The Company believes it minimizes the credit risk by transacting with major credit-worthy financial institutions.

The Company has interest rate swap agreements with an aggregate notional amount of $1.4 billion to hedge variable interest rates on our unsecured term loans.

We have designated these pay-fixed, receive-floating interest rate swap derivatives as cash flow hedges.

Item 3. Quantitative and Qualitative Disclosures about Market Risk.

Interest Rate Sensitivity

We are exposed to market risk from changes in interest rates. We seek to limit the impact of interest rate changes on earnings and cash flows and to lower our overall borrowing costs by closely monitoring our variable rate debt and converting such debt to fixed rates when we deem such conversion advantageous. From time to time, we may enter into interest rate swap agreements or other interest rate hedging contracts. While these agreements are intended to lessen the impact of rising interest rates, they also expose us to the risks that the other parties to the agreements will not perform, that we could incur significant costs associated with the settlement of the agreements, and that the agreements will be unenforceable and the underlying transactions will fail to qualify as highly effective cash flow hedges under guidance included in ASC 815 "Derivatives and Hedging."

As of March 31, 2021, $168.0 million of the Company's aggregate indebtedness (6.9% of total indebtedness) was subject to variable interest rates, excluding amounts outstanding under the term loan facilities that have been effectively swapped into fixed rates. If interest rates on our variable rate debt increase or decrease by 0.1 percent, our annual interest expense will increase or decrease by approximately $0.2 million, respectively.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(b) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that these disclosure controls and procedures are effective.

Changes in Internal Control Over Financial Reporting

There have been no changes to our internal control over financial reporting during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

The nature of the operations of our hotels exposes the hotels and us to the risk of claims and litigation in the normal course of business. We are not presently subject to any material litigation nor, to our knowledge, is any litigation threatened against us, other than routine actions for negligence or other claims and administrative proceedings arising in the ordinary course of

business, some of which are expected to be covered by liability insurance and all of which collectively are not expected to have a material adverse effect on our liquidity, results of operations or our financial condition.

Item 1A. Risk Factors.

There have been no material changes from the risk factors disclosed in the "Risk Factors" section of our Annual Report on Form 10-K for the year ended December 31, 2020.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Issuer Purchases of Equity Securities

Period	Total Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs [1]
January 1, 2021 - January 31, 2021	38,310	$ 18.80	—	—
February 1, 2021 - February 28, 2021	—	$ —	—	—
March 1, 2021 - March 31, 2021	—	$ —	—	—
Total	38,310	$ 18.80	—	$ 56,600,000

[1] On February 22, 2016, the Company announced its Board of Trustees authorized a share repurchase program of up to $150.0 million of the Company's outstanding common shares. Under this program, the Company may repurchase its common shares from time to time in transactions on the open market or by private agreement. The Company may suspend or discontinue this program at any time. The amount in this column does not include the approximate dollar value of shares that may yet be purchased under the $100.0 million share repurchase program that was announced on July 27, 2017, which will commence upon the completion of the Company's $150.0 million share repurchase program. See Note 7 to the accompanying financial statements for more information about the $100.0 million share repurchase program.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

Exhibit Number	Description of Exhibit
10.1†	Fourth Amendment to Fourth Amended and Restated Credit Agreement, dated as of October 13, 2017, among Pebblebrook Hotel, L.P., as the borrower, Pebblebrook Hotel Trust, as the parent REIT and a guarantor, certain subsidiaries of the borrower, as guarantors, Bank of America, N.A., as administrative agent, swing line lender and L/C issuer, and the other lenders party thereto, dated as of February 18, 2021.
10.2†	Third Amendment to Amended and Restated Credit Agreement, dated as of October 13, 2017, among Pebblebrook Hotel, L.P., as the borrower, Pebblebrook Hotel Trust, as the parent REIT and a guarantor, certain subsidiaries of the borrower, as guarantors, U.S. Bank National Association, as administrative agent, and the other lenders party thereto, dated as of February 18, 2021.
10.3†	Third Amendment to Credit Agreement, dated as of October 13, 2017, among Pebblebrook Hotel, L.P., as the borrower, Pebblebrook Hotel Trust, as the parent REIT and a guarantor, certain subsidiaries of the borrower, as guarantors, Capital One, National Association, as administrative agent, and the other lenders party thereto, dated as of February 18, 2021.
10.4†	Fourth Amendment to Note Purchase Agreement, dated as of November 12, 2015, among Pebblebrook Hotel Trust, Pebblebrook Hotel, L.P., Massachusetts Mutual Life Insurance Company, MassMutual Asia Limited, Allianz Life Insurance Company of North America and The Guardian Life Insurance Company of America, dated as of February 18, 2021.
10.5†	Third Amendment to Credit Agreement, dated as of October 31, 2018, among Pebblebrook Hotel L.P., as the borrower, Pebblebrook Hotel Trust, as the parent REIT and a guarantor, certain subsidiaries of the borrower, as guarantors, Bank of America, N.A., as administrative agent, and the other lenders party thereto, dated as of February 18, 2021.
10.6*†	Form of LTIP Class B Unit Vesting Agreement – retention award.
31.1†	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2†	Certification of Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1††	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2††	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.SCH XBRL	Inline XBRL Taxonomy Extension Schema Document
101.CAL XBRL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB XBRL	Inline XBRL Taxonomy Extension Label Linkbase Document
101.DEF XBRL	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.PRE XBRL	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Date File (embedded within the Inline XBRL document)

* Management agreement or compensatory plan or arrangement.
† Filed herewith.
†† Furnished herewith.

SIGNATURES

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 thereunto duly authorized.

PEBBLEBROOK HOTEL TRUST

Date: April 29, 2021

/s/ JON E. BORTZ
Jon E. Bortz
Chairman, President and Chief Executive Officer

FOURTH AMENDMENT TO FOURTH AMENDED AND RESTATED CREDIT AGREEMENT

THIS FOURTH AMENDMENT TO FOURTH AMENDED AND RESTATED CREDIT AGREEMENT (this "***Amendment***") is entered into as of February 18, 2021, among **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership (the "***Borrower***"), **PEBBLEBROOK HOTEL TRUST**, a Maryland real estate investment trust (the "***Parent REIT***"), each Guarantor (defined below) party hereto, each Lender (defined below) party hereto, and **BANK OF AMERICA, N.A.**, as Administrative Agent (the "***Administrative Agent***"), Swing Line Lender, and L/C Issuer (the Administrative Agent, the Swing Line Lender, the L/C Issuer, and Lenders are each a "***Credit Party***" and collectively "***Credit Parties***").

R E C I T A L S

A. The Borrower, the Parent REIT, certain guarantors (each a "***Guarantor***" and collectively "***Guarantors***;" the Borrower, the Parent REIT and the Guarantors are each a "***Loan Party***" and collectively the "***Loan Parties***"), the Administrative Agent, the Swing Line Lender, the L/C Issuer, and certain lenders (each, a "***Lender***" and collectively, "***Lenders***") are parties to that certain Fourth Amended and Restated Credit Agreement dated as of October 13, 2017, as amended by that certain First Amendment to Fourth Amended and Restated Credit Agreement (the "***First Amendment***") dated as of February 20, 2020, as amended by that certain Second Amendment to Fourth Amended and Restated Credit Agreement (the "***Second Amendment***") dated as of June 29, 2020, and as further amended by that certain Third Amendment to Fourth Amended and Restated Credit Agreement (the "***Third Amendment***") dated as of December 10, 2020 (as amended by the First Amendment, the Second Amendment, the Third Amendment and as may be further modified, amended, renewed, extended, or restated from time to time, the "***Credit Agreement***").

B. The parties hereto desire to amend the Credit Agreement, subject to the terms and conditions set forth herein.

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

1. Terms and References. Unless otherwise stated in this Amendment (a) terms defined in the Credit Agreement have the same meanings when used in this Amendment, and (b) references to "*Sections*" are to the Credit Agreement's sections.

2. Amendments to the Credit Agreement. On and as of the date hereof, the Credit Agreement is hereby amended (including the schedules and exhibits thereto) to delete the red font stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the blue font double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the composite conformed copy of the Credit Agreement attached hereto as ***Exhibit A***.

3. Amendments to other Loan Documents.

(a) All references in the Loan Documents to the Credit Agreement shall henceforth include references to the Credit Agreement, as modified and amended hereby, and as may, from time to time, be further amended, modified, extended, renewed, and/or increased.

(b) Any and all of the terms and provisions of the Loan Documents are hereby amended and modified wherever necessary, even though not specifically addressed herein, so as to conform to the amendments and modifications set forth herein.

4. Conditions Precedent. This Amendment shall not be effective unless and until:

(a) the Administrative Agent receives fully executed counterparts of this Amendment signed by the Loan Parties, the Administrative Agent and the Required Lenders;

(b) the Administrative Agent receives a certificate of a Responsible Officer of each Loan Party certifying (i) the incorporation, formation and organization documents, as the case may be, of such Loan Party (or that there have been no changes thereto since the date last certified to the Administrative Agent), (ii) resolutions or other action of such Loan Party authorizing this Amendment and the other documents executed by the Loan Parties in connection herewith, (iii) the identity, authority, incumbency and signatures of each Responsible Officer executing this Amendment and any other document executed in connection herewith, and (iv) such other matters as the Administrative Agent may reasonably require;

(c) the Administrative Agent receives evidence dated within thirty (30) days as of the date hereof that each Loan Party is validly existing and in good standing in its jurisdiction of incorporation, formation or organization, as the case may be;

(d) the Administrative Agent receives a favorable opinion of counsel of Honigman LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender and in form and substance reasonably acceptable to the Administrative Agent;

(e) upon the reasonable request of any Lender made at least five (5) days prior to the date hereof, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested 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 two (2) days prior to the date hereof;

(f) at least five (5) days prior to the date hereof, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation as set forth in 31 C.F.R. §1010.230 (the "***Beneficial Ownership Regulation***") shall have delivered, to each Lender that so requests, a certification regarding beneficial ownership required by the Beneficial Ownership Regulation in relation to such Loan Party (a "***Beneficial Ownership Certification***");

(g) the representations and warranties in the Credit Agreement, as amended by this Amendment, and each other Loan Document are true and correct in all material respects on and as of the date of this Amendment as though made as of the date of this Amendment except to the extent that (i) any of them speak to a different specific date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided*, that for purposes of this Amendment, the representations and warranties contained in *subsections (a)* and *(b)* of *Section 5.05* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a)* and *(b)*, respectively, of *Section 6.01* of the Credit Agreement, or (ii) the facts on which any of them were based have been changed by transactions contemplated or permitted by the Credit Agreement;

(h) the Administrative Agent receives payment of all reasonable fees and expenses of the Administrative Agent in connection with this Amendment;

(i) the Borrower shall have paid to the Administrative Agent, for the benefit of the Credit Parties, all fees required to be paid on or before the date hereof in connection with this Amendment;

(j) the Borrower and the Parent REIT shall have entered into amendments to all Specified Debt, each in form and substance reasonably satisfactory to the Administrative Agent, as necessary to conform the applicable terms of such Specified Debt to the amendments set forth herein;

(k) the Administrative Agent and the holders (or an authorized representative thereof) of all Specified Debt shall have entered into an amendment to the Intercreditor Agreement, in form and substance reasonably satisfactory to the Administrative Agent, and each Lender party hereto hereby authorizes the Administrative Agent to enter into such amendment; and

(l) after giving effect to this Amendment, no Default or Event of Default exists.

5. Ratifications. Each Loan Party, (a) ratifies and confirms all provisions of the Loan Documents as amended by this Amendment, (b) ratifies and confirms that all guaranties, assurances, and liens granted, conveyed, or assigned to or for the benefit of the Credit Parties under the Loan Documents are not released, reduced, or otherwise adversely affected by this Amendment and continue to guarantee, assure, and secure full payment and performance of the present and future obligations of the Borrower under the Credit Agreement and the other Loan Documents, and (c) agrees to perform such acts and duly authorize, execute, acknowledge, deliver, file, and record such additional documents, and certificates as the Administrative Agent may request in order to create, perfect, preserve, and protect those guaranties, assurances, and liens.

6. Representations. Each Loan Party, represents and warrants to the Credit Parties that as of the date of this Amendment: (a) this Amendment has been duly authorized, executed, and delivered by each applicable Loan Party; (b) no action of, or filing with, any governmental authority is required to authorize, or is otherwise required in connection with, the execution, delivery, and performance by any Loan Party of this Amendment except for those which have been obtained; (c) the Loan Documents, as amended by this Amendment, are valid and binding upon each Loan Party and are enforceable against each Loan Party in accordance with their respective terms, except as limited by Debtor Relief Laws; (d) the execution, delivery, and performance by each applicable Loan Party of this Amendment does not require the consent of any other Person and do not and will not constitute a violation of any laws, agreements, or understandings to which any Loan Party is a party or by which any Loan Party is bound except for those which have been obtained; (e) all representations and warranties in the Loan Documents are true and correct in all material respects except to the extent that (i) any of them speak to a different specific date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided*, that for purposes of this Amendment, the representations and warranties contained in *subsections (a)* and *(b)* of *Section 5.05* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a)* and *(b)*, respectively, of *Section 6.01* of the Credit Agreement, or (ii) the facts on which any of them were based have been changed by transactions contemplated or permitted by the Credit Agreement; (f) the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects; and (g) no Default or Event of Default exists.

7. Continued Effect. Except to the extent amended hereby, all terms, provisions and conditions of the Credit Agreement and the other Loan Documents, and all documents executed in connection therewith, shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

8. Release. The Loan Parties hereby acknowledge that, as of the date hereof, the Obligations under the Credit Agreement and under the other Loan Documents are absolute and unconditional without any right of rescission, setoff, counterclaim, defense, offset, cross-complaint, claim or demand of any kind or nature from the Administrative Agent. Each Loan Party hereby voluntarily and knowingly releases and forever discharges each of the Credit Parties and its respective agents, employees, successors, and assigns (collectively, the "*Released Parties*") from all possible claims, demands, actions, causes of action, damages, costs, expenses, and liabilities whatsoever arising from or whether known or unknown, anticipated or unanticipated, suspected or unsuspected, fixed, contingent, or conditional, at law or in equity, originating in whole or in part on or before the date hereof which any Loan Party may now or hereafter have against the Released Parties, if any, and irrespective of whether any such claims arise out of contract, tort, violation of law or regulations, or otherwise, including, without limitation, any contracting for, charging, taking, reserving, collecting, or receiving interest in excess of the highest lawful rate applicable. Notwithstanding anything to the contrary contained herein, the foregoing release does not apply to any act or omission of any Released Party first occurring after the date hereof.

9. Electronic Signatures. This Amendment and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Amendment (each a "***Communication***"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each Loan Party agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Loan Party to the same extent as a manual signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Loan Party enforceable against such in accordance with the terms thereof to the same extent as if manually executed. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("***Electronic Copy***"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "***Electronic Record***" and "***Electronic Signature***"

shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10. Miscellaneous. Unless stated otherwise (a) the singular number includes the plural and *vice versa* and words of any gender include each other gender, in each case, as appropriate, (b) headings and captions may not be construed in interpreting provisions, (c) this Amendment must be construed -- and its performance enforced -- under New York law, (d) if any part of this Amendment is for any reason found to be unenforceable, all other portions of it nevertheless remain enforceable, and (e) this Amendment may be executed in any number of counterparts (originals or facsimile copies followed by originals) with the same effect as if all signatories had signed the same document, and all of those counterparts must be construed together to constitute the same document.

11. Entireties. The Credit Agreement as amended by this Amendment represents the final agreement between the parties about the subject matter of the Credit Agreement as amended by this Amendment and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

12. Parties. This Amendment binds and inures to each Loan Party and each Credit Party, and their respective successors and permitted assigns.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

EXECUTED as of the date first stated above.

BORROWER:

PEBBLEBROOK HOTEL, L.P., a Delaware limited partnership

By: **PEBBLEBROOK HOTEL TRUST**, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond Martz
Name: Raymond Martz
Title: Executive Vice President and Chief Financial Officer

PARENT REIT:

PEBBLEBROOK HOTEL TRUST, a Maryland Real Estate Investment Trust

By: /s/ Raymond Martz
Name: Raymond Martz
Title: Executive Vice President and Chief Financial Officer

GUARANTORS:

HUSKIES OWNER LLC, a Delaware limited liability company
BLUE DEVILS OWNER LLC, a Delaware limited liability company
PORTLAND HOTEL TRUST, a Maryland real estate investment trust

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Vice President and Secretary

BEARCATS HOTEL OWNER LP, a Delaware limited partnership
BEAVERS OWNER LLC, a Delaware limited liability company
BRUINS HOTEL OWNER LP, a Delaware limited partnership
CREEDENCE HOTEL OWNER LP, a Delaware limited partnership
CRUSADERS HOTEL OWNER LP, a Delaware limited partnership
DONS HOTEL OWNER LP, a Delaware limited partnership
GOLDEN BEARS OWNER LLC, a Delaware limited liability company
GOLDEN EAGLES OWNER LLC, a Delaware limited liability company
HAZEL OWNER LLC, a Delaware limited liability company
HOYAS OWNER LLC, a Delaware limited liability company
JAYHAWK OWNER LLC, a Delaware limited liability company
MENUDO OWNER LLC, a Delaware limited liability company
MINERS HOTEL OWNER LP, a Delaware limited partnership
NKOTB OWNER LLC, a Delaware limited liability company
RAMBLERS HOTEL OWNER LP, a Delaware limited partnership
RAZORBACKS OWNER LLC, a Delaware limited liability company
RHCP HOTEL OWNER LP, a Delaware limited partnership
RUNNING REBELS OWNER LLC, a Delaware limited liability company
SOUTH 17TH STREET OWNERCO, L.P., a Delaware limited partnership
TERRAPINS OWNER LLC, a Delaware limited liability company
WILDCATS OWNER LLC, a Delaware limited liability company
WOLFPACK OWNER LLC, a Delaware limited liability company
WOLVERINES OWNER LLC, a Delaware limited liability company

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

CHAMBER MAID, LP, a Delaware limited partnership
FUN TO STAY, LP, a Delaware limited partnership
GEARY DARLING, LP, a Delaware limited partnership
GLASS HOUSES, a Maryland Real Estate Investment Trust
HARBORSIDE, LLC, a Florida limited liability company
LET IT FLHO, LP, a Delaware limited partnership
LHOBERGE, LP, a Delaware limited partnership
LHO BACKSTREETS, L.L.C., a Delaware limited liability company
LHO CHICAGO RIVER, L.L.C., a Delaware limited liability company
LHO GRAFTON HOTEL, L.P., a Delaware limited partnership
LHO HARBORSIDE HOTEL, L.L.C., a Delaware limited liability company
LHO HOLLYWOOD LM, L.P., a Delaware limited partnership
LHO LE PARC, L.P., a Delaware limited partnership
LHO MICHIGAN AVENUE FREEZEOUT, L.L.C., a Delaware limited liability company
LHO MISSION BAY HOTEL, L.P., a California limited partnership
LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership
LHO SAN DIEGO FINANCING, L.L.C., a Delaware limited liability company
LHO SAN DIEGO HOTEL ONE, L.P., a Delaware limited partnership
LHO SANTA CRUZ HOTEL ONE, L.P., a Delaware limited partnership
LHO TOM JOAD CIRCLE DC, L.L.C., a Delaware limited liability company
LHO WASHINGTON HOTEL FOUR, L.L.C., a Delaware limited liability company
LHO WASHINGTON HOTEL SIX, L.L.C., a Delaware limited liability company
LOOK FORWARD, LLC, a Delaware limited liability company
PDX PIONEER, LLC, a Delaware limited liability company
RW NEW YORK, LLC, a Delaware limited liability company
SEASIDE HOTEL, LP, a Delaware limited partnership
SERENITY NOW, LP, a Delaware limited partnership
SF TREAT, LP, a Delaware limited partnership
SOULDRIVER, L.P., a Delaware limited partnership
SUNSET CITY, LLC, a Delaware limited liability company
WESTBAN HOTEL INVESTORS, LLC, a Delaware limited liability company

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

DON'T LOOK BACK, LLC, a Delaware limited liability company

By: **LOOK FORWARD, LLC**, a Delaware limited liability company, its manager

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

LASALLE HOTEL OPERATING PARTNERSHIP, L.P., a Delaware limited partnership

By: **PING MERGER OP GP, LLC**, a Delaware limited liability company, its general partner

By: **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership, its sole member

By: **PEBBLEBROOK HOTEL TRUST**, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Executive Vice President and Chief Financial Officer

ADMINISTRATIVE AGENT:

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

By: /s/ Roger C. Davis
Name: Roger C. Davis
Title: Senior Vice President

LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Anand J. Jobanputra
Name: Anand J. Jobanputra
Title: Managing Director

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Lori Y. Jenson
Name: Lori Y. Jenson
Title: Senior Vice President

RAYMOND JAMES BANK, N.A., as a Lender

By: /s/ Matt Stein
Name: Matt Stein
Title: Senior Vice President

CAPITAL ONE, N.A., as a Lender

By: /s/ Jessica W. Phillips
Name: Jessica W. Phillips
Title: Authorized Signatory

CITIBANK, N.A., as a Lender

By: /s/ Tina Lin
Name: Tina Lin
Title: Vice President

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ William R. Lynch III
Name: William R. Lynch III
Title: Senior Vice President

REGIONS BANK, as a Lender

By: /s/ Ghi S. Gavin
Name: Ghi S. Gavin
Title: Senior Vice President

TD BANK, N.A., as a Lender

By: /s/ Michael Duganich
Name: Michael Duganich
Title: Vice President

TRUIST BANK, as a Lender

By: /s/ Ryan Almond
Name: Ryan Almond
Title: Director

SUMITOMO MITSUI BANKING CORPORATION, as a Lender

By: /s/ Eugene Nirenberg
Name: Eugene Nirenberg
Title: Executive Director

BANK OF MONTREAL, as a Lender

By: /s/ Gwendolyn Gatz
Name: Gwendolyn Gatz
Title: Director

BBVA USA (f/k/a Compass Bank), as a Lender

By: /s/ Don Byerly
Name: Don Byerly
Title: Executive Vice President

THE BANK OF NOVA SCOTIA, as a Lender

By: /s/ Ajit Goswami
Name: Ajit Goswami
Title: Managing Director & Industry Head

EXHIBIT A

CONFORMED CREDIT AGREEMENT

[See attached]

Published CUSIP Number: 70509WAN8

FOURTH AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 13, 2017

among
PEBBLEBROOK HOTEL, L.P.,
as the Borrower,

PEBBLEBROOK HOTEL TRUST,
as the Parent REIT and a Guarantor,

CERTAIN SUBSIDIARIES OF THE BORROWER,
as Guarantors,

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

and

The Other Lenders Party Hereto

U.S. BANK NATIONAL ASSOCIATION,

as

Joint Lead Arranger and Syndication Agent

RAYMOND JAMES BANK, N.A., REGIONS BANK and WELLS FARGO BANK, NATIONAL ASSOCIATION,

as

Documentation Agents

BOFA SECURITIES, INC.,

as

Joint Lead Arranger and Sole Bookrunner

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FOURTH AMENDED AND RESTATED CREDIT AGREEMENT

This **FOURTH AMENDED AND RESTATED CREDIT AGREEMENT** ("***Agreement***") is entered into as of October 13, 2017, among **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership (the "***Borrower***"), **PEBBLEBROOK HOTEL TRUST**, a Maryland real estate investment trust (the "***Parent REIT***"), the other Persons party hereto from time to time as Guarantors (as such term is defined herein), each lender from time to time party hereto (collectively, the "***Lenders***" and individually, a "***Lender***"), and **BANK OF AMERICA, N.A.**, as Administrative Agent, Swing Line Lender and L/C Issuer.

The Borrower, Parent REIT, Administrative Agent, L/C Issuer, and certain Lenders are parties to that certain Third Amended and Restated Credit Agreement dated as of October 16, 2014 (as amended, the "***Original Credit Agreement***").

The Borrower, Parent REIT, Administrative Agent, L/C Issuer and Lenders desire to amend and restate the Original Credit Agreement in its entirety.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. DEFINITIONS AND ACCOUNTING TERMS

1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

"***Acceleration***" has the meaning specified in ***Section 8.02***.

"***Adjusted NOI***" means, as of any date of calculation, the sum of Net Operating Incomes for all Real Properties for the most recently-ended Calculation Period (and, if specifically required, including adjustments for subsequent events or conditions on a Pro Forma Basis).

"***Adjusted Unrestricted Cash***" means, on any date, an amount, not less than zero ($0), equal to the Borrower's Unrestricted Cash *less* (a) with respect to the calculation of the Consolidated Leverage Ratio, $10,000,000, and (b) with respect to the calculation of the Unsecured Leverage Ratio, $100,000,000.

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

"***Administrative Agent's Office***" means the Administrative Agent's address and, as appropriate, account as set forth on ***Schedule 10.02***, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"***Administrative Questionnaire***" means an Administrative Questionnaire in substantially the form of ***Exhibit E-2*** or any other form approved 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.

"***Affiliated Debt***" has the meaning specified in ***Section 11.09***.

"***Aggregate Commitments***" means the Commitments of all the Lenders.

"***Agreement***" has the meaning specified in the introductory paragraph.

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

"***Applicable Margin***" means:

(a) Subject to ***clause (b)*** below, in respect of the Revolving Credit Facility and the Term Facility, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to ***Section 6.02(a)***:

Pricing Level	Consolidated Leverage Ratio	Revolving Credit Facility	Revolving Credit Facility	Term Facility	Term Facility
		Eurodollar Rate Loans and Letter of Credit Fees	Base Rate Loans and Swing Line Loans	Eurodollar Rate Loans	Base Rate Loans
I	< 3.5x	1.45%	0.45%	1.40%	0.40%
II	≥3.5x and <4.0x	1.50%	0.50%	1.45%	0.45%
III	≥4.0x and <5.0x	1.60%	0.60%	1.55%	0.55%
IV	≥ 5.0x and < 5.5x	1.80%	0.80%	1.75%	0.75%
V	≥5.5x and <6.0x	1.95%	0.95%	1.85%	0.85%
VI	≥6.0x	2.25%	1.25%	2.20%	1.20%

Any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the last day of the fiscal quarter for which such Compliance Certificate has been timely delivered pursuant to ***Section 6.02(a)***; *provided, however*, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level VI shall apply as of the first Business Day after the last day of the fiscal quarter for which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is actually delivered. The Applicable Margin in effect from the Closing Date until adjusted as set forth above shall be set at a Pricing Level II.

Notwithstanding anything to the contrary contained in this ***clause (a)***, the determination of the Applicable Margin under this ***clause (a)*** for any period shall be subject to the provisions of ***Section 2.10(b)***.

(b) If the Parent REIT or the Borrower attains at least one public or private Investment Grade Rating from either Moody's or S&P, then the Borrower may, upon written notice to the Administrative Agent, make an irrevocable one time written election to exclusively use the below table based on the Debt Rating of the Parent REIT or the Borrower (setting forth the date for such election to be effective), and thereafter the Applicable Margin shall be determined based on the applicable rate per annum set forth in the below table notwithstanding any failure of the Parent REIT or the Borrower to maintain an Investment Grade Rating or any failure of the Parent REIT or the Borrower to maintain a Debt Rating:

Debt Rating	Revolving Credit Facility	Revolving Credit Facility	Revolving Credit Facility	Term Facility	Term Facility
	Facility Fee Rate	Eurodollar Rate Loans and Letters of Credit	Base Rate Loans and Swing Line Loans	Eurodollar Rate Loans	Base Rate Loans
≥ A-/A3	0.125%	0.875%	0.000%	0.900%	0.000%
BBB+/Baa1	0.150%	0.900%	0.000%	0.950%	0.000%
BBB/Baa2	0.200%	1.000%	0.050%	1.100%	0.100%
BBB-/Baa3	0.250%	1.250%	0.250%	1.350%	0.350%
<BBB-/Baa3 or Unrated	0.300%	1.550%	0.550%	1.750%	0.750%

If at any time the Parent REIT and/or the Borrower has two (2) Debt Ratings, and such Debt Ratings are split, then: (i) 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 Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used; and (ii) if the difference between such Debt Ratings is two (2) ratings categories (e.g., Baa1 by Moody's and BBB- by S&P), the Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the rating that is one higher than the lower of the applicable Debt Ratings were used. If at any time the Parent REIT and/or the Borrower has three (3) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest of such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Ratings-Based Applicable Margin 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 (2) ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch) or more, the Ratings-Based Applicable Margin 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 Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the second highest Debt Rating of the three (3) were used. If the Borrower has elected to use the above table set forth in this ***clause (b)*** and the Parent REIT and/or the Borrower no longer has a private or public Debt Rating from either Moody's or S&P, then the Ratings-Based Applicable Margin shall be deemed to be < BBB-/Baa3 or Unrated. Each change in the Applicable Margin resulting from a change in a Debt Rating shall be effective, in the case of an upgrade, during the period commencing on the date of delivery by the Borrower to the Administrative Agent of notice thereof pursuant to ***Section 6.02(j)*** and ending on

the date immediately preceding the effective date of the next such change and, in the case of a downgrade, during the period commencing on the date of the announcement thereof and ending on the date immediately preceding the effective date of the next such change.

(c) Notwithstanding the foregoing, for the period of time commencing on the first Business Day immediately following the Surge Date and ending on the earlier of (i) the last day of the fourth (4^{th}) fiscal quarter following the Surge Date and (ii) the first Business Day immediately following the last day of the fiscal quarter for which a Compliance Certificate has been timely delivered pursuant to ***Section 6.02(a)*** containing a written notice to the Administrative Agent terminating the Surge Period, the Applicable Margin (whether based on the Consolidated Leverage Ratio or the applicable Debt Rating) shall be increased by thirty-five basis points (0.35%).

(d) Notwithstanding the foregoing, (i) for the period of time commencing on the Second Amendment Effective Date ~~through and including the last day of the Waiver Period~~up to, but excluding, the Fourth Amendment Effective Date, the Applicable Margin shall be a percentage per annum equal to (~~i~~A) two and one-quarter of one percent (2.25%) with respect to Eurodollar Rate Loans and Letter of Credit Fees under the Revolving Credit Facility, (~~ii~~B) one and one-quarter of one percent (1.25%) with respect to Base Rate Loans and Swing Line Loans under the Revolving Credit Facility, (~~iii~~C) two and one-fifth of one percent (2.20%) with respect to Eurodollar Rate Loans under the Term Facility, and (~~iv~~D) one and one-fifth of one percent (1.20%) with respect to Base Rate Loans under the Term Facility, and (ii) for the period of time commencing on the Fourth Amendment Effective Date through and including the last day of the Waiver Period, the Applicable Margin shall be a percentage per annum equal to (A) two and four tenths percent (2.40%) with respect to Eurodollar Rate Loans and Letter of Credit Fees under the Revolving Credit Facility, (B) one and four tenths percent (1.40%) with respect to Base Rate Loans and Swing Line Loans under the Revolving Credit Facility, (C) two and thirty-five hundredths percent (2.35%) with respect to Eurodollar Rate Loans under the Term Facility, and (D) one and thirty-five hundredths percent (1.35%) with respect to Base Rate Loans under the Term Facility.

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

"***Applicable Revolving Credit Percentage***" means, with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender's Applicable Percentage in respect of the Revolving Credit Facility at such time.

"***Appropriate Lender***" means, at any time, (a) with respect to any of the Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term Loan or a Revolving Credit Loan, respectively, at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to ***Section 2.03(a)***, the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to ***Section 2.04(a)***, the Revolving Credit Lenders.

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

"***Arrangers***" means (a) BofA Securities, Inc., in its capacity as joint lead arranger and sole bookrunner and (b) U.S. Bank National Association, in its capacity as joint lead arranger.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by ***Section 10.06(b)***), and accepted by the Administrative Agent, in substantially the form of ***Exhibit E-1*** or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

"***Attributable Indebtedness***" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"***Audited Financial Statements***" means the audited consolidated balance sheet of the Consolidated Parties for the fiscal year ended December 31, 2016, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Consolidated Parties, including the notes thereto.

"***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 (a) the Maturity Date with respect to the Revolving Credit Facility, (b) the date of termination of the Revolving Credit Commitments pursuant to ***Section 2.06***, and (c) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to ***Section 8.02***.

"***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.

"***Bank of America Term Facility***" means the facility evidenced by that certain Credit Agreement, dated as of October 31, 2018, among the Borrower, the Parent REIT, certain lenders party thereto, and Bank of America, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Base Rate***" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus one-half of one percent (0.50%), (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 Eurodollar Rate plus one percent (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 the Base Rate is being used as an alternate rate of interest pursuant to ***Section 3.03*** hereof, then the Base Rate shall be the greater of ***clauses (a)*** and ***(b)*** above and shall be determined without reference to ***clause (c)*** above. For the avoidance of doubt, in no circumstance shall the Base Rate be less than one and one-quarter of one percent (1.25%) per annum.

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

"***BHC Act Affiliate***" has the meaning specified in ***Section 10.23(b)***.

"***Borrower***" has the meaning specified in the introductory paragraph.

"***Borrower Materials***" has the meaning specified in ***Section 6.02***.

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

"***Business Day***" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Applicable Laws of, or are in fact closed in, New York, New York, Charlotte, North Carolina or Dallas, Texas and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

"***Calculation Period***" means, as of any date of determination commencing with the delivery of the Required Financial Information for the fiscal quarter ending June 30, 2017, the most recent four (4) fiscal quarter period for which the Borrower has provided the Required Financial Information; *provided that*, for calculations made on a Pro Forma Basis, the amounts calculated for the applicable Calculation

Period shall be adjusted as set forth in ***Section 1.03(c)***, but shall otherwise relate to the applicable Calculation Period (as defined above).

"***Capitalization Rate***" means (a) 7.25% for: (i) the LaPlaya Beach Resort & Club; (ii) Real Properties in the central business districts of New York, New York, San Diego, California, San Francisco, California, Washington, D.C., and Boston, Massachusetts; and (iii) Los Angeles, California urban Real Properties (including Real Properties located in Santa Monica, California); and (b) 7.75% for all other Real Properties.

"***Capital One Facility***" means the facility evidenced by that certain Credit Agreement, dated as of the date hereof, among the Borrower, the Parent REIT, certain lenders party thereto, and Capital One, National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***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 Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or Swing Line Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Swing Line 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.

"***Cash Equivalents***" means any of the following types of Investments, to the extent owned by any Consolidated Party:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i)(A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in ***clause (c)*** of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of any Consolidated Party, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to

Investments of the character, quality and maturity described in ***clauses (a)***, ***(b)*** and ***(c)*** of this definition.

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

"***Change of Control***" means an event or series of events by which:

(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 twenty-five percent (25%) or more of the equity securities of the Borrower or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Borrower or Parent REIT 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);

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower or Parent REIT 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 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 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 passage of thirty (30) days from the date upon which any Person or two (2) or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower or Parent REIT, or control over the equity securities of the Borrower or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Borrower or Parent REIT 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) representing twenty-five percent (25%) or more of the combined voting power of such securities.

"***Closing Date***" means the first date all the conditions precedent in ***Section 4.01*** are satisfied or waived in accordance with ***Section 10.01***.

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

"***Collateral***" has the meaning specified in ***Section 6.17***.

"***Collateral Documents***" means, collectively, the Pledge Agreement and all other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations, including all other security agreements, pledge agreements, deeds of trust, pledges, powers of attorney, consents, assignments, notices, financing statements and all other written matter whether heretofore, now, or hereafter executed by the Borrower or any of its Subsidiaries and delivered to the Administrative Agent to create, perfect or evidence Liens to secure the Obligations.

"***Collateral Period***" means any period after the Second Amendment Effective Date commencing on the occurrence of a Collateral Trigger Date and ending on the Collateral Release Date.

"***Collateral Release***" has the meaning specified in ***Section 6.17***.

"***Collateral Release Certificate***" has the meaning specified in ***Section 6.17***.

"***Collateral Release Date***" means any date after the expiration of the Waiver Period on which (a) no Default or Event of Default is continuing, (b) the Borrower delivers a Collateral Release Certificate as required by ***Section 6.17***, and (c) the Consolidated Leverage Ratio is either (i) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (ii) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***.

"***Collateral Trigger Date***" means any date during the Waiver Period, on which (a) the Liquidity of the Consolidated Parties does not exceed $~~300,000,000~~400,000,000 after the Fourth Amendment Effective Date (the "***First Limited Collateral Trigger Event***"), (b) the Liquidity of the Consolidated Parties does not exceed $300,000,000 after the Second Amendment Effective Date (the "***Second Limited Collateral Trigger Event***"), (c) the Liquidity of the Consolidated Parties does not exceed $250,000,000 after the Second Amendment Effective Date, or (~~e~~d) the Total Revolving Credit Outstandings exceed $400,000,000 at any time on or after the fourth (4th) Business Day following the Second Amendment Effective Date.

"***Commitment***" means a Term Commitment or a Revolving Credit Commitment, as the context may require.

"***Committed Loan Notice***" means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of Loans from one Type to the other, or (d) a continuation of Eurodollar Rate Loans, pursuant to ***Section 2.02(a)***, which 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.

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

"***Compliance Certificate***" means a certificate substantially in the form of ***Exhibit D***.

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

"***Consolidated Adjusted EBITDA***" means, for any period, EBITDA less an annual replacement reserve equal to four percent (4.0%) of gross property revenues (excluding revenues with respect to third party space or retail leases).

"***Consolidated Fixed Charge Coverage Ratio***" means, as of any date of determination, the ratio of (a) Consolidated Adjusted EBITDA for the Calculation Period ending on such date *to* (b) Consolidated Fixed Charges for such period.

"***Consolidated Fixed Charges***" means, for any period, the sum of (a) Consolidated Interest Charges for such period, *plus* (b) current scheduled principal payments on Consolidated Funded Indebtedness for such period (including, for purposes hereof, current scheduled reductions in commitments, but excluding any payment of principal under the Loan Documents and any "balloon" payment or final payment at maturity that is significantly larger than the scheduled payments that preceded it), *plus* (c) dividends and distributions paid in cash on preferred stock by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, if any, for such period, in each case, determined in accordance with GAAP; *provided that*, to the extent the calculations under ***clauses (a)***, ***(b)*** and ***(c)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Consolidated Party).

"***Consolidated Funded Indebtedness***" means, as of any date of determination, without duplication, the sum of (a) the outstanding principal amount of all obligations of the Consolidated Parties on a consolidated basis, whether current or long-term, for borrowed money (including all obligations hereunder and under the other Loan Documents) and all obligations of the Consolidated Parties on a consolidated basis evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness of the Consolidated Parties on a consolidated basis, (c) all obligations of the Consolidated Parties on a consolidated basis arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations of the Consolidated Parties on a consolidated basis in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (e) Attributable Indebtedness of the Consolidated Parties on a consolidated basis in respect of capital leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees of the Consolidated Parties on a consolidated basis with respect to outstanding Indebtedness of the types specified in ***clauses (a)*** through ***(e)*** above of Persons other than the Parent REIT or any Subsidiary, (g) without duplication, all Indebtedness of the Consolidated Parties on a consolidated basis of the types referred to in ***clauses (a)*** through ***(f)*** above of any partnership or joint venture in which the Parent REIT or a Subsidiary is a general partner or joint venturer, and (h) without duplication, the aggregate amount of Unconsolidated Affiliate Funded Indebtedness for all Unconsolidated Affiliates. Notwithstanding the foregoing, Consolidated Funded Indebtedness shall exclude Excluded Capital Leases.

"***Consolidated Interest Charges***" means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates with respect to such period under capital leases (other than Excluded Capital Leases) that is treated as interest in accordance with GAAP; *provided that*, to the extent the calculations under ***clauses (a)*** and ***(b)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Consolidated Party).

"***Consolidated Leverage Ratio***" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness less Adjusted Unrestricted Cash as of such date *to* (b) EBITDA for the Calculation Period most recently ended.

"***Consolidated Net Income***" means, for any period, the sum of (a) the net income of the Consolidated Parties on a consolidated basis (excluding extraordinary gains, extraordinary losses and gains and losses from the sale of assets) for such period, calculated in accordance with GAAP, *plus* (b) without duplication, an amount equal to the aggregate of net income (excluding extraordinary gains and extraordinary losses) for such period, calculated in accordance with GAAP, of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"***Consolidated Parties***" means a collective reference to the Parent REIT and its consolidated Subsidiaries and "***Consolidated Party***" means any one of the Consolidated Parties.

"***Consolidated Recourse Secured Indebtedness***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt that is recourse to any Consolidated Party or any Unconsolidated Affiliate (except to the extent such recourse is limited to customary non-recourse carve-outs); *provided that*, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Consolidated Party).

"***Consolidated Secured Debt***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt; *provided that*, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Consolidated Party).

"***Consolidated Tangible Net Worth***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, Shareholders' Equity on that date, *minus* the amount of Intangible Assets, *plus* the amount of accumulated depreciation; *provided that* there shall be excluded from the calculation of "Consolidated Tangible Net Worth" any effects resulting from the application of FASB ASC No. 715: Compensation – Retirement Benefits; *provided*, further, that, to the extent the calculation of foregoing amounts includes amounts allocable to Unconsolidated Affiliates, such

calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

"***Consolidated Total Asset Value***" means, without duplication, as of any date of determination, for the Consolidated Parties on a consolidated basis, the sum of: (a) the Operating Property Value of all Real Properties (other than Development/Redevelopment Properties); (b) the amount of all Unrestricted Cash; (c) the book value of all Development/Redevelopment Properties, mortgage or real estate-related loan assets and undeveloped or speculative land; (d) the contract purchase price for all assets under contract for purchase (to the extent included in Indebtedness); and (e) the Borrower's applicable Unconsolidated Affiliate Interests of the preceding items for its Unconsolidated Affiliates.

"***Consolidated Unsecured Interest Coverage Ratio***" means, as of any date of determination, the ratio of (a) Net Operating Income from the Unencumbered Borrowing Base Properties for the Calculation Period ending on such date *to* (b) Unsecured Interest Charges for such period; *provided that*, unless otherwise approved by the Required Lenders, there shall be excluded from the calculation of Consolidated Unsecured Interest Coverage Ratio: (i) any excess above forty percent (40%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Major MSA and (ii) any excess above thirty-three percent (33%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Other MSA.

"***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 Entity***" has the meaning specified in ***Section 10.23(b)***.

"***Credit Extension***" means each of the following: (a) a Borrowing; and (b) an L/C Credit Extension.

"***Credit Parties***" means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Swing Line Lender, the Hedge Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to ***Section 9.05***, and the other Persons to whom the Obligations are owing from time to time.

"***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.

"***Debt Rating***" means the current published or private long term unsecured senior, non-credit enhanced debt rating of the Parent REIT or the Borrower by S&P, Moody's or Fitch.

"***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 Margin, if any, applicable to Base Rate Loans *plus* (iii) two percent (2.0%) per annum; *provided, however*, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus two percent (2.0%) per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Margin *plus* two percent (2.0%) per annum.

"***Default Right***" has the meaning specified in ***Section 10.23(b)***.

"***Defaulting Lender***" means, subject to ***Section 2.17(b)***, any Lender that (a) has failed to (i) fund all or any portion of its Loans within three (3) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within three (3) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this ***clause (c)*** upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; *provided that* a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of ***clauses (a)*** through ***(d)*** above, 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 2.17(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 Swing Line Lender and each other Lender promptly following such determination.

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

"***Development/Redevelopment Property***" means Real Property with respect to which development activities are being undertaken by the applicable owner thereof. A Real Property shall cease to be a Development/Redevelopment Property on the last day of the sixth (6th) full fiscal quarter after opening or reopening (or such earlier date as elected by the Borrower by written notice to the Administrative Agent).

"***Disposition***" or "***Dispose***" means the sale, transfer, license, lease (excluding the lease of any Unencumbered Borrowing Base Property and personal property assets related thereto to any TRS pursuant to a form of Lease approved by the Administrative Agent, in its reasonable discretion) or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale leaseback transaction), 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. For the avoidance of doubt, leases of personal or Real Property (other than sale and leaseback transactions) entered into in the ordinary course of business shall not be deemed to be Dispositions.

"***Dividing Person***" has the meaning assigned to it in the definition of "*Division.*"

"***Division***" means the division of the assets, liabilities and/or obligations of a Person (the "***Dividing Person***") among two or more Persons (whether pursuant to a "*plan of division*" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"***Dollar***" and "***$***" mean lawful money of the United States.

"***EBITDA***" means, for any period, the sum of (a) an amount equal to Consolidated Net Income for such period *plus* (b) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by the Consolidated Parties and Unconsolidated Affiliates for such period, (iii) depreciation and amortization expense of the Consolidated Parties and Unconsolidated Affiliates, (iv) other non-recurring expenses of the Consolidated Parties and Unconsolidated Affiliates reducing such Consolidated Net Income which do not represent a cash item in such period or any future period, (v) without duplication of any of the foregoing, amounts deducted from net income as a result of fees or expenses incurred in connection with acquisitions permitted under the Loan Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, (vi) all non-cash items with respect to straight-lining of rents materially decreasing Consolidated Net Income for such period, and (vii) all other non-cash items decreasing Consolidated Net Income (including non-cash expenses or losses with respect to Excluded Capital Leases), *minus* (c) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits of the Consolidated Parties and Unconsolidated Affiliates for such period, (ii) all non-cash items with respect to straight-lining of rents materially increasing Consolidated Net Income for such period, and (iii) all other non-cash items increasing Consolidated Net Income for such period (including non-cash revenues or gains with respect to Excluded Capital Leases); *provided that*, to the extent the calculations under ***clauses (a)***, ***(b)*** and ***(c)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

"***EEA Financial Institution***" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any

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

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

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

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

"***Eligible Ground Lease***" means a ground or similar building lease with respect to an Unencumbered Borrowing Base Property executed by the Borrower or a Subsidiary of the Borrower, as lessee, (a) that has a remaining lease term (including extension or renewal rights) of at least thirty-five (35) years, calculated as of the date such property becomes an Unencumbered Borrowing Base Property, (b) that is in full force and effect, (c) that may be transferred and/or assigned without the consent of the lessor (or as to which (i) such lease may be transferred and/or assigned with the consent of the lessor and (ii) such consent shall not be unreasonably withheld or delayed or is subject to certain customary and reasonable requirements), and (d) pursuant to which (i) no default or terminating event exists thereunder, and (ii) no event has occurred which but for the passage of time, or notice, or both would constitute a default or terminating event thereunder.

"***Environmental Laws***" means any and all applicable Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or Governmental Authority 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, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Laws, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Equity Interests***" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting,

and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; *provided* that neither Permitted Convertible Notes (prior to conversion thereof) nor Permitted Convertible Notes Swap Contracts shall constitute Equity Interests of the Parent REIT.

"***Equity Issuance***" means the issuance or sale by any Person of any of its Equity Interests or any capital contribution to such Person by any holder of its Equity Interests.

"***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 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) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to *Section 4063* of ERISA during a plan year in which such entity 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 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 a Pension Plan or the treatment of a Pension Plan amendment as a termination under *Section 4041* or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any 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; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of *Sections 430*, 431 and 432 of the Code or *Sections 303*, *304* and *305* of ERISA; or (h) 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 or any ERISA Affiliate.

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

"***Eurodollar Rate***" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) ("***LIBOR***") or a comparable or successor rate, which rate is approved by the Administrative Agent (in consultation with the Borrower), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

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

provided that (i) 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, (ii) 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) for the avoidance of doubt, in no circumstance shall the Eurodollar Rate be less than one-quarter of one percent (0.25%) per annum for (A) each Eurodollar Rate Loan for the Revolving Credit Facility and (B) each Eurodollar Rate Loan for the Term Facility that has not been identified by the Borrower in writing as being subject to a Swap Contract.

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

"***Event of Default***" has the meaning specified in ***Section 8.01***.

"***Excess Un-Reinvested Proceeds***" has the meaning specified in the definition of Excluded Net Proceeds.

"***Excluded Capital Lease***" means any long-term ground lease or building lease that is treated as a capital lease in accordance with GAAP.

"***Excluded Net Proceeds***" means (a) Net Cash Proceeds from the issuance of any common Equity Interests of the Parent REIT after the Second Amendment Effective Date in an aggregate amount of up to $~~300,000,000~~500,000,000 to be used to acquire one or more Unencumbered Borrowing Base Properties, (b) Net Cash Proceeds of Dispositions after the Second Amendment Effective Date in the aggregate amount of up to $~~200,000,000~~500,000,000 that the Borrower has designated in writing as being held for reinvestment in one or more new Unencumbered Borrowing Base Properties; *provided* that, if any such Net Cash Proceeds in excess of $200,000,000 are not reinvested in one or more new Unencumbered Borrowing Base Properties on or before March 31, 2022 (the "***Excess Un-Reinvested Proceeds***"), then such Excess Un-Reinvested Proceeds shall no longer be qualified as Excluded Net Proceeds and shall be used to make a mandatory prepayment required hereunder in accordance with ***Section 2.05(d)***, and (c) Net Cash Proceeds from Permitted Preferred Issuances which are contemporaneously (or not later than thirty (30) days after the issuance thereof) being used to redeem existing preferred Equity Interests of the Parent REIT.

"***Excluded Swap Obligations***" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to ***Section 11.08*** and any other "keepwell, support or other agreement" for the benefit of such Guarantor and any and all Guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, then such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

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

"***Facility***" means the Term Facility or the Revolving Credit Facility, as the context may require.

"***FAS 141R Changes***" means those changes made to a buyer's accounting practices by the Financial Accounting Standards Board's Statement of Financial Accounting Standard No. 141R, *Business Combinations*, which is effective for annual reporting periods that begin in calendar year 2009.

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

"***FATCA***" means *Sections 1471* through *1474* of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to *Section 1471(b)(1)* of the Code.

"***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 by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that* (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one one-hundredth of one percent (1/100 of 1%)) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"***Fee Letters***" means (a) the letter agreement, dated August 3, 2017, among the Parent REIT, the Borrower, the Administrative Agent and BofA Securities, Inc. (b) the letter agreement, dated October 10, 2017, among the Parent REIT, the Borrower, and U.S. Bank National Association, and (c) any other fee letter among the Borrower, the Parent REIT, the Administrative Agent and BofA Securities, Inc.

"***FFO Distribution Allowance***" means, for any fiscal year of the Consolidated Parties, an amount equal to ninety-five percent (95%) of Funds From Operations for such fiscal year.

"***First Extended Maturity Date***" means July 15, 2022.

"***First Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.

"***Fitch***" means Fitch, Inc. and any successor thereto.

"***Foreign Lender***" means any Lender that is organized under the Applicable Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"***Fourth Amendment Effective Date***" means February 18, 2021.

"***FRB***" means the Board of Governors of the Federal Reserve System of the United States.

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

"***Fully Satisfied***" means, with respect to the Obligations as of any date, that, as of such date, (a) all principal of and interest accrued to such date which constitute Obligations shall have been irrevocably paid in full in cash, (b) all fees, expenses and other amounts then due and payable which constitute Obligations shall have been irrevocably paid in cash, (c) all outstanding Letters of Credit shall have been (i) terminated, (ii) fully irrevocably Cash Collateralized or (iii) secured by one or more letters of credit on terms and conditions, and with one or more financial institutions, satisfactory to the L/C Issuer and (d) the Aggregate Commitments shall have expired or been terminated in full (in each case, other than inchoate indemnification liabilities arising under the Loan Documents).

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

"***Funds From Operations***" means, for any period, Consolidated Net Income, plus depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures as hereafter provided; *provided that*, to the extent such calculations include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests. Without limiting the foregoing, notwithstanding contrary treatment under GAAP, for purposes hereof, (a) "Funds From Operations" shall include, and be adjusted to take into account, (i) the Parent REIT's interests in unconsolidated partnerships and joint ventures, on the same basis as consolidated partnerships and subsidiaries, as provided in the "white paper" issued in April 2002 by the National Association of Real Estate Investment Trusts, as may be amended from time to time, and (ii) amounts deducted from net income as a result of pre-funded fees or expenses incurred in connection with acquisitions permitted under the Loan Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, and (b) net income (or loss) of the Consolidated Parties on a consolidated basis shall not include gains (or, if applicable, losses) resulting from or in connection with (i) restructuring of

indebtedness, (ii) sales of property, (iii) sales or redemptions of preferred stock, (iv) non-cash asset impairment charges or (v) other non-cash items including items with respect to Excluded Capital Leases.

"***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.

"***Glass Houses***" means Glass Houses, a Maryland real estate investment trust.

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

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

"***Guarantors***" means, collectively, the Parent REIT, all Subsidiaries of the Borrower as of the Closing Date and as identified on the signature pages hereto as a "Guarantor" as of the Closing Date (excluding all Non-Guarantor Subsidiaries as of the Closing Date), each Person that is required to be a Guarantor pursuant to ***Section 6.12*** (including any Subsidiary that owns an Unencumbered Borrowing Base Property), unless such subsidiary is a Non-Guarantor Subsidiary or has otherwise been released

from its obligations pursuant to ***Section 6.13***, and, with respect to the payment and performance by each Specified Loan Party of its obligations under ***Section 11*** with respect to all Swap Obligations, the Borrower, in each case together with their successors and permitted assigns.

"***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 Laws.

"***Hedge Bank***" means any Lender or Affiliate of a Lender, in its capacity as a party to a Swap Contract that is not otherwise prohibited under ***Section 6*** or ***7***.

"***Immaterial Subsidiary***" means any Subsidiary whose assets constitute less than one percent (1%) of Consolidated Total Asset Value; *provided that* if at any time the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" exceeds ten percent (10%) of all Consolidated Total Asset Value, then the Borrower shall designate certain "*Immaterial Subsidiaries*" as Guarantors such that the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" which are not Guarantors does not exceed ten percent (10%) of all Consolidated Total Asset Value.

"***Impacted Loans***" has the meaning specified in ***Section 3.03(a)***.

"***Increase Effective Date***" has the meaning given to such term in ***Section 2.15(d)***.

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

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

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

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

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business and, in each case, not overdue by more than ninety (90) days after such trade account payable was created, except to the extent that any such trade payables are being disputed in good faith);

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

(f) capital leases (other than Excluded Capital 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 or any other Person, valued, in

the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include, without duplication, the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease (other than an Excluded Capital Lease) or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

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

"***Indemnitees***" has the meaning specified in ***Section 10.04(b)***.

"***Information***" has the meaning specified in ***Section 10.07***.

"***Initial Compliance Date***" means (a) if the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of Waiver Period, ~~June 30, 2021~~(i) March 31, 2022 with respect to the financial covenants set forth in ***Sections 7.11(d)***, ***7.11(e)*** and ***7.11(j)(iii)*** and (ii) June 30, 2022 with respect to the financial covenants set forth in ***Section 7.11*** (other than the covenants set forth in ***clauses (d)***, ***(e)*** and ***(j)(iii)*** thereof) or (b) if the Waiver Period ends on the date occurring under ***clause (b)*** of the definition of Waiver Period, the last day of the applicable fiscal quarter set forth in the Compliance Certificate delivered pursuant to such ***clause (b)***.

"***Initial Maturity Date***" has the meaning specified in ***Section 2.14(a)***.

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

"***Intercreditor Agreement***" means that certain Intercreditor Agreement, dated as of the Second Amendment Effective Date, by and among the Borrower, the Parent REIT, certain grantors and guarantors party thereto, the Administrative Agent, U.S. Bank National Association, Capital One, National Association, Truist Bank, and each additional pari passu collateral agent from time to time party thereto.

"***Interest Payment Date***" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; *provided, however*, that if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

"***Interest Period***" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1) week (to the extent each Lender is able to provide a Eurodollar Rate Loan for such period) or one (1), two (2), three (3) or six (6) months thereafter, or, upon consent of all of the Lenders, such other period that is twelve (12) months or less (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 Maturity Date of the Facility under which such Loan was made.

"***Intermediate REIT***" means (a) Glass Houses and (b) any Subsidiary of the Borrower that is formed as a real estate investment trust under its jurisdiction of formation, which Subsidiary does not own any assets (other than any Equity Interests in any Subsidiary that owns any Real Property assets); *provided that* such Subsidiary (i) shall not incur or guarantee any other Indebtedness, and (ii) may receive Restricted Payments paid in cash from its Subsidiaries so long as such Restricted Payments are immediately distributed upon receipt to the Borrower.

"***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.

"***Investment Grade Rating***" means a Debt Rating for the Parent REIT or the Borrower of BBB- or better from S&P, Baa3 or better from Moody's or BBB- or better from Fitch.

"***IP Rights***" has the meaning specified in ***Section 5.18***.

"***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 such Letter of Credit.

"***Joinder Agreement***" means a Joinder Agreement substantially in the form of ***Exhibit F***, executed and delivered by a new Guarantor in accordance with the provisions of ***Section 6.12***.

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

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

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

"***L/C Issuer***" means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder in the event that Bank of America ceases (for whatever reason) to act in such capacity, or any other Lender (with the consent of the Administrative Agent, in its sole discretion) as an issuer of Letters of Credit hereunder.

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

"***Lease***" means a lease, sublease, license, concession agreement or other agreement providing for the use or occupancy of any portion of any Real Property (and any personal property related thereto that is covered by such lease, sublease, license, concession agreement or other agreement) owned or ground leased by any Loan Party, including all amendments, supplements, restatements, assignments and other modifications thereto.

"***Lender***" has the meaning specified in the introductory paragraph and, as the context requires, includes the Swing Line Lender.

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

"***Letter of Credit***" means any letter of credit issued hereunder. A Letter of Credit may be a standby letter of credit only.

"***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 thirty (30) days prior to the Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

"***Letter of Credit Fee***" has the meaning specified in ***Section 2.03(h)***.

"***Letter of Credit Sublimit***" means an amount equal to $30,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

"***LIBOR***" has the meaning specified in the definition of Eurodollar 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).

~~"***Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.~~

"***Liquidity***" means, as of any date of determination, the sum of (a) cash and Cash Equivalents not subject to any Liens, Negative Pledges or other restrictions *plus* (b) undrawn availability under this Agreement or under any other credit facilities of the Consolidated Parties (to the extent available to be drawn at the date of determination in accordance with this Agreement or the other applicable credit facility).

"***Liquidity Compliance Certificate***" means a certificate substantially in the form of ***Exhibit I*** or in such other form as may be agreed by the Borrower and the Administrative Agent.

"***Loan***" means an extension of credit by a Lender to the Borrower under ***Section 2*** in the form of a Term Loan, a Revolving Credit Loan or a Swing Line Loan.

"***Loan Documents***" means this Agreement, each Note, each Issuer Document, the Intercreditor Agreement, each Collateral Document, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of ***Section 2.16***, and the Fee Letters.

"***Loan Parties***" means, collectively, the Borrower and each Guarantor.

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

"***Major MSA***" means the metropolitan statistical area of any of the following: (a) New York City, New York; (b) Chicago, Illinois; (c) Washington, DC; (d) Los Angeles, California (excluding Santa Monica, California); (e) Boston, Massachusetts; (f) San Diego, California; and (g) San Francisco, California.

"***Material Acquisition***" means the acquisition by any Consolidated Party, in a single transaction or in a series of related transactions, of one or more Real Properties or Persons owning Real Properties in which the total investment with respect to such acquisition is equal to or greater than ten percent (10%) of Consolidated Total Asset Value at such time.

"***Material Adverse Effect***" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or

otherwise) of the Parent REIT, the Borrower and their Subsidiaries taken as a whole; (b) a material impairment of the ability of the Borrower and the other Loan Parties taken as a whole to perform their respective obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"***Material Lease***" means as to any Unencumbered Borrowing Base Property (a) any Lease of such Unencumbered Borrowing Base Property (and any personal property assets related thereto) between the applicable Loan Party that owns such Unencumbered Borrowing Base Property and any TRS, (b) any Lease which, individually or when aggregated with all other Leases at such Unencumbered Borrowing Base Property with the same tenant or any of its Affiliates, accounts for ten percent (10%) or more of such Unencumbered Borrowing Base Property's revenue, or (c) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Property.

"***Maturity Date***" means (a) with respect to the Revolving Credit Facility, (i) if the Initial Maturity Date is not extended to the First Extended Maturity Date pursuant to ***Section 2.14***, then the Initial Maturity Date, (ii) if the Initial Maturity Date is extended to the First Extended Maturity Date pursuant to ***Section 2.14*** and the First Extended Maturity Date is not extended to the Second Extended Maturity Date pursuant to ***Section 2.14***, then the First Extended Maturity Date, and (iii) if the Initial Maturity Date is extended to the First Extended Maturity Date pursuant to ***Section 2.14*** and the First Extended Maturity Date is extended to the Second Extended Maturity Date pursuant to ***Section 2.14***, then the Second Extended Maturity Date; and (b) with respect to the Term Facility, January 15, 2023; *provided, however*, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"***Minimum Collateral Amount***" means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of ***Section 2.16(a)(i)***, ***2.16(a)(ii)*** or ***2.16(a)(iii)***, an amount equal to 105% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

"***Moody's***" means Moody's Investors Service, Inc. and any successor thereto.

"***Multiemployer Plan***" means any employee benefit plan of the type described in *Section 4001(a)(3)* of ERISA that is subject to Title IV of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

"***Multiple Employer Plan***" means any employee benefit plan which has two (2) or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two (2) of whom are not under common control, as such a plan is described in *Section 4064* of ERISA.

"***Negative Pledge***" means a provision of any agreement (other than this Agreement or any other Loan Document) that prohibits the creation of any Lien on any assets of a Person; *provided, however*, that neither (a) an agreement that establishes a maximum ratio of unsecured debt to unencumbered assets, or of secured debt to total assets, or that otherwise conditions a Person's ability to encumber its assets upon

the maintenance of one or more specified ratios that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets nor (b) any requirement for the grant in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations, shall constitute a "*Negative Pledge*" for purposes of this Agreement.

"***Net Cash Proceeds***" means:

(a) with respect to any Disposition by any Consolidated Party, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction, including any accrued interest, repayment fees or charges due in connection with such repayment (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Consolidated Party in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two (2) years of the date of the relevant transaction as a result of any gain recognized in connection therewith; *provided that*, if the amount of any estimated taxes pursuant to ***subclause (C)*** exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds;

(b) with respect to the sale or issuance of any Equity Interest by any Consolidated Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Consolidated Party in connection therewith; and

(c) with respect to the incurrence or issuance of any Indebtedness by any Consolidated Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the sum of (A) the principal amount of any Indebtedness that is refinanced, replaced and/or repaid with the proceeds of such Indebtedness, including any accrued interest, repayment fees or charges due in connection with such refinancing, replacement and/or repayment (other than Indebtedness under the Loan Documents) and (B) the reasonable and customary out-of-pocket expenses incurred by such Consolidated Party in connection therewith.

"***Net Operating Income***" means, with respect to any Real Property and for the most recently ended Calculation Period, an amount equal to (a) the aggregate gross revenues from the operations of such Real Property during the applicable Calculation Period, *minus* (b) the sum of (i) all expenses and other proper charges incurred in connection with the operation of such Real Property during such period pro-rated as appropriate (including real estate taxes, but excluding any management fees, debt service charges, income taxes, depreciation, amortization and other non-cash expenses), and (ii) actual management fees paid during such period, and (iii) an annual replacement reserve equal to four percent (4.0%) of the aggregate revenues from the operations of such Real Property (excluding revenues with respect to third party space or retail leases).

"***New Property***" means each Real Property acquired by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) from the date of acquisition for

a period of six (6) full fiscal quarters after the acquisition thereof; *provided, however*, that, upon the Seasoned Date for any New Property (or any earlier date selected by Borrower), such New Property shall be converted to a Seasoned Property and shall cease to be a New Property.

"***Net Proceeds***" means, with respect to any Equity Issuance by any Consolidated Party, the amount of cash received by such Consolidated Party in connection with any such transaction after deducting therefrom the aggregate, without duplication, of the following amounts to the extent properly attributable to such transaction and such amounts are usual, customary, and reasonable: (a) brokerage commissions; (b) attorneys' fees; (c) finder's fees; (d) financial advisory fees; (e) accounting fees; (f) underwriting fees; (g) investment banking fees; and (h) other commissions, costs, fees, expenses and disbursements related to such Equity Issuance, in each case to the extent paid or payable by such Consolidated Party.

"***Non-Consenting Lender***" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of ***Section 10.01*** and (b) has been approved by the Required Lenders.

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

"***Non-Extension Notice Date***" has the meaning specified in ***Section 2.03(b)(iii)***.

"***Non-Guarantor Subsidiary***" means any Subsidiary (whether direct or indirect) of the Borrower, other than any Subsidiary which owns an Unencumbered Borrowing Base Property, which (a) is a TRS; (b) is an Intermediate REIT; (c) is (i) formed for or converted to the specific purpose of holding title to Real Property assets which are collateral for Indebtedness owing or to be owed by such Subsidiary, *provided that* such Indebtedness must be incurred or assumed within ninety (90) days (or such longer period as the Administrative Agent may agree in writing) of such formation or conversion or such Subsidiary shall cease to qualify as a Non-Guarantor Subsidiary, and (ii) expressly prohibited in writing from guaranteeing Indebtedness of any other person or entity pursuant to (A) a provision in any document, instrument or agreement evidencing such Indebtedness of such Subsidiary or (B) a provision of such Subsidiary's Organization Documents, in each case, which provision was included in such Organization Document or such other document, instrument or agreement at the request of the applicable third party creditor and as an express condition to the extension or assumption of such Indebtedness; *provided that* a Subsidiary meeting the requirements set forth in this ***clause (c)*** shall only remain a "Non-Guarantor Subsidiary" for so long as (1) each of the foregoing requirements set forth in this ***clause (c)*** are satisfied, (2) such Subsidiary does not guarantee any other Indebtedness and (3) the Indebtedness with respect to which the restrictions noted in ***clause (c)(ii)*** are imposed remains outstanding; *provided further that* in no event shall any party to a Permitted Intercompany Mortgage encumbering an Unencumbered Borrowing Base Property be a Non-Guarantor Subsidiary; (d)(i) becomes a Subsidiary following the Closing Date, (ii) is not a Wholly Owned Subsidiary of the Borrower, and (iii) with respect to which the Borrower and its Affiliates, as applicable, do not have sufficient voting power to cause such Subsidiary to become a Guarantor hereunder; or (e) is an Immaterial Subsidiary.

"***Note***" means a Term Note or a Revolving Credit Note, as the context may require.

"***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, or any Swap Contract entered into by any Loan Party with any Lender or its Affiliate as a

counterparty with respect to the Loans, 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 the "Obligations" with respect to a Guarantor shall exclude any Excluded Swap Obligations of such Guarantor.

"***OFAC***" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"***Operating Property Value***" means, at any date of determination, (a) for each Seasoned Property, (i) the Adjusted NOI for such Real Property divided by (ii) the applicable Capitalization Rate, and (b) for each New Property, the GAAP book value for such New Property (until the Seasoned Date or such earlier date as elected by the Borrower by written notice to the Administrative Agent).

"***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.

"***Original Credit Agreement***" has the meaning specified in the introductory paragraph.

"***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 MSA***" means any metropolitan statistical area other than a Major MSA. For the avoidance of doubt, Santa Monica, California shall constitute an Other MSA.

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to ***Section 3.06***).

"***Outstanding Amount***" means (a) with respect to Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension

occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

"***Parent REIT***" has the meaning specified in the introductory paragraph.

"***Pari Passu Obligations***" has the meaning specified in the Intercreditor Agreement.

"***Participant***" has the meaning specified in ***Section 10.06(d)***.

"***PBGC***" means the Pension Benefit Guaranty Corporation.

"***Pebblebrook Hotel Lessee***" means Pebblebrook Hotel Lessee, Inc., a Delaware corporation, and its permitted successors.

"***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 or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a Multiple Employer Plan, has made contributions at any time during the immediately preceding five (5) plan years.

"***Permitted Convertible Notes***" means senior convertible debt securities of the Parent REIT (a) that are unsecured, (b) that do not have the benefit of any Guarantee of any Subsidiary, (c) that are otherwise permitted under ***Section 7.03*** and, if applicable, ***Section 7.20***, (d) the Net Cash Proceeds of which are applied during the Waiver Period, if applicable, in accordance with this Agreement and the Intercreditor Agreement, (e) that are not subject to any sinking fund or any prepayment, redemption or repurchase requirements, whether scheduled, triggered by specified events or at the option of the holders thereof (it being understood that none of (i) a customary "change in control" or "fundamental change" put, (ii) a right to convert such securities into common shares of the Parent REIT, cash or a combination thereof as the Parent REIT may elect or (iii) an acceleration upon an event of default will be deemed to constitute such a sinking fund or prepayment, redemption or repurchase requirement), and (f) that have the benefit of covenants and events of default customary for comparable convertible securities (as determined by the Parent REIT in good faith).

"***Permitted Convertible Notes Swap Contract***" means a Swap Contract entered into by the Parent REIT in connection with, and prior to or concurrently with, the issuance of any Permitted Convertible Notes pursuant to which the Parent REIT acquires a call or a capped call option requiring the counterparty thereto to deliver to the Parent REIT common shares of the Parent REIT, the cash value of such shares or a combination of such shares and cash from time to time upon exercise of such option; provided that the terms, conditions and covenants of each such Swap Contract shall be such as are typical and customary for Swap Contracts of such type (as determined by the Parent REIT in good faith).

"***Permitted Intercompany Mortgage***" means a loan by a Loan Party to another Loan Party secured by a Lien in Real Property so long as such loan is subordinated to the Obligations pursuant to ***Section 11.09*** or otherwise on terms acceptable to the Administrative Agent; *provided that* in no event shall there be more than five (5) Permitted Intercompany Mortgages at any time.

"***Permitted Liens***" has the meaning specified in ***Section 7.01***.

"***Permitted Preferred Issuances***" means the issuance after the Second Amendment Effective Date by the Parent REIT of preferred Equity Interests that (a) are not subject to mandatory redemption or are

otherwise not treated as Indebtedness pursuant to GAAP and (b) to the extent used to purchase or redeem existing preferred Equity Interests, have a yield to maturity yield (including any voluntary or involuntary liquidation preference and any accrued and unpaid dividends) not greater than any preferred Equity Interest purchased or redeemed with the proceeds thereof.

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

"***Plan***" means any "*employee benefit plan*" (as such term is defined in *Section 3(3)* of ERISA) other than a Multiemployer Plan established by the Borrower 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***.

"***Pledge Agreement***" means any pledge or security agreement entered into, after the Second Amendment Effective Date between the Borrower, certain Subsidiaries of the Borrower party thereto, and the Administrative Agent, for the benefit of the Administrative Agent and the other Credit Parties (as required by this Agreement or any other Loan Document), substantially in the form of ***Exhibit J***.

"***Pledged Subsidiary***" has the meaning specified in the Pledge Agreement.

"***PNC Facility***" means the facility evidenced by that certain Amended and Restated Credit Agreement, dated as of the date hereof, among the Borrower, the Parent REIT, certain lenders party thereto, and PNC Bank, National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Pro Forma Basis***" means, for purposes of calculating (utilizing the principles set forth in ***Section 1.03(c)***) compliance with each of the financial covenants set forth in ***Section 7.11*** in respect of a proposed transaction, that such transaction shall be deemed to have occurred as of the first day of the four (4) fiscal-quarter period ending as of the most recent fiscal quarter end preceding the date of such transaction with respect to which the Administrative Agent has received the Required Financial Information. As used herein, "***transaction***" shall mean (a) any Credit Extension, (b) any incurrence or assumption of Indebtedness as referred to in ***Section 7.03(f)***, (c) any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to ***Section 7.05(a)*** or ***(b)*** or any other Disposition as referred to in ***Section 7.05***, or (d) any acquisition of any Person (whether by merger or otherwise) or other property. In connection with any calculation relating to the financial covenants set forth in ***Section 7.11*** upon giving effect to a transaction on a Pro Forma Basis:

(i) for purposes of any such calculation in respect of any incurrence or assumption of Indebtedness as referred to in ***Section 7.03(f)***, any Indebtedness which is retired in connection with such incurrence or assumption shall be excluded and deemed to have been retired as of the first day of the applicable period;

(ii) for purposes of any such calculation in respect of any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to ***Section 7.05*** or any other Disposition as referred to in ***Section 7.05***, (A) income statement items (whether positive or negative) attributable to the Person or property disposed of shall be excluded, (B) any Indebtedness which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the first day of the applicable period, and (C) pro forma adjustments shall be included to the extent that such adjustments would give effect to events that are (1)

directly attributable to such transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the reasonable judgment of the Administrative Agent); and

(iii) for purposes of any such calculation in respect of any acquisition of any Person (whether by merger or otherwise) or other property, (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall be deemed to be included as of the first day of the applicable period, and (B) pro forma adjustments (with the calculated amounts annualized to the extent the period from the date of such acquisition through the most-recently ended fiscal quarter is not at least twelve (12) months or four (4) fiscal quarters, in the case of any applicable period that is based on twelve months or four (4) fiscal quarters) shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the reasonable judgment of the Administrative Agent).

"***Public Lender***" has the meaning specified in ***Section 6.02***.

"***QFC***" has the meaning specified in ***Section 10.23(b)***.

"***QRS***" means a Person qualifying for treatment either as a "qualified REIT subsidiary" under *Section 856(i)* of the Code, or as an entity disregarded as an entity separate from its owner under Treasury Regulations under *Section 7701* of the Code.

"***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.

"***Real Properties***" means, at any time, a collective reference to each of the facilities and real properties owned or leased by the Borrower or any other Subsidiary or in which any such Person has an interest at such time; and "***Real Property***" means any one of such Real Properties.

"***Recipient***" means 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.

"***Register***" has the meaning specified in ***Section 10.06(c)***.

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

"***Related Parties***" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, 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 (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an

L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"***Required Financial Information***" means, with respect to each fiscal period or quarter of the Borrower, (a) the financial statements required to be delivered pursuant to ***Section 6.01(a)*** or ***(b)*** for such fiscal period or quarter of the Parent REIT, and (b) the Compliance Certificate required by ***Section 6.02(a)*** to be delivered with the financial statements described in ***clause (a)*** above.

"***Required Lenders***" means, at any time, Lenders having Total Credit Exposures representing at least fifty-one percent (51%) of the Total Credit Exposures of all Lenders (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition). The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; *provided* that, the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or L/C Issuer, as the case may be, in making such determination.

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

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

"***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, vice president of finance, treasurer, or controller of a 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 and, solely for purposes of notices given pursuant to ***Section 2***, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Parent REIT or any

Subsidiary or any Unconsolidated Affiliate, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Parent REIT's shareholders, partners or members (or the equivalent Person thereof); *provided that*, to the extent the calculation of the amount of any dividend or other distribution for purposes of this definition of "Restricted Payment" includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests; *provided*, further, that payments for, in respect of or in connection with Permitted Convertible Notes Swap Contracts shall not constitute Restricted Payments.

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

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

"***Revolving Credit Exposure***" means the sum of (a) the unused portion of the Revolving Credit Facility at such time and (b) the Total Revolving Credit Outstandings at such time.

"***Revolving Credit Facility***" means, at any time, the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time.

"***Revolving Credit Lender***" means (a) at any time prior to the last day of the Availability Period, any Lender that has a Revolving Credit Commitment at such time and (b) at any time thereafter, any Lender that holds Revolving Credit Loans at such time.

"***Revolving Credit Loan***" has the meaning specified in ***Section 2.01(b)***.

"***Revolving Credit Note***" means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of ***Exhibit C-2***.

"***Revolving Unused Fee***" has the meaning specified in ***Section 2.09(a)***.

"***Revolving Unused Rate***" means, as of any date, (a) a percentage per annum equal to thirty basis points (0.30%) if on such date the Total Revolving Credit Outstandings (excluding any Swing Line Loans) are less than fifty percent (50%) of the Revolving Credit Facility and (b) a percentage per annum equal to twenty basis points (0.20%) if on such date the Total Revolving Credit Outstandings (excluding any Swing Line Loans) are greater than or equal to fifty percent (50.0%) of the Revolving Credit Facility.

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

"***Sale and Leaseback Transaction***" means any arrangement pursuant to which any Consolidated Party, directly or indirectly, becomes liable as lessee, guarantor or other surety with respect to any lease, whether an operating lease or a capital lease, of any property (a) which such Consolidated Party has sold or transferred (or is to sell or transfer) to a Person which is not a Consolidated Party or (b) which such Consolidated Party intends to use for substantially the same purpose as any other property which has been sold or transferred (or is to be sold or transferred) by such Consolidated Party to another Person which is not a Consolidated Party in connection with such lease.

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

"***Seasoned Date***" means the first day on which an acquired Real Property has been owned for six (6) full fiscal quarters following the date of acquisition of such Real Property.

"***Seasoned Property***" means (a) each Real Property (other than a New Property) owned by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) and (b) upon the occurrence of the Seasoned Date of any New Property, such Real Property.

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

"***Second Amendment Effective Date***" means June 29, 2020.

"***Second Extended Maturity Date***" means January 15, 2023.

"***Second Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.

"***Secured Debt***" means, for any given calculation date, without duplication, the total aggregate principal amount of any Indebtedness of the Consolidated Parties on a consolidated basis that is secured in any manner by any Lien (other than Permitted Liens of the types described in ***Sections 7.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)***, ***(g)***, ***(h)***, and ***(k)***); *provided that* (a) Indebtedness in respect of obligations under any capitalized lease shall not be deemed to be "*Secured Debt*" and (b) "*Secured Debt*" shall exclude Excluded Capital Leases and any Indebtedness in respect of the Pari Passu Obligations.

"***Secured Non-Recourse Debt***" means Secured Debt that is not recourse to the Parent REIT or any of its Subsidiaries (except to the extent such recourse is limited to customary non-recourse carve-outs).

"***Senior Notes***" means the Borrower's 4.70% Senior Notes Series A Due December 1, 2023 and 4.93% Senior Notes Series B Due December 1, 2025 evidenced by that certain Note Purchase and Guarantee Agreement dated November 12, 2015 (as the same may be amended, restated, modified or supplemented from time to time).

"***Shareholders' Equity***" means, as of any date of determination, the sum of (a) consolidated shareholders' equity of the Consolidated Parties as of that date determined in accordance with GAAP *plus* (b) without duplication, an amount equal to the aggregate shareholders' equity of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"***Solvent***" and "***Solvency***" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"***Specified Debt***" means the Senior Notes, the US Bank Facility, the Bank of America Term Facility, the Capital One Facility, the US Bank Lessee Line of Credit, and any other agreement creating or evidencing Indebtedness for borrowed money (excluding any Secured Non-Recourse Debt) entered into on or after the Closing Date by any Consolidated Party, or in respect of which any Consolidated Party is an obligor or otherwise provides a Guarantee or other credit support (other than customary non-recourse carve outs), which is either (a) incurred pursuant to ***Section 7.20(c)(iii)*** or (b) in a principal amount outstanding or available for borrowing equal to or greater than $25,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency).

"***Specified Loan Party***" means any Loan Party that is not an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to ***Section 11.08***).

"***Subsidiary***" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "***Subsidiary***" or to "***Subsidiaries***" shall refer to a Subsidiary or Subsidiaries of the Parent REIT.

"***Subsidiary TRS***" means any TRS other than Pebblebrook Hotel Lessee.

"***Surge Date***" has the meaning specified in ***Section 7.11(a)***.

"***Surge Period***" has the meaning specified in ***Section 7.11(a)***.

"***Swap Contract***" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and

conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "***Master Agreement***"), including any such obligations or liabilities under any Master Agreement.

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

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

"***Swing Line Borrowing***" means a borrowing of a Swing Line Loan pursuant to ***Section 2.04***.

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

"***Swing Line Loan***" has the meaning specified in ***Section 2.04(a)***.

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

"***Swing Line Sublimit***" means an amount equal to the lesser of (a) $30,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

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

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

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

"***Term Commitment***" means, as to each Term Lender, its obligation to make Term Loans to the Borrower pursuant to ***Section 2.01(a)*** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender's name on ***Schedule 2.01*** under the caption "*Term Commitment*" or opposite such caption in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"***Term Facility***" means the Outstanding Amount of the Term Loans of all Term Lenders outstanding at such time.

"***Term Lender***" means any Lender that holds Term Loans at such time.

"***Term Loan***" means an advance made by any Term Lender under the Term Facility.

"***Term Note***" means a promissory note made by the Borrower in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of ***Exhibit C-1***.

"***Threshold Amount***" means $25,000,000.

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

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

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

"***TRS***" means each of (a) Pebblebrook Hotel Lessee and (b) each other taxable REIT subsidiary that is a Wholly Owned Subsidiary of Pebblebrook Hotel Lessee.

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

"***UCC***" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"***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 Kington 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.

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

"***Unconsolidated Affiliate Funded Indebtedness***" means, as of any date of determination for any Unconsolidated Affiliate, the product of (a) the sum of (i) the outstanding principal amount of all obligations of such Unconsolidated Affiliate, whether current or long-term, for borrowed money and all obligations of such Unconsolidated Affiliate evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all purchase money Indebtedness of such Unconsolidated Affiliate, (iii) all obligations of such Unconsolidated Affiliate arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (iv) all obligations of such Unconsolidated Affiliate in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (v) Attributable Indebtedness of such Unconsolidated Affiliate in respect of capital leases and Synthetic Lease Obligations, (vi) without duplication, all Guarantees of such Unconsolidated Affiliate with respect to outstanding Indebtedness of the types specified in ***clauses (i)*** through ***(v)*** above of Persons other than such Unconsolidated Affiliate, and (vii) all Indebtedness of such Unconsolidated Affiliate of the types referred to in ***clauses (i)*** through ***(vi)*** above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Unconsolidated Affiliate is a general partner or joint venturer, multiplied by (b) the respective Unconsolidated Affiliate Interest of each Consolidated Party in such Unconsolidated Affiliate.

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

"***Unencumbered Asset Value***" means, as of any date of determination, the Operating Property Value of all Unencumbered Borrowing Base Properties (other than Development/Redevelopment Properties).

"***Unencumbered Borrowing Base Entity***" means, as of any date of determination, any Person that owns (or leases as ground lessee pursuant to an Eligible Ground Lease) an Unencumbered Borrowing Base Property.

"***Unencumbered Borrowing Base Properties***" means, as of any date, a collective reference to each Real Property listed in the most recent Compliance Certificate delivered by the Borrower hereunder that meets the following criteria:

(i) such Real Property is, or is expected to be, a "luxury", "upper upscale", or "upscale" full or select service hotel located in the United States;

(ii) such Real Property is wholly-owned, directly or indirectly, by the Borrower or a Subsidiary of the Borrower in fee simple or ground leased pursuant to an Eligible Ground Lease (and such Real Property, whether owned in fee simple by the Borrower or a Subsidiary of the Borrower or ground leased pursuant to an Eligible Ground Lease, is leased to the applicable TRS);

(iii) if such Real Property is owned or ground leased pursuant to an Eligible Ground Lease by a Subsidiary of the Borrower, then (A) such Subsidiary is a Guarantor (unless such Subsidiary has been released as, or is not required to be, a Guarantor pursuant to the terms of ***Section 6.13***), (B) the Borrower directly or indirectly owns at least ninety percent (90%) of the issued and outstanding Equity Interests of such Subsidiary, and (C) such Subsidiary is controlled exclusively by the Borrower and/or one or more Wholly Owned Subsidiaries of the Borrower

(including control over operating activities of such Subsidiary and the ability of such Subsidiary to dispose of, grant Liens in, or otherwise encumber assets, incur, repay and prepay Indebtedness, provide Guarantees and make Restricted Payments, in each case without any requirement for the consent of any other Person);

(iv) such Real Property is free of any Liens (other than Permitted Liens of the types described in ***Sections 7.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)***, ***(g)***, ***(h)***, and ***(k)***) or Negative Pledges;

(v) such Real Property is free of all material title defects;

(vi) if such Real Property is subject to an Eligible Ground Lease, then there is no default by the lessee under the Eligible Ground Lease and such Eligible Ground Lease is in full force and effect;

(vii) such Real Property is free of all material structural defects;

(viii) such Real Property complies in all material respects with all applicable Environmental Laws and is not subject to any material Environmental Liabilities;

(ix) neither all nor any material portion of such Real Property is subject to any proceeding for the condemnation, seizure or appropriation thereof, nor the subject of negotiations for sale in lieu thereof;

(x) such Real Property has not otherwise been removed as an "Unencumbered Borrowing Base Property" pursuant to the provisions of this Agreement; and

(xi) the Borrower has executed and delivered to the Administrative Agent all documents and taken all actions reasonably required by the Administrative Agent to confirm the rights created or intended to be created under the Loan Documents and the Administrative Agent has received all other evidence and information that it may reasonably require;

provided that, if any Real Property does not meet all of the foregoing criteria, then, upon the request of the Borrower, such Real Property may be included as an "Unencumbered Borrowing Base Property" with the written consent of the Required Lenders.

"***United States***" and "***U.S.***" mean the United States of America.

"***Unreimbursed Amount***" has the meaning specified in ***Section 2.03(c)(i)***.

"***Unrestricted Cash***" means as of any date of determination, all cash of the Borrower on such date that (a) does not appear (or would not be required to appear) as "restricted" on a balance sheet of the Borrower, (b) is not subject to a Lien in favor of any Person other than Liens securing the Pari Passu Obligations on an equal and ratable basis and statutory Liens in favor of any depositary bank where such cash is maintained, (c) does not consist of or constitute "deposits" or sums legally held by the Borrower in trust for another Person, (d) is not subject to any contractual restriction or obligation regarding the payment thereof for a particular purpose (including insurance proceeds that are required to be used in connection with the repair, restoration or replacement of any property of the Borrower), and (e) is otherwise generally available for use by the Borrower.

"***Unsecured Indebtedness***" means all Indebtedness which is not Secured Debt.

"***Unsecured Interest Charges***" means, as of any date of determination, Consolidated Interest Charges on the Unsecured Indebtedness for the most recently ended Calculation Period.

"***Unsecured Leverage Increase Period***" has the meaning specified in ***Section 7.11(g)***.

"***US Bank Facility***" means the facility evidenced by that certain Amended and Restated Credit Agreement, dated as of the date hereof, among the Borrower, the Parent REIT, certain lenders party thereto, and U.S. Bank National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***US Bank Lessee Line of Credit***" means the facility evidenced by that certain ~~Third~~Fourth Amended and Restated Revolving Credit Note, dated as of the ~~Second~~Fourth Amendment Effective Date, among Pebblebrook Hotel Lessee, as maker, and U.S. Bank National Association, as payee (as the same may be amended, restated, modified or supplemented from time to time).

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

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

"***Waiver Period***" means the period commencing on the Second Amendment Effective Date and ending on the earlier to occur of (a) the date the Borrower is required to deliver a duly completed Compliance Certificate for the fiscal quarter ending June 30, ~~2021~~2022 pursuant to ***Section 6.02(a)*** (or, if earlier, the date on which the Borrower delivers such Compliance Certificate pursuant to ***Section 6.02(a)*** evidencing, to the Administrative Agent's reasonable satisfaction, the Borrower's compliance with the financial covenants contained in ***Section 7.11*** as of June 30, ~~2021~~2022) and (b) the date the Borrower delivers a Compliance Certificate in accordance with ***Section 6.02(a)*** with respect to any fiscal quarter ending after the Second Amendment Effective Date but prior to June 30, ~~2021~~2022 evidencing, to the Administrative Agent's reasonable satisfaction, the Borrower's compliance with the financial covenants contained in ***Section 7.11*** as of the last day of such fiscal quarter as if such covenants had applied for such quarter, together with a written notice to the Administrative Agent irrevocably electing to terminate the Waiver Period concurrently with such delivery.

"***Wholly Owned Subsidiary***" means, with respect to any direct or indirect Subsidiary of any Person, that one hundred percent (100%) of the Equity Interests with ordinary voting power issued by such Subsidiary (other than directors' qualifying shares and investments by foreign nationals mandated by Applicable Laws) is beneficially owned, directly or indirectly, by such Person.

"***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, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

(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).

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 and its Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(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); *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 and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any change to GAAP occurring after the Closing Date as a result of the adoption of any proposals set forth in the Proposed Accounting Standards Update, Leases (Topic 840), issued by the Financial Accounting Standards Board on August 17, 2010, or any other proposals issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) was not required to be so treated under GAAP as in effect on the Closing Date.

(c) **Financial Covenant Calculation Conventions**. Notwithstanding the above, the parties hereto acknowledge and agree that, for purposes of all calculations made under the financial covenants set forth in ***Section 7.11*** (including without limitation for purposes of the definitions of "Pro Forma Basis" set forth in ***Section 1.01***), (i) after consummation of any Disposition or removal of an Unencumbered Borrowing Base Property pursuant to ***Section 1.07*** (A) income statement items (whether income or expense) and capital expenditures attributable to the property disposed of or removed shall, to the extent not otherwise excluded in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in ***Section 1.01***, be excluded as of the first day of the applicable period and (B) Indebtedness which is retired shall be excluded and deemed to have been retired as of the first day of the applicable period and (ii) after consummation of any acquisition (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall, to the extent not otherwise included in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in ***Section 1.01***, be included to the extent relating to any period applicable in such calculations, (B) to the extent not retired in connection with such acquisition, Indebtedness of the Person or property acquired shall be deemed to have been incurred as of the first day of the applicable period, (iii) in connection with any incurrence of Indebtedness, any Indebtedness which is retired in connection with such incurrence shall be excluded and deemed to have been retired as of the first day of the applicable period and (iv) pro forma adjustments may be included to the extent that such adjustments would give effect to items that are (1) directly attributable to

the relevant transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the opinion of the Administrative Agent).

(d) **Consolidation of Variable Interest Entities**. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

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

1.05 **Times of Day; Rates**. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility, 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 "***Eurodollar Rate***" or with respect to any rate that is an alternative or replacement for or successor to any such rate or the effect of any of the foregoing.

1.06 **Letter of Credit Amounts**. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07 **Addition/Removal of Unencumbered Borrowing Base Properties.**

(a) The Unencumbered Borrowing Base Properties and the Eligible Ground Leases as of the Closing Date are listed on ***Schedule 5.23***.

(b) The Borrower may from time to time add an additional Real Property as an Unencumbered Borrowing Base Property in a Compliance Certificate delivered to the Administrative Agent in accordance with the terms of ***Section 6.03(e)***; *provided that* no Real Property shall be included as an Unencumbered Borrowing Base Property in any Compliance Certificate delivered to the Administrative Agent or in any calculation of any of the components of the financial covenants set forth in ***Section 7.11*** that refer to "Unencumbered Borrowing Base Properties" unless such Real Property satisfies the eligibility criteria set forth in the definition of "Unencumbered Borrowing Base Property."

(c) Notwithstanding anything contained herein to the contrary, to the extent any property previously-qualifying as an Unencumbered Borrowing Base Property ceases to meet the criteria for qualification as such, such property shall be immediately removed from all financial covenant related calculations contained herein. Any such property shall immediately cease to be an "Unencumbered Borrowing Base Property" hereunder and the Borrower shall provide a

Compliance Certificate to the Administrative Agent in accordance with the terms of ***Section 6.03(e)*** removing such Real Property from the list of Unencumbered Borrowing Base Properties.

(d) The Loan Parties may voluntarily remove any Unencumbered Borrowing Base Property from qualification as such (but only in connection with a proposed financing, sale or other Disposition otherwise permitted hereunder) by deleting such Unencumbered Borrowing Base Property in a Compliance Certificate delivered to the Administrative Agent in accordance with the terms of ***Section 6.03(e)***, if, and to the extent: (i) the Loan Parties shall, immediately following such removal, be in compliance (on a Pro Forma Basis) with all of the covenants contained in ***Section 7*** of this Agreement and (ii) no Default exists or would result therefrom. So long as no Default exists or would result therefrom, the Administrative Agent shall release any Subsidiary that owns any Unencumbered Borrowing Base Property that is being removed pursuant to this ***clause (d)*** from its obligations (accrued or unaccrued) under ***Section 11*** and the Administrative Agent shall promptly, and in any event within five (5) Business Days, execute a Release of Guarantor in the form of ***Exhibit H*** attached hereto if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal.

2. THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 **The Loans**.

(a) **The Term Borrowings**. Subject to the terms and conditions set forth herein, each Term Lender severally agrees to make a single loan to the Borrower on the Closing Date in an amount not to exceed such Term Lender's Applicable Percentage of the Term Facility. The Term Borrowings shall consist of Term Loans made simultaneously by the Term Lenders in accordance with their respective Applicable Percentage of the Term Facility. Amounts borrowed under this ***Section 2.01(a)*** and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) **The Revolving Credit Borrowings**. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a "***Revolving Credit Loan***") to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Credit Commitment; *provided, however*, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, *plus* such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, *plus* such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender's Revolving Credit Commitment. Within the limits of each Revolving Credit Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this ***Section 2.01(b)***, prepay under ***Section 2.05***, and reborrow under this ***Section 2.01(b)***. Revolving Credit Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

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

(a) Each Term Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (x) telephone or (y) 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 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans; *provided, however*, that if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one (1), two (2), three (3) or six (6) months in duration as provided in the definition of "*Interest Period*," the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four (4) Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three (3) Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Except as provided in ***Sections 2.03(c)*** and ***2.04(c)***, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Term Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Term Loans or Revolving Credit 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 Term Loans or Revolving Credit Loans shall be made as, or converted to, Eurodollar Rate Loans having an Interest Period of one (1) month. Any such automatic conversion to Eurodollar Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar 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. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a Eurodollar Rate Loan.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable Term Loans or Revolving Credit Loans, and 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 Eurodollar Rate Loans described in the preceding subsection. In the case of a Term Borrowing or a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in

immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in ***Section 4.02*** (and, if such Borrowing is the initial Credit Extension, ***Section 4.01***), the Administrative Agent shall make all funds so received available to the 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 Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, *first*, shall be applied to the payment in full of any such L/C Borrowings, and *second*, shall be made available to the Borrower as provided above.

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

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the 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 (i) all Term Borrowings, all conversions of Term Loans from one Type to the other, and all continuations of Term Loans as the same Type, and (ii) all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than eight (8) Interest Periods in effect with respect to the Term Facility and the Revolving Credit Facility.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or a 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.

2.03 **Letters of Credit.**

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

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this ***Section 2.03***, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of any Loan Party or any Subsidiary of the Borrower, and to amend Letters of Credit previously issued by it, in accordance with ***subsection (b)*** below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrower, any other

Loan Party, or any Subsidiary of the Borrower and any drawings thereunder; *provided that* after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (y) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, *plus* such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all L/C Obligations, *plus* such Revolving Credit Lender's Applicable Revolving Credit Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. 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.

(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 the requested Letter of Credit would occur more than twelve months after the date of issuance, unless all the Revolving Credit Lenders have approved such expiry date;

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless the Administrative Agent, L/C Issuer and each Revolving Credit Lender, each acting in its sole discretion, has approved in writing such expiry date; *provided that* such approval may be conditioned on such terms and conditions (including the posting of Cash Collateral or other collateral) as the Administrative Agent, L/C Issuer and each Revolving Credit Lender, each acting in its sole discretion, may determine; or

(C) a default of any Revolving Credit Lender's obligations to fund under ***Section 2.03(c)*** exists or any Revolving Credit Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into arrangements satisfactory to the L/C Issuer with the Borrower or such Revolving Credit Lender to eliminate the L/C Issuer's risk with respect to such Revolving Credit Lender; or

(D) the requested Letter of Credit is to be denominated in a currency other than Dollars.

(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 the Letter of Credit, or any Applicable Laws 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 the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of the 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, the Letter of Credit is in an initial stated amount less than $500,000;

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

(E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(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 the 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 the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in ***Section 9*** 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 ***Section 9*** 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 of the Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may 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 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 Credit Lender, the Administrative Agent, any Loan Party, or any Subsidiary of the Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in ***Section 4*** 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 Loan Party or Subsidiary of the Borrower) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage *times* the amount of such Letter of Credit.

(iii) 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-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-month period to be agreed upon 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 Credit 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; *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 Revolving Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit 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.

(c) **Drawings and Reimbursements; Funding of Participations**.

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

provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

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

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in ***Section 4.02*** cannot be satisfied or for any other reason, the 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 Credit Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to ***Section 2.03(c)(ii)*** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Revolving Credit Lender in satisfaction of its participation obligation under this ***Section 2.03***.

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

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this ***Section 2.03(c)***, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the L/C Issuer, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this ***Section 2.03(c)*** is subject to the conditions set forth in ***Section 4.02*** (other than delivery by the 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.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this ***Section***

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

(d) **Repayment of Participations**.

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

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

(e) **Obligations Absolute**. The obligation of the 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) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

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

(viii) 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, to the extent permitted by Applicable Laws, any such claim against the L/C Issuer and its correspondents with respect to any particular Letter of Credit unless such notice is given within five (5) Business Days after the issuance of such Letter of Credit or amendment thereto.

(f) **Role of L/C Issuer**. Each Revolving Credit 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 Credit Lender for (i) any

action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The 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 ***(viii)*** of ***Section 2.03(e)***; *provided, however*, that anything in ***clauses (i)*** through ***(viii)*** of ***Section 2.03(e)*** and this ***Section 2.03(f)*** 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 or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) **Applicability of ISP and UCP; Limitation of Liability**. Unless otherwise expressly agreed by the L/C Issuer and the Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to the Borrower for, and the L/C Issuer's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) **Letter of Credit Fees**. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage a Letter of Credit fee (the "***Letter of Credit Fee***") for each Letter of Credit equal to the Applicable Margin *times* the daily amount available to be drawn under such Letter of Credit; *provided, however*, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this ***Section 2.03*** shall be payable, to the maximum extent permitted by Applicable Laws, to the other Revolving Credit Lenders in

accordance with the upward adjustments in their respective Applicable Revolving Credit Percentages allocable to such Letter of Credit pursuant to ***Section 2.17(a)(iv)***, with the balance of such fee, if any, payable to the L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with ***Section 1.06***. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Margin during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) **Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer**. The Borrower shall, in connection with the issuance or extension (whether or not pursuant to an automatic extension) of each Letter of Credit, pay directly to the L/C Issuer for its own account a fronting fee for each Letter of Credit equal to the greater of (i) $1,500 and (ii) twelve and one-half basis points (0.125%) times the maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect with respect to such Letter of Credit). Such fronting fee shall be payable upon issuance or extension of the applicable Letter of Credit. For the purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with ***Section 1.06***. In addition to the foregoing, the Borrower shall pay directly to the L/C Issuer for its own account 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 as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) **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.

(k) **Letters of Credit Issued for Loan Parties Other than the Borrower and for Subsidiaries of the Borrower**. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, any Subsidiary of the Borrower or a Loan Party (other than the Borrower), 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 the Loan Parties or any Subsidiary of the Borrower inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Loan Parties and such Subsidiaries.

2.04 **Swing Line Loans.**

(a) **The Swing Line**. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Revolving Credit Lenders set forth in this ***Section 2.04***, shall make loans (each such loan, a "***Swing Line Loan***") to the Borrower from time to time on any Business Day during the Availability Period in Dollars in an aggregate

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

(b) **Borrowing Procedures**. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by (x) telephone or (y) a Swing Line Loan Notice; *provided that* any telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice. Each such Swing Line Loan Notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $250,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of ***Section 2.04(a)***, or (B) that one or more of the applicable conditions specified in ***Section 4*** is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower. The Swing Line Lender shall not be required to fund any Swing Line Loan to the extent any Lender is at such time a Defaulting Lender hereunder.

(c) **Refinancing of Swing Line Loans**.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Revolving Credit Lender's Applicable Revolving Credit Percentage

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

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

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this ***Section 2.04(c)*** by the time specified in ***Section 2.04(c)(i)***, the Swing Line Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this ***clause (iii)*** shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this ***Section 2.04(c)*** shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right

which such Revolving Credit Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this ***Section 2.04(c)*** is subject to the conditions set forth in ***Section 4.02***. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) **Repayment of Participations**.

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Swing Line Lender.

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

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

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

2.05 **Prepayments.**

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; *provided that* (i) such notice must be in a form reasonably acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 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) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). 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. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to ***Section 3.05***. Subject to ***Section 2.17***, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

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

(c) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, then the Borrower shall immediately prepay the Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess; *provided, however*, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this ***Section 2.05(c)*** unless after the prepayment in full of the Revolving Credit Loans and Swing Line Loans the Total Revolving Credit Outstandings exceed the Revolving Credit Facility at such time.

(d) During the Waiver Period, and subject to the terms of the Intercreditor Agreement, if any Consolidated Party makes any Disposition (other than Dispositions permitted by ***Section 7.05(b)(i)***, ***(ii)***, ***(iii)*** and ***(iv)***), issues any Equity Interests, or incurs any Indebtedness, the Borrower shall, within three (3) Business Days of (i) receipt by such Consolidated Party of the proceeds thereof or (ii) the date any Excess Un-Reinvested Proceeds no longer qualify as Excluded Net Proceeds, make a mandatory repayment of the Pari Passu Obligations in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds received in connection with such Disposition, such issuance of Equity Interests, or such Indebtedness, other than Excluded Net Proceeds.

(e) Each mandatory repayment of the Pari Passu Obligations required under ***clause (d)*** above shall be applied to such Pari Passu Obligations (including the Obligations) as set forth in the Intercreditor Agreement. The portion of such mandatory repayments to be applied to the Revolving Credit Facility in accordance with the Intercreditor Agreement shall be applied as follows: (i) *first*, to payment of that portion of the Total Revolving Credit Outstandings constituting the Outstanding Amount of Swing Line Loans, (ii) *second*, to payment of that portion of the Revolving Credit Outstandings constituting the Outstanding Amount of Revolving Credit

Loans ratably among the Revolving Credit Lenders in accordance with their Applicable Percentages, (iii) *third*, 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 hereunder, and (iv) *fourth*, the excess, if any, retained by the applicable Consolidated Party or applied to the other outstanding Pari Passu Obligations, in each case in accordance with the Intercreditor Agreement. The portion of such mandatory repayments to be applied to the Term Facility in accordance with the Intercreditor Agreement shall be applied to payment of the Outstanding Amount of Term Loans ratably among the Term Lenders in accordance with their Applicable Percentages. Cash Collateral provided pursuant to the foregoing ***clause (iii)*** shall be released promptly following the expiration of the Waiver Period; *provided, however*, that Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default.

2.06 **Termination or Reduction of Commitments**.

(a) **Optional**. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit; *provided* that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $10,000,000 or any whole multiple of $1,000,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit.

(b) **Mandatory**. If, after giving effect to any reduction of the Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Credit Facility, such Sublimit shall be automatically reduced by the amount of such excess.

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

2.07 **Repayment of Loans.**

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

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

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

2.08 **Interest.**

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

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

(ii) If any amount (other than principal of any Loan) payable by the 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, 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.

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

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after

judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 **Fees**

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

(a) **Revolving Unused Fees**. The Borrower shall, for each day during the term of this Agreement (i) on which there exist any Revolving Credit Commitments and (ii) that the Applicable Margin is determined pursuant to ***clauses (a)*** and ***(d)*** of the definition of Applicable Margin, pay to the Administrative Agent for the account of each Revolving Credit Lender holding a Revolving Credit Commitment (in accordance with such Lender's Applicable Revolving Credit Percentage thereof), an unused fee (the "***Revolving Unused Fee***") equal to the Revolving Unused Rate *times* the actual daily amount by which the Revolving Credit Facility exceeds the Outstanding Amount of Revolving Credit Loans (less the amount of any outstanding Swing Line Loans) as of such date, subject to adjustment as provided in ***Section 2.17***. The Revolving Unused Fee shall accrue at all times during the term of this Agreement at which there exist any Revolving Credit Commitments, including at any time during which one or more of the conditions in ***Section 5*** is not met. The Revolving Unused Fee shall be calculated for each calendar quarter in arrears, based on the applicable daily Revolving Unused Rate during each day of such calendar quarter or portion thereof and shall be due and payable on the fifth day of each January, April, July and October (or the next succeeding Business Day if such day is not a Business Day), commencing on January 5, 2018 (with such initial payment to include such fees commencing from the Closing Date), and on the Maturity Date with respect to the Revolving Credit Facility.

(b) **Facility Fee**. The Borrower shall, for each day during the term of this Agreement (i) on which there exist any Revolving Credit Commitments and (ii) that the Applicable Margin is determined pursuant to ***clause (b)*** of the definition of Applicable Margin, pay to the Administrative Agent for the account of each Revolving Credit Lender holding a Revolving Credit Commitment (in accordance with such Lender's Applicable Revolving Credit Percentage thereof), a facility fee equal to the Applicable Margin *times* the actual daily amount of the Revolving Credit Facility (or, if the Revolving Credit Facility terminated, on the actual daily Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and L/C Obligations), regardless of usage, subject to adjustment as provided in ***Section 2.17***. The facility fee shall accrue at all times during the Availability Period (and thereafter so long as any Revolving Credit Loans, Swing Line Loans or L/C Obligations remain outstanding), including at any time during which one or more of the conditions in ***Section 4*** is not met, and shall be due and payable quarterly in arrears on the fifth day of each January, April, July and October (or the next succeeding Business Day if such day is not a Business Day), and on the last day of the Availability Period (and, if applicable, thereafter on demand). The facility fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Margin during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Margin separately for each period during such quarter that such Applicable Margin was in effect.

(c) **Other Fees**.

(i) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee

Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Administrative Agent, for the account of the Lenders, such fees (if any) in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 **Computation of Interest and Fees; Retroactive Adjustments of Applicable Margin.**

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

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on 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 of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under ***Section 2.03(c)(iii)***, ***2.03(i)*** or ***2.08(b)*** or under ***Section 8***. The Borrower's obligations under this paragraph shall survive until the date that is one (1) year after the date of the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.11 **Evidence of Debt.**

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the 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 and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

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

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

(a) **General**. All payments to be made by the Borrower shall be made free and clear of and 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 immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. 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, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) **Clawback**.

(i) **Funding by Lenders; Presumption by Administrative Agent**. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with ***Section 2.02*** (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by ***Section 2.02***) and may, in reliance upon such assumption, make available to the 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 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, 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 Base Rate Loans. 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. 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 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 Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

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

(c) **Failure to Satisfy Conditions Precedent**. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this ***Section 2***, 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*** 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, with interest earned thereon at the Federal Funds Rate until returned.

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

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

2.13 **Sharing of Payments by Lenders**

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

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

(ii) the provisions of this ***Section*** 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 2.16***, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this ***Section*** shall apply).

2.14 **Extension of Maturity Date in Respect of Revolving Credit Facility.**

(a) **Initial Maturity Date.** Subject to extension pursuant to the terms and conditions set forth in ***clause (b)*** of this ***Section 2.14*** and subject to the provisions of ***clause (c)*** of this ***Section 2.14***, the Borrower shall, on January 15, 2022 (the "***Initial Maturity Date***"), cause (i) the

Obligations under the Revolving Credit Facility (including, without limitation, all outstanding principal and interest on the Revolving Credit Loans and Swing Line Loans) and (ii) all fees, costs and expenses due and owing under the Loan Documents to be Fully Satisfied.

(b) **Extended Maturity Date Option**. Not more than ninety (90) days and not less than sixty (60) days prior to the Initial Maturity Date, the Borrower may request in writing that the Revolving Credit Lenders extend the term of the Revolving Credit Facility to the First Extended Maturity Date so long as no Default exists at the time of such request. If the Initial Maturity Date is extended to the First Extended Maturity Date, then, not more than ninety (90) days and not less than sixty (60) days prior to the First Extended Maturity Date, the Borrower may request in writing that the Revolving Credit Lenders extend the term of the Revolving Credit Facility to the Second Extended Maturity Date so long as no Default exists at the time of such request. Each Revolving Credit Lender agrees that the Maturity Date with respect to the Revolving Credit Facility shall be extended following such a request from the Borrower subject to satisfaction of the following terms and conditions:

(i) no Default shall exist on the date of such extension and after giving effect thereto;

(ii) the Borrower shall, at the Initial Maturity Date and, if applicable, the First Extended Maturity Date pay to the Administrative Agent (for the pro rata benefit of each Revolving Credit Lender based on its respective Applicable Percentage as of such date) an extension fee equal to (A) seven and one-half basis points (0.075%), multiplied by (B) the Revolving Credit Exposure of all Revolving Credit Lenders as of such date and shall have paid all other outstanding fees, expenses or other amounts for which the Loan Parties are responsible hereunder; and

(iii) each Loan Party shall deliver to the Administrative Agent a certificate dated as of the Initial Maturity Date and, if applicable, the First Extended Maturity Date signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such extension and (B) certifying that, before and after giving effect to such extension, (1) the representations and warranties of such Loan Party contained in ***Section 5*** and the other Loan Documents are true and correct in all material respects on and as of the Initial Maturity Date or the First Extended Maturity Date, as applicable, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this ***Section 2.14***, 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) no Default exists.

(c) **Notification by Administrative Agent**. The Administrative Agent shall notify the Borrower and each of the Revolving Credit Lenders of the effectiveness of any extension pursuant to this ***Section 2.14***.

(d) **Satisfaction of Obligations Upon Acceleration.** Notwithstanding anything contained herein or in any other Loan Document to the contrary, to the extent any of the Obligations are accelerated pursuant to the terms hereof (including, without limitation, ***Section***

8.02) or of any other Loan Document, the Borrower shall, immediately upon the occurrence of such acceleration, cause such accelerated Obligations to be Fully Satisfied.

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

2.15 **Increase in Total Credit Exposure.**

(a) **Request for Increase**. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may, from time to time, request an increase in the Total Credit Exposure of all Lenders (which increase may take the form of additional Revolving Credit Commitments under the Revolving Credit Facility, an increase to the Term Facility, or one or more additional term loan tranches) by an amount (for all such requests) not exceeding $500,000,000; *provided that* any such request for an increase shall be in a minimum amount of $10,000,000 and, if greater than $10,000,000, in whole increments of $1,000,000 in excess thereof, unless the Administrative Agent and the Borrower agree otherwise; *provided*, *further*, that, after giving effect to such increase, the Total Credit Exposure of all Lenders shall not exceed $1,250,000,000 less the amount of any prepayments of the Outstanding Amount of the Term Facility. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders).

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

(c) **Notification by Administrative Agent; Additional Lenders**. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent, the L/C Issuer and the Swing Line Lender (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.

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

(e) **Conditions to Effectiveness of Increase**. As a condition precedent to such increase, (i) the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting

to such increase, and (y) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in ***Section 5*** and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this ***Section 2.15***, the representations and warranties contained in ***subsections (a)*** and ***(b)*** of ***Section 5.05*** shall be deemed to refer to the most recent statements furnished pursuant to ***clauses (a)*** and ***(b)***, respectively, of ***Section 6.01***, and (B) no Default exists or would result therefrom, and (ii)(x) upon the reasonable request of any Lender made at least ten (10) days prior to the Increase Effective Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested 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 three (3) days prior to the Increase Effective Date and (y) at least three (3) days prior to the Increase Effective Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party. To the extent that the increase of the Commitments shall take the form of a new term loan tranche, this Agreement shall be amended, in form and substance satisfactory to the Administrative Agent, to include such terms as are customary for a term loan commitment. The Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to ***Section 3.05***) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Total Credit Exposure of any Lender under this ***Section***, and each Loan Party shall execute and deliver such documents or instruments as the Administrative Agent may require to evidence such increase in the Total Credit Exposure of any Lender and to ratify each such Loan Party's continuing obligations hereunder and under the other Loan Documents.

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

2.16 **Cash Collateral.**

(a) **Certain Credit Support Events**. If (i) 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, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrower shall be required to provide Cash Collateral pursuant to ***Section 8.02***, or (iv) there shall exist a Defaulting Lender, the Borrower shall immediately (in the case of ***clause (iii)*** above) or within one (1) Business Day (in all other cases) following any request by the Administrative Agent, the L/C Issuer or the Swing Line Lender, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to ***clause (iv)*** above, after giving effect to ***Section 2.17(a)(iv)*** and any Cash Collateral provided by the Defaulting Lender).

(b) **Grant of Security Interest**. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting 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 Lenders (including the Swing Line 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 2.16(c)***. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) **Application**. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this ***Section 2.16*** or ***Sections 2.03***, ***2.04***, ***2.05***, ***2.17*** or ***8.02*** in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) **Release**. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with ***Section 10.06(b)(vi)***)) or (ii) the good faith determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; *provided, however*, that (x) Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default (and following application as provided in this ***Section 2.16*** may be otherwise applied in accordance with ***Section 8.03***), and (y) the Person providing Cash Collateral and the L/C Issuer or the Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.17 **Defaulting Lenders.**

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

(i) **Waivers and Amendments**. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "***Required Lenders***" and ***Section 10.01***.

(ii) **Defaulting Lender Waterfall**. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to ***Section 8*** or otherwise) or received by the Administrative Agent from a 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 such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or the Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with ***Section 2.16***; *fourth*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with ***Section 2.16***; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or the Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default 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 were made or the related Letters of Credit were issued 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 Obligations 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 Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to ***Section 2.17(a)(iv)***. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this ***Section 2.17(a)(ii)*** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees**.

(A) No Defaulting Lender shall be entitled to receive any fee payable under ***Section 2.09(a)*** for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender). Each Defaulting Lender shall be entitled to receive fees payable under ***Section 2.09(b)*** for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the outstanding principal amount of the Revolving Credit Loans funded by it, and (2) its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to this Agreement.

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Revolving Credit Percentage of the stated amount of Letters of Credit for which such Defaulting Lender has provided Cash Collateral pursuant to this Agreement.

(C) With respect to any fee payable under ***Section 2.09(b)*** or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to ***clause (A)*** or ***(B)*** above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to ***clause (iv)*** below, (y) pay to the L/C Issuer and the Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or the Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) **Reallocation of Applicable Percentages to Reduce Fronting Exposure**. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Revolving Credit Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. Subject to ***Section 10.22***, 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.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in ***clause (a)(iv)*** above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under Applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in ***Section 2.16***.

(b) **Defaulting Lender Cure**. If the Borrower, the Administrative Agent, the Swing Line Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to ***Section 2.17(a)(iv)***), whereupon such Lender will cease to be a Defaulting Lender; *provided that* no adjustments will be made retroactively with respect to fees accrued or payments made by or on

behalf of the Borrower while that Lender was a Defaulting Lender; and *provided*, *further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

3. TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) **Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes**.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to ***subsection (e)*** below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code 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 ***subsection (e)*** below, (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, 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 applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any Applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Applicable Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to ***subsection (e)*** below, (B) such Loan Party or the Administrative Agent, to the extent required by such Applicable Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified 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 applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) **Payment of Other Taxes by the Borrower**. Without limiting the provisions of ***subsection (a)*** above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) **Tax Indemnifications**.

(i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this ***Section 3.01***) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender 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. The Borrower shall, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to ***Section 3.01(c)(ii)*** below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (y) the Administrative Agent and the Borrower, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of ***Section 10.06(d)*** relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Borrower, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or the Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes 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)***.

(d) **Evidence of Payments**. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this ***Section 3.01***, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Applicable Laws to report such

payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) **Status of Lenders; Tax Documentation**.

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

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

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

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

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

or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" Article of such tax treaty;

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

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

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in *Section 1471(b)* or *1472(b)* of the 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 (D)***, "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Obligations as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation *Section 1.1471-2(b)(2)(i)*.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this ***Section 3.01*** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the 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 any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this ***Section 3.01***, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this ***Section 3.01*** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this ***subsection***, in no event will the applicable Recipient be required to pay any amount to the Borrower pursuant to this ***subsection*** the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This ***subsection*** shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) **Survival**. Each party's obligations under this ***Section 3.01*** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 **Illegality**. If any Lender determines that any Applicable Laws have made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain, fund or charge interest with respect to any Credit Extension, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender

to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make, maintain, fund or charge interest with respect to any such Credit Extension or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) 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 Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 **Inability to Determine Rates**.

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to this ***clause (i)***, "***Impacted Loans***"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, 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, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in ***clause (i)*** of ***Section 3.03(a)***, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under ***clause (i)*** of the first sentence of ***Section 3.03(a)***, (ii) the Administrative Agent or 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 (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

3.04 **Increased Costs; Reserves on Eurodollar 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, any Lender (except any reserve requirement contemplated by ***Section 3.04(e)***) or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in ***clauses (b)*** through ***(d)*** of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

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

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the 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, 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 requirements or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such

Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the 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.

(c) **Certificates for Reimbursement**. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in ***subsection (a)*** or ***(b)*** of this ***Section 3.04*** and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests**. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this ***Section 3.04*** shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, *provided that* the Borrower shall not be required to compensate 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 nine (9) months prior to the date that 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 such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Reserves on Eurodollar Rate Loans**. The Borrower shall pay to each Lender, 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 Eurodollar Rate 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), which 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 from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

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 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; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to ***Section 10.13***;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

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 Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06 **Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office**. Each Lender may make any Credit Extension to the Borrower through any Lending Office; *provided that* the exercise of this option shall not affect the obligation of the Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under ***Section 3.04***, or requires the Borrower to pay any Indemnified Taxes or additional amounts 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, at the request of Borrower, 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 Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to ***Section 3.01*** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with ***Section 3.06(a)***, the Borrower may replace such Lender in accordance with ***Section 10.13***.

3.07 **Survival**. All of the Borrower's obligations under this ***Section 3*** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

4. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 **Conditions of Initial Credit Extension**. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Borrower to be true and correct as of the Closing Date and such other documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of the Loan Parties is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;

(v) a favorable opinion of Honigman Miller Schwartz and Cohn LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may request;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in ***Sections 4.02(a)***, ***(b)*** and ***(c)*** have been satisfied**,** (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in

the aggregate, a Material Adverse Effect; and (C) a calculation of the Consolidated Leverage Ratio as of the last day of the fiscal quarter of the Borrower ended on June 30, 2017;

(viii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of the Borrower ended on June 30, 2017, signed by a Responsible Officer of the Borrower;

(ix) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(x) a certificate executed by a Responsible Officer of the Borrower as of the Closing Date, in form and substance satisfactory to the Administrative Agent, regarding the Solvency of (A) the Borrower, (B) each of the other Loan Parties, and (C) the Consolidated Parties on a consolidated basis; and

(xi) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(b) Any fees required to be paid hereunder or under the Fee Letters on or before the Closing Date shall have been paid (provided such fees may be paid from the proceeds of such initial Credit Extension).

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute 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).

(d) The representations and warranties of the Borrower and each other Loan Party contained in ***Section 5*** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the Closing Date.

(e) No Default shall exist, or would result from, such proposed Credit Extension or from the application of the proceeds thereof.

(f) There shall not have occurred any event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(g) The absence of any condition, circumstance, action, suit, investigation or proceeding pending or, to the knowledge of the Borrower and/or Guarantors, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(h) The Parent REIT and the Borrower shall have entered into (i) the US Bank Facility, the PNC Facility, the Capital One Facility and the US Bank Lessee Line of Credit and (ii) a conforming amendment to the Senior Notes, each in form and substance reasonably satisfactory to the Administrative Agent.

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, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 **Conditions to all Credit Extensions**. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in ***Section 5*** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, 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, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Assuming the effectiveness of the requested Credit Extension, the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility.

(d) The Borrower shall be in compliance (on a Pro Forma Basis taking into account the applicable Credit Extension) with the financial covenants set forth in ***Section 7.11***.

(e) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(f) All of the conditions precedent set forth in ***Section 4.01*** shall have been satisfied on or prior to date of such requested Credit Extension.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in ***Sections 4.02(a)***, ***(b)*** and ***(c)*** have been satisfied on and as of the date of the applicable Credit Extension.

5. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 **Existence, Qualification and Power**. Each Consolidated Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Applicable Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Applicable 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 (b)(i)*** or ***(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 such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, except in each case, to the extent such violation, breach, Lien or payment could not reasonably be expected to have a Material Adverse Effect, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Applicable Laws.

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.

5.04 **Binding Effect**. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.05 **Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Consolidated Parties, on a consolidated basis, 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 indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of the date thereof, including liabilities for taxes,

commitments and Indebtedness, that in each case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Consolidated Parties.

(b) The unaudited consolidated balance sheets of the Consolidated Parties dated June 30, 2017, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Consolidated Parties 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. Except as otherwise set forth on ***Schedule 5.05***, such financial statements set forth all indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of June 30, 2017, including liabilities for taxes, commitments and Indebtedness, that in each case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Consolidated Parties.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) The consolidated pro forma balance sheets of the Consolidated Parties as of June 30, 2017, and the related consolidated pro forma statements of income and cash flows of the Consolidated Parties for the three (3) months then ended, certified by the chief financial officer or treasurer of the Borrower, copies of which have been furnished to each Lender, fairly present the consolidated pro forma financial condition of the Consolidated Parties as at such date and the consolidated pro forma results of operations of the Consolidated Parties for the period ended on such date, all in accordance with GAAP.

5.06 **Litigation**. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Responsible Officer of any Consolidated Party after due and diligent investigation, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Consolidated Party or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in ***Schedule 5.06***, if determined adversely, could (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, and there has been no material adverse change in the status of, or the financial effect on, any Consolidated Party with respect to the matters described on ***Schedule 5.06***.

5.07 **No Default**. No Consolidated Party is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default exists or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 **Ownership of Property; Liens; Investments.**

(a) Each Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, each of the Unencumbered Borrowing Base Properties and/or all other real property necessary or used in the ordinary conduct of its business, except for such defects in title

as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party is subject to no Liens, other than Liens set forth on ***Schedule 5.08(b)*** and Liens permitted by ***Section 7.01***.

(c) ***Schedule 5.08(c)*** sets forth a complete and accurate list of all Investments held by any Consolidated Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

5.09 **Environmental Compliance.**

(a) The Consolidated Parties conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Laws on their respective businesses, operations and Real Properties, and as a result thereof the Consolidated Parties have reasonably concluded that, except as specifically disclosed in ***Schedule 5.09***, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in ***Schedule 5.09*** and except as would not reasonably be expected to have a Material Adverse Effect, (i) none of the real properties currently or to the knowledge of any Responsible Officer of any Consolidated Party, formerly owned or operated by any Consolidated Party, is listed or, to the knowledge of any Responsible Officer of any Consolidated Party, proposed for listing on the United States Environmental Protection Agency's (EPA) National Priorities List or on the EPA Comprehensive Environmental Response, Compensation, and Liability Information Sharing database or any analogous state or local list, nor to the knowledge of any Responsible Officer of any Consolidated Party is any adjacent property on such list, (ii) no Consolidated Party has operated and, to the knowledge of any Responsible Officer of any Consolidated Party, there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been transported, treated, stored or disposed on any Real Property currently owned or operated by any Consolidated Party or, to the knowledge of any Responsible Officer of any Consolidated Party, on any real property formerly owned or operated by any Consolidated Party, (iii) or to the knowledge of any Responsible Officer of any Consolidated Party, there is no friable asbestos or asbestos-containing material on any Real Property currently owned or operated by any Consolidated Party, and (iv) Hazardous Materials have not been transported, released, discharged or disposed of on any real property currently or formerly owned or operated by any Consolidated Party.

(c) Except as otherwise set forth on ***Schedule 5.09***, no Consolidated Party is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Laws; and to the knowledge of the Responsible Officers of the Consolidated Parties all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any real property currently or formerly owned or operated by any Consolidated Party have been disposed of in a manner not reasonably expected to result in a Material Adverse Effect.

(d) Except as otherwise set forth on ***Schedule 5.09***, each of the Unencumbered Borrowing Base Properties and, to the knowledge of the Responsible Officers of the Loan Parties, all operations at such Unencumbered Borrowing Base Properties are in compliance with all Environmental Laws in all material respects, there is no material violation of any Environmental Laws with respect to such Unencumbered Borrowing Base Properties or, to the knowledge of any Responsible Officer of any Loan Party, the businesses operated thereon, and there are no conditions relating to such Unencumbered Borrowing Base Properties or the businesses that could reasonably be expected to result in a Material Adverse Effect.

(e) Except as otherwise set forth on ***Schedule 5.09***, none of the Unencumbered Borrowing Base Properties contains, or to the knowledge of any Responsible Officer of any Loan Party has previously contained, any Hazardous Materials at, on or under such Unencumbered Borrowing Base Properties in amounts or concentrations that constitute or constituted a violation of Environmental Laws that could have a Material Adverse Effect.

(f) Except as otherwise set forth on ***Schedule 5.09***, no Loan Party has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding Hazardous Materials or compliance with Environmental Laws with regard to any of its Unencumbered Borrowing Base Properties or the businesses located thereon, nor does any Responsible Officer of any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(g) No Consolidated Party is subject to any judicial proceeding or governmental or administrative action and, to the knowledge of the Responsible Officers of the Consolidated Parties, no such proceeding or action is threatened in writing, under any Environmental Laws that could reasonably be expected to give rise to a Material Adverse Effect, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Laws with respect to the Consolidated Parties, the Unencumbered Borrowing Base Properties or, to the knowledge of any Responsible Officer of any Consolidated Party, the businesses located thereon that could be reasonably expected to give rise to a Material Adverse Effect.

5.10 **Insurance**. The properties of the Consolidated Parties are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Consolidated Party operates. The insurance coverage of the Consolidated Parties with respect to the Unencumbered Borrowing Base Properties as of the Closing Date is outlined as to carrier, policy number, expiration date, type and amount on ***Schedule 5.10***.

5.11 **Taxes**. The Consolidated Parties have filed all Federal and state income and other material tax returns and reports required to be filed, and have paid all Federal and state income and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Consolidated Party that would, if made, have a Material Adverse Effect. No Consolidated Party nor any Subsidiary thereof is party to any tax sharing agreement; *provided, however*, that any tax protection agreement entered into with a contributor of property to a Consolidated Party (but only to the extent the indemnity or other

obligation to such contributor under such tax protection agreement is limited to any capital gains tax that would be due upon a sale or other Disposition of such contributed property and either (i) is limited to an amount that does not exceed one percent (1%) of the total assets of such Consolidated Party or (ii) exceeds one percent (1%) but less than five percent (5%) of the total assets of such Consolidated Party but which indemnity is only triggered by a sale or other Disposition of such contributed property) shall not be considered a tax sharing agreement.

5.12 **ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws, except to the extent that the failure to so comply would result in, or could reasonably be expected to result in, a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under *Section 401(a)* of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under *Section 401(a)* of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under *Section 501(a)* of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Consolidated Party, nothing has occurred that would prevent or cause the loss of the tax-qualified status of any such Pension Plan.

(b) There are no pending or, to the best knowledge of each Consolidated 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, and neither the Consolidated Parties nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) there has been no failure to satisfy the minimum funding standard applicable to a Pension Plan under *Section 412* of the Code and *Section 302* of ERISA for any plan year, and no waiver of the minimum funding standards applicable to a Pension Plan under *Section 412* of the Code and *Section 302* of ERISA for any plan year has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in *Section 430(d)(2)* of the Code) is sixty percent (60%) or higher and neither the Consolidated Parties nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such Pension Plan to drop below sixty percent (60%) as of the most recent valuation date; (iv) neither the Consolidated Parties nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Consolidated Parties nor any ERISA Affiliate has engaged in a transaction that could be subject to *Section 4069* or *Section 4212(c)* of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Consolidated Parties nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than those listed on ***Schedule 5.12(d)*** hereto.

(e) Neither the Borrower nor any of its Subsidiaries is (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to Section 4975 of the Code, (iii) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (iv) a "governmental plan" within the meaning of ERISA.

5.13 **Subsidiaries; Equity Interests**. The corporate capital and ownership structure of the Consolidated Parties is as described in ***Schedule 5.13(a)*** (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof). Set forth on ***Schedule 5.13(b)*** is a complete and accurate list (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof) with respect to each Consolidated Party of (i) jurisdiction of organization, (ii) number of ownership interests (if expressed in units or shares) of each class of Equity Interests outstanding, (iii) number and percentage of outstanding ownership interests (if expressed in units or shares) of each class owned (directly or indirectly) by the Parent REIT, the Borrower and their Subsidiaries, (iv) all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto and (v) an identification of which such Consolidated Parties are Guarantors hereunder and which Unencumbered Borrowing Base Properties are owned by each such Loan Party. The outstanding Equity Interests of the Consolidated Parties are, to the extent applicable depending on the organizational nature of such Person, validly issued, fully paid and non-assessable and are owned by the Parent REIT, the Borrower or a Subsidiary thereof (as applicable), directly or indirectly, in the manner set forth on ***Schedule 5.13(b)***, free and clear of all Liens (other than Permitted Liens or, in the case of the Equity Interests of the Loan Parties, statutory Liens or Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement). Other than as set forth in ***Schedule 5.13(b)*** (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof), no Consolidated Party (other than the Parent REIT) has outstanding any securities convertible into or exchangeable for its Equity Interests nor does any such Consolidated Party have outstanding any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to its Equity Interests. The copy of the Organization Documents of each Loan Party provided pursuant to ***Section 4.01(a)(iv)*** is a true and correct copy of each such document as of the Closing Date, each of which is valid and in full force and effect.

5.14 **Margin Regulations; Investment Company Act.**

(a) The Consolidated Parties are not engaged and will not engage, principally or as one of their 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) None of the Consolidated Parties nor any Person Controlling such Consolidated Parties is required to be registered as an "*investment company*" under the Investment Company Act of 1940.

5.15 **Disclosure**. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any other Consolidated Party is subject, and all other matters known to any Responsible Officer of any Consolidated Party (other than matters of a general economic nature), that, individually or in the aggregate, could reasonably be expected

to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Consolidated Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided that*, with respect to projected financial information, the Consolidated Parties represent only that such information was prepared in good faith based upon assumptions believed by the Consolidated Parties to be reasonable at the time (it being recognized by the Lenders that projections as to future events are not to be viewed as facts and that actual results may differ).

5.16 **Compliance with Laws**. Each Consolidated Party thereof is in compliance in all material respects with the requirements of all Applicable 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 Applicable Laws or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 **Taxpayer Identification Number**. The Borrower's true and correct U.S. taxpayer identification number is set forth on ***Schedule 10.02***.

5.18 **Intellectual Property; Licenses, Etc**. The Borrower and the other Consolidated Parties 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. To the knowledge of any Responsible Officer of any Consolidated 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 or any other Consolidated Party infringes upon any rights held by any other Person, except for such infringements that would not have a Material Adverse Effect. Except as specifically disclosed in ***Schedule 5.18***, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of any Responsible Officer of any Consolidated Party, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.19 **Solvency**. (a) As of the Closing Date and immediately prior to the initial Credit Extension, the Borrower is Solvent, each other Loan Party is Solvent, and the Consolidated Parties, on a consolidated basis, are Solvent, (b) as of the date and immediately prior to each Subsidiary becoming a Guarantor pursuant to ***Section 6.12***, such Subsidiary is Solvent, and (c) following the initial Credit Extension, the Borrower is Solvent, each other Loan Party is Solvent, and the Consolidated Parties, on a consolidated basis, are Solvent if the contribution rights that each such party will have against such other parties and the subrogation rights that each such party may have, if any, against the Borrower are taken into account.

5.20 **Casualty, Etc**. None of the Unencumbered Borrowing Base Properties have been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.21 **Labor Matters**. As of the Closing Date, there are no collective bargaining agreements or Multiemployer Plans covering the employees of any Consolidated Party or any of their Subsidiaries. No Consolidated Party or any of their Subsidiaries has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last year, which could (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

5.22 **REIT Status**. The Parent REIT is qualified as a REIT and the Borrower is qualified as a REIT, a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS, and each of their Subsidiaries that is a corporation is either a TRS or a QRS. As of the Closing Date, the Subsidiaries of the Parent REIT and the Borrower that are taxable REIT subsidiaries, as such term is used in the Code, are identified on ***Schedule 5.22***.

5.23 **Unencumbered Borrowing Base Properties**. Each Unencumbered Borrowing Base Property listed in each Compliance Certificate delivered by the Borrower to the Administrative Agent in accordance with the terms of this Agreement fully qualifies as an Unencumbered Borrowing Base Property as of the date of such Compliance Certificate.

5.24 **OFAC**. Neither the Parent REIT, nor any of its Subsidiaries, nor, to the knowledge of the Parent REIT and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

5.25 **Anti-Corruption Laws**. The Parent REIT and its Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.26 **Affected Financial Institutions**. Neither the Parent REIT, nor any of its Subsidiaries, is an Affected Financial Institution.

5.27 **Covered Entities**. No Loan Party is a Covered Entity.

6. **AFFIRMATIVE COVENANTS**. So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall not be Fully Satisfied, or any Letter of Credit shall remain outstanding, the Borrower shall, and shall cause each Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable) to:

6.01 **Financial Statements**. Deliver to the Administrative Agent, for distribution to the Lenders:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Parent REIT (commencing with the fiscal year ended December 31, 2017), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in 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 (i) certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties in accordance with GAAP, and (ii) audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and 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; and

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Parent REIT (commencing with the fiscal quarter ended September 30, 2017), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and the related consolidated of changes in shareholders' equity, and cash flows for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties 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(c)***, 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)*** or ***(b)*** above at the times specified therein.

6.02 **Certificates; Other Information**. Deliver to the Administrative Agent (for distribution of the same to each Lender):

(a) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), and (ii) a profit and loss summary showing the operating condition for each of the Unencumbered Borrowing Base Properties (in form and with such detail as is reasonably satisfactory to the Administrative Agent);

(b) if a Default exists, promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Consolidated Party by independent accountants in connection with the accounts or books of any Consolidated Party, or any audit of any of them, subject to applicable professional guidelines;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the shareholders of the Parent REIT, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or the Parent REIT 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;

(d) promptly after the furnishing thereof, copies of any report furnished to any holder of debt securities of any Loan Party (or any Subsidiary thereof if such debt securities are recourse (other than customary non-recourse carve outs) to such Loan Party) pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to ***Section 6.01*** or any other clause of this ***Section 6.02***;

(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 or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(f) not later than five (5) Business Days after receipt thereof by any Loan Party, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement regarding or related to any breach or default by any party thereto or any other event that could materially impair the value of the interests or the rights of any Loan Party or otherwise have a Material Adverse Effect and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may request;

(g) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party with respect to an Unencumbered Borrowing Base Property with any Environmental Laws that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any Unencumbered Borrowing Base Property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Laws;

(h) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, an update to ***Schedules 5.06***, ***5.09***, ***5.12(d)*** or ***5.13(a)*** or ***(b)*** to the extent the information provided by any such schedules has changed since the most recent update thereto; *provided that* the Borrower shall, promptly upon the Administrative Agent's written request therefor, provide any information or materials requested by the Administrative Agent to confirm or evidence the matters reflected in such updated schedules;

(i) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, copies of Smith Travel Research (STR Global) summary STAR Reports for each Unencumbered Borrowing Base Property for the fiscal quarter to which such financial statements relate;

(j) promptly, of any change in any public or private Debt Rating;

(k) annually, on or before December 31, written evidence of the current Debt Ratings by any of Moody's, S&P and/or Fitch, if such rating agency has provided to the Parent REIT or the Borrower a private debt rating, which evidence shall be reasonably acceptable to the Administrative Agent;

(l) promptly following any request therefor, provide 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;

(m) not later than seven (7) Business Days after the last Business Day of each month during the Waiver Period, a Liquidity Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Parent REIT (which delivery may, unless the Administrative Agent requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), together with documentation reasonably satisfactory to the Administrative Agent to verify the calculations set forth in such certificate; and

(n) promptly, such additional information regarding the business, financial or corporate affairs of the Loan Parties or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to ***Section 6.01(a)*** or ***(b)*** or ***Section 6.02(c)*** (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 posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on ***Schedule 10.02***; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided that*: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent upon its request (either in its discretion or at the direction of the Required Lenders) to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and 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 of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "***Borrower Materials***") by posting Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "***Platform***") and (b) certain of the Lenders (each, a "***Public Lender***") may have personnel who do not wish to receive material non-public information with respect to the Borrower 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 hereby agrees that

(w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower 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 Side Information;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

6.03 **Notices**. Promptly notify the Administrative Agent (who shall promptly notify each Lender):

(a) of the occurrence of any Default;

(b) of (i)(A) any breach or non-performance of, or any default under, a material Contractual Obligation of any Loan Party; (B) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party, including pursuant to any Environmental Laws; or (C) any other matter, which, in the case of any of ***clause (A)***, ***(B)*** or ***(C)***, individually or in the aggregate, has resulted in or could reasonably be expected to result in a Material Adverse Effect; and (ii) any material written dispute or any material litigation, investigation, proceeding or suspension between the Borrower or any Loan Party and any Governmental Authority;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party, including any determination by the Borrower referred to in ***Section 2.10(b)***;

(e) of any voluntary addition or removal of an Unencumbered Borrowing Base Property or other event or circumstance that results in a Real Property previously qualifying as an Unencumbered Borrowing Base Property ceasing to qualify as such; *provided that* such notification shall be accompanied by an updated Compliance Certificate with calculations showing the effect of such addition or removal on the financial covenants contained herein; and

(f) of any adverse changes to any insurance policy obtained by any Loan Party with respect to or in connection with any Unencumbered Borrowing Base Property in accordance with ***Section 6.15***, including, without limitation, any reduction in the amount or scope of coverage or any increase in any deductible or other self-retention amount thereunder.

Each notice pursuant to this ***Section 6.03*** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein (including, in the case of any notice pursuant to ***Section 6.03(a)***, a description of any and all provisions of this Agreement and any other Loan Document that the Responsible Officers of the Borrower believe have been breached) and stating what action the Borrower has taken and proposes to take with respect thereto.

6.04 **Payment of Obligations**. Pay and discharge as the same shall become due and payable, all of its material obligations and liabilities, including (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Consolidated Parties; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, unless the same are being contested in good faith by appropriate proceedings diligently conducted (the commencement and continuation of which proceedings shall suspend the collection of any such contested amount from such Consolidated Party, and suspend the enforcement thereof against, the applicable property), and adequate reserves in accordance with GAAP are being maintained by such Consolidated Party and, as to any Loan Party, such claims are bonded (to the extent requested by the Administrative Agent).

6.05 **Preservation of Existence, Etc**. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization except in a transaction permitted by ***Section 7.04*** or ***7.05***; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 **Maintenance of Properties**. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty (as to which insurance satisfying the criteria hereunder was maintained at the time of such casualty) excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07 **Maintenance of Insurance**. Maintain with financially sound and reputable insurance companies not Affiliates of any Consolidated Party, insurance with respect to the properties and business of the Consolidated Parties against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and, in the case of insurance maintained by the Loan Parties, providing for not less than thirty (30) days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance.

6.08 **Compliance with Laws and Contractual Obligations**. Comply in all material respects with the requirements of all Applicable Laws, all Contractual Obligations 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 Applicable Laws, Contractual Obligation 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 each Consolidated Party.

6.10 **Inspection Rights**

. Permit representatives of the Administrative Agent to visit and inspect any property of any Loan Party, 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 may, if it so chooses, be present at or may participate in any such discussions), at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to such Loan Party with the costs and expenses of the Administrative Agent being for its own account if no Event of Default then exists; *provided, however*, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 **Use of Proceeds**. Use the proceeds of the Credit Extensions for working capital, capital expenditures and other general corporate purposes (including, without limitation, property acquisitions and Restricted Payments not prohibited under ***Section 7.06***) not in contravention of any Applicable Laws or of any Loan Document.

6.12 **Additional Guarantors**. Unless such Subsidiary is not required to become a Guarantor pursuant to ***Section 6.13***, notify the Administrative Agent at the time that any Person becomes a Subsidiary of the Borrower, another Loan Party or any Intermediate REIT (other than, in each case, a Non-Guarantor Subsidiary), and promptly thereafter (and in any event on the earlier to occur of (a) the date on which such Person Guarantees any other Specified Debt or (b) concurrently with the delivery of each Compliance Certificate pursuant to ***Section 6.02(a)***, or such later date as the Administrative Agent may agree in writing), cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a counterpart of this Agreement, a Joinder Agreement, a Guarantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), a Grantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), or such other document as the Administrative Agent shall deem appropriate for such purpose, and (ii) deliver to the Administrative Agent documents of the types referred to in ***Section 4.01(a)(iii)***, ***4.01(a)(iv)***, ***4.01(a)(vi)*** and ***4.01(a)(vii)***, together with a favorable opinion of counsel of such Person, all such documentation and opinion to be in form, content and scope reasonably satisfactory to the Administrative Agent.

6.13 **Release of Guarantors**. At any time after the later of (a) the expiration of the Waiver Period or (b) the Collateral Release Date, if applicable, if the Parent REIT achieves at least two (2) Investment Grade Ratings, then, at the written request of the Borrower, the Guarantors (other than the Parent REIT) shall be released and discharged from all obligations (accrued or unaccrued) hereunder (other than those that expressly survive termination hereof), *provided that* any Subsidiary of the Borrower, another Loan Party or any Intermediate REIT (other than, in each case, a Non-Guarantor Subsidiary) that (a) owns or ground leases any Real Property that qualifies as an Unencumbered Borrowing Base Property and (b) is liable for any recourse Indebtedness (whether secured or unsecured, and including any guarantee obligations in respect of indentures or otherwise) shall nonetheless be required to be a Guarantor hereunder in order for each Real Property owned or ground leased by such Subsidiary to be treated as an Unencumbered Borrowing Base Property.

6.14 **Further Assurances**. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution or acknowledgment thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the

Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

6.15 **Additional Insurance Requirements for Unencumbered Borrowing Base Properties.**

(a) Obtain and maintain, with respect to each Unencumbered Borrowing Base Property (or cause the applicable TRS that is party to any Lease regarding each such Unencumbered Borrowing Base Property to obtain and maintain), at its (or their) sole expense the following:

(i) property insurance with respect to all insurable property located at or on or constituting a part of such Unencumbered Borrowing Base Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism (to the extent commercially available) and such other insurable hazards as the Administrative Agent may require, in an amount not less than one hundred percent (100%) of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent the applicable Loan Parties and the Administrative Agent from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non reporting) form during and with respect to any construction on or with respect to such Unencumbered Borrowing Base Property;

(ii) if and to the extent any portion of any of the improvements are, under the Flood Disaster Protection Act of 1973 ("***FDPA***"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by the Administrative Agent, but in no event less than the amount sufficient to meet the requirements of Applicable Laws and the FDPA, as such requirements may from time to time be in effect;

(iii) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of the applicable Loan Party as named insured and the Administrative Agent as additional insured;

(iv) statutory workers' compensation insurance with respect to any work on or about such Unencumbered Borrowing Base Property (including employer's liability insurance, if required by the Administrative Agent), covering all employees of the applicable Loan Party and/or its applicable Subsidiaries and any contractor;

(v) if there is a general contractor, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in ***clause (iv)*** above, for the benefit of the general contractor as named insured and the applicable Loan Party and the Administrative Agent as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the premises (including employer's liability insurance, if required by the Administrative Agent), covering all employees of the general contractor and any contractor; and

(vi) such other insurance (and related endorsements) as may from time to time be required by the Administrative Agent (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance (if then customarily carried by owners of premises similarly situated), wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements.

(b) All insurance policies obtained by any Loan Party with respect to or in connection with any Unencumbered Borrowing Base Property shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to the Administrative Agent, and shall require not less than thirty (30) days' prior written notice to the Administrative Agent of any cancellation of coverage.

(c) All insurance companies providing coverage pursuant to ***clause (a)*** of this ***Section 6.15*** or any other general coverage required pursuant to any Loan Documents must be licensed to do business in the state in which the applicable Unencumbered Borrowing Base Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better.

(d) All insurance policies maintained, or caused to be maintained, by any Loan Party or its applicable Subsidiaries with respect to any Unencumbered Borrowing Base Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by such Loan Party or its applicable Subsidiaries or the Administrative Agent and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(e) If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this ***Section 6.15*** or any other provision of any Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any debtor relief law, or if in Administrative Agent's opinion the financial responsibility of such insurer is or becomes inadequate, such Loan Party shall, in each instance promptly upon its discovery thereof or upon the request of the Administrative Agent therefor, and at the Loan Party's expense, promptly obtain and deliver (or cause to be obtained and delivered) to the Administrative Agent a like policy (or, if and to the extent permitted by the Administrative Agent, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this ***Section 6.15*** or any other provision of any Loan Document, as the case may be.

(f) A copy of the original policy and such evidence of insurance as may be acceptable to the Administrative Agent shall be delivered to the Administrative Agent with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to the Administrative Agent, with all premiums fully paid current, at least ten (10) Business Days before the termination of the policy it renews or replaces. The applicable Loan Party shall pay (or cause to be paid) all premiums on policies required hereunder as they

become due and payable and promptly deliver to the Administrative Agent evidence satisfactory to the Administrative Agent of the timely payment thereof.

(g) If any loss occurs at any time when the applicable Loan Party has failed to perform the covenants and agreements set forth in this ***Section 6.15*** with respect to any insurance payable because of loss sustained to any part of the premises whether or not such insurance is required by the Administrative Agent, then the Administrative Agent shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for the applicable Loan Party, to the same extent as if it had been made payable to the Administrative Agent.

(h) Each Loan Party shall at all times comply (and shall cause each applicable TRS to comply) in all material respects with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting any Unencumbered Borrowing Base Property.

6.16 **Anti-Corruption Laws**. Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance with such laws.

6.17 **Collateral**.

(a) During any Collateral Period, on or prior to the times specified below (or such later date as the Administrative Agent shall reasonably determine), the Borrower will cause, subject to ***clause (f)*** below, all of the issued and outstanding Equity Interests of each Guarantor (other than the Parent REIT) (collectively, the "***Collateral***"), to be, subject to the terms of the Intercreditor Agreement, subject to a perfected Lien in favor of the Administrative Agent to secure the Obligations in accordance with the terms and conditions of the Collateral Documents:

(i) within thirty (30) days of the Collateral Trigger Date; and

(ii) contemporaneously with the occurrence of any date any Subsidiary shall be required to become a Guarantor pursuant to ***Section 6.12*** hereof.

(b) During a Collateral Period, and without limiting the foregoing, the Borrower will, and will cause each Loan Party that owns any Collateral to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements), which may be required by applicable Law and which the Administrative Agent may, from time to time during a Collateral Period, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the reasonable expense of the Borrower; *provided*, *however*, that no Pledged Subsidiary shall be permitted to certificate its Equity Interests or make an election under *Article 8* of the UCC unless such certificates are promptly delivered to the Administrative Agent, together with an endorsement in blank. Without limiting the foregoing, the Borrower shall cause each Loan Party that owns any Collateral to execute and deliver to the Administrative Agent a Grantor Joinder Agreement (as defined in the Intercreditor Agreement).

(c) During a Collateral Period, without limiting the release provisions set forth in ***clause (d)*** below, the Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release, the Equity Interests in any Pledged Subsidiary from the Pledge Agreement with respect to any Unencumbered Borrowing Base Property that is being removed pursuant to ***Section 1.07(d)*** if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal, so long as no Default or Event of Default exists or would result therefrom. The Administrative Agent agrees to furnish to the Borrower, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, after the Borrower's request and at the Borrower's reasonable expense, any release, termination, or other agreement or document evidencing the foregoing release as may be reasonably requested by the Borrower.

(d) The Borrower may deliver to the Administrative Agent, on or prior to the date that is five (5) Business Days (or such shorter period of time as agreed to by the Administrative Agent) before the date on which the Collateral Release is to be effected, written notice that it is requesting the Collateral Release, which notice shall identify the Collateral to be released and the proposed effective date for the Collateral Release, together with a certificate signed by a Responsible Officer of the Borrower (such certificate, a "***Collateral Release Certificate***"), certifying that:

(i) the Consolidated Leverage Ratio is either (A) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (B) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***; and

(ii) at the time of the delivery of notice requesting such release, on the proposed effective date of the Collateral Release and immediately before and immediately after giving effect to the Collateral Release, (A) no Default or Event of Default has occurred and is continuing or would result therefrom and (B) the representations and warranties contained in ***Section 5*** and the other Loan Documents are true and correct in all material respects on and as of the effective date of the Collateral Release, 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 as of such earlier date, and except that for purposes of this ***Section 6.17***, 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***.

(e) On or after any Collateral Release Date, the Administrative Agent shall, subject to the satisfaction of the requirements of ***clause (d)*** above, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release all of the Liens granted to the Administrative Agent pursuant to the requirements of this ***Section 6.17***. and the Collateral Documents (the "***Collateral Release***"). Upon the release of any Collateral pursuant to this ***Section 6.17***, the Administrative Agent shall (to the extent applicable) promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, deliver to the Borrower, upon the Borrower's request and at the Borrower's reasonable expense, such documentation as

may be reasonably satisfactory to the Administrative Agent and otherwise necessary or advisable to evidence the release of such Collateral from the Loan Documents.

(f) Notwithstanding the foregoing, (i) if a Collateral Trigger Date occurs in connection with a First Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals fifty percent (50%) of the amount of the aggregate amount of ~~Unsecured Indebtedness~~the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the First Limited Collateral Trigger Event and (ii) if a Collateral Trigger Date occurs in connection with a Second Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals the amount of the aggregate amount of the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the Second Limited Collateral Trigger Event.

7. **NEGATIVE COVENANTS**. So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall not be Fully Satisfied, or any Letter of Credit shall remain outstanding, the Loan Parties shall not, nor shall they permit any other Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable), directly or indirectly, to:

7.01 **Liens**. Create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, other than the following (collectively, the "***Permitted Liens***"):

(a) Liens that secure the Obligations;

(b) Liens that secure Indebtedness of the Consolidated Parties on a pari passu basis with the Lien described in ***Section 7.01(a)***;

(c) Liens existing on the date hereof and listed on ***Schedule 5.08(b)*** and any renewals or extensions thereof, *provided that* (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by ***Section 7.03(b)***, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by ***Section 7.03(b)***;

(d) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) 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 are maintained on the books of the applicable Person;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(g) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting any Real Property owned by any Loan Party 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 and which, with respect to Unencumbered Borrowing Base Properties, have been reviewed and approved by the Administrative Agent (such approval to be in the reasonable judgment of the Administrative Agent);

(i) Liens securing judgments for the payment of money not constituting an Event of Default under ***Section 8.01(h)***;

(j) Liens, if any, in favor of the L/C Issuer and/or the Swing Line Lender to Cash Collateralize or otherwise secure the obligations of a Defaulting Lender to fund risk participations hereunder;

(k) (i) the interests of any ground lessor under an Eligible Ground Lease and the interests of any TRS under a lease of any Unencumbered Borrowing Base Property and (ii) Liens in connection with Permitted Intercompany Mortgages;

(l) Liens on any assets (other than any Unencumbered Borrowing Base Property and related assets) securing Indebtedness permitted by ***Section 7.03(f)***, including Liens on such Real Property existing at the time such Real Property is acquired by the applicable Loan Party or any Non-Guarantor Subsidiary;

(m) Liens on the Equity Interests of any Non-Guarantor Subsidiary; *provided*, no such Liens shall be permitted with respect to the Equity Interests of Pebblebrook Hotel Lessee, any entity which is the lessee with respect to an Unencumbered Borrowing Base Property or the direct or indirect parent thereof;

(n) other Liens on assets (other than Unencumbered Borrowing Base Properties) securing claims or other obligations of the Loan Parties and their Subsidiaries (other than Indebtedness) in amounts not exceeding $5,000,000 in the aggregate; and

(o) any interest of title of a lessor under, and Liens arising from or evidenced by protective UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, operating leases permitted hereunder.

Notwithstanding anything contained in this ***Section 7.01***, each of the Parent REIT and the Borrower shall not, and shall not permit any other Consolidated Party to, secure any Indebtedness outstanding under or pursuant to any Specified Debt unless and until the Obligations (including any Guarantee in connection therewith) shall concurrently be secured equally and ratably with such Indebtedness pursuant to documentation reasonably acceptable to the Administrative Agent

in substance and in form including an intercreditor agreement and opinions of counsel to the Parent REIT, the Borrower and/or any other Consolidated Party, as the case may be, from counsel and in a form that is reasonably acceptable to the Administrative Agent.

7.02 **Investments**. Make any Investments, except:

(a) Investments by the Consolidated Parties (other than by the Parent REIT) in (i) Unencumbered Borrowing Base Properties, and (ii) other real properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels, and which real properties shall, upon the making of such Investments, be wholly owned by such Consolidated Party;

(b) Investments held by the Borrower or such Loan Party or other Subsidiary in the form of cash or Cash Equivalents;

(c) Investments existing as of the Closing Date and set forth in ***Schedule 5.08(c)***;

(d) Advances to officers, directors and employees of the Borrower, the Loan Parties and other Subsidiaries in aggregate amounts not to exceed (i) $500,000 at any time outstanding for employee relocation purposes, and (ii) $100,000 at any time outstanding for travel, entertainment, and analogous ordinary business purposes;

(e) Investments of (i) the Borrower in any Guarantor (including (A) Investments by the Borrower in any private REIT, so long as Borrower owns one hundred percent (100%) of the "common" Equity Interests in such private REIT and (B) Investments by the Borrower in a Guarantor in the form of an intercompany loan), (ii) any Guarantor in the Borrower or in another Guarantor (including Investments by a Guarantor in the Borrower or in another Guarantor in the form of an intercompany loan), and (iii) the Borrower, any Guarantor or any Non-Guarantor Subsidiary in Non-Guarantor Subsidiaries (including Investments by the Borrower, any Guarantor or any Non-Guarantor Subsidiary in a Non-Guarantor Subsidiary in the form of an intercompany loan) that own, directly or indirectly, and operate Real Properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels; *provided*, notwithstanding the foregoing or any other provision herein or in any other Loan Document to the contrary, the Parent REIT shall not own any Equity Interests in any Person other than the Borrower;

(f) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(g) Guarantees permitted by ***Section 7.03***;

(h) Other Investments of the Borrower and its Subsidiaries in:

(i) Real properties consisting of undeveloped or speculative land (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than five percent

(5%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary;

(ii) Incoming-producing real properties (other than hotels or similar hospitality properties) (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than ten percent (10%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary;

(iii) Development/Redevelopment Properties (valued at cost for purposes of this ***clause (h)***; *provided that* all costs and expenses associated with all existing development activities with respect to such Development/Redevelopment Properties (budget to completion) shall be included in determining the aggregate Investment of the Borrower or such Subsidiary with respect to such activities) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value and which Development/Redevelopment Properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary and;

(iv) Unconsolidated Affiliates (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than twenty percent (20%) of Consolidated Total Asset Value;

(v) mortgage or real estate-related loan assets (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value; and

(vi) Equity Interests (including preferred Equity Interests) in any Person (other than any Affiliate of the Borrower) (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value;

provided, however, that the collective aggregate value of the Investments owned pursuant to ***items (i)*** through ***(vi)*** of this ***clause (h)*** above shall not at any time exceed thirty-five percent (35%) of Consolidated Total Asset Value;

(vii) Investments in fixed or capital assets to the extent not prohibited under ***Section 7.12***; and

(i) Investments in any Person as a result of any merger or consolidation completed in compliance with ***Section 7.04***.

7.03 **Indebtedness**. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on ***Schedule 7.03*** and any refinancings, refundings, renewals or extensions thereof; *provided that* the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees

and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(c) Guarantees of (i) the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor, (ii) the Parent REIT or the Borrower, in respect of Indebtedness otherwise permitted hereunder of any Non-Guarantor Subsidiary if, in the case of any Guarantee pursuant to this ***clause (ii)***, (x) no Default shall exist immediately before or immediately after the making of such Guarantee, and (y) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the making of such Guarantee, and (iii) Non-Guarantor Subsidiaries made in the ordinary course of business;

(d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract, *provided that* (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) unsecured Indebtedness in the form of trade payables incurred in the ordinary course of business;

(f) Indebtedness of any Loan Party or Non-Guarantor Subsidiary incurred or assumed after the date hereof that is either unsecured or is secured by Liens on any assets of such Loan Party (other than any Unencumbered Borrowing Base Property) or of such Non-Guarantor Subsidiary; *provided*, such Indebtedness shall be permitted under this ***Section 7.03(f)*** only if: (i) no Default shall exist immediately before or immediately after the incurrence or assumption of such Indebtedness, and (ii) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the incurrence or assumption of such Indebtedness; and

(g) Indebtedness consisting of intercompany loans permitted under ***Section 7.02(e)***.

7.04 **Fundamental Changes**. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division), except for Dispositions permitted under ***Section 7.05*** (other than under ***Section 7.05(e)***) or except that, so long as no Default exists or would result therefrom:

(a) any Guarantor may merge with the Borrower or any other Guarantor, *provided that* when any Guarantor is merging with the Borrower, the Borrower shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party; and

(c) (i) any Non-Guarantor Subsidiary may merge with any other Person or Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any other Person; *provided* such merger or Disposition shall be permitted under this ***Section 7.04(c)(i)*** only if there exists no violation of the financial covenants hereunder on a Pro Forma Basis after such

merger or Disposition, and (ii) any Non-Guarantor Subsidiary may merge with a Loan Party; *provided that* the Loan Party shall be the continuing or surviving Person.

7.05 **Dispositions**. Make any Disposition of any assets or property, except:

(a) Dispositions in the ordinary course of business (other than those Dispositions permitted under ***clause (b)*** of this ***Section 7.05***), so long as (i) no Default shall exist immediately before or immediately after such Disposition, and (ii) the Consolidated Parties will be in compliance, on a Pro Forma Basis following such Disposition, with (x) the covenants set forth in ***Sections 7.01***, ***7.02***, ***7.03***, and ***7.11*** of this Agreement, (y) all restrictions on Outstanding Amounts contained herein, and (z) the requirements of ***Section 1.07*** (in the case of any Disposition with respect to an Unencumbered Borrowing Base Property), in each case as demonstrated by a Compliance Certificate with supporting calculations delivered to the Administrative Agent on or prior to the date of such Disposition showing the effect of such Disposition;

(b) Any of the following:

(i) Dispositions of obsolete, surplus or worn out property or other property not necessary for operations, whether now owned or hereafter acquired, in the ordinary course of business and for no less than fair market value;

(ii) Dispositions of equipment or real property to the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property, in each case in the ordinary course of business and for no less than fair market value;

(iii) Dispositions of inventory and Investments of the type described in ***Section 7.02(b)*** and ***(c)*** in the ordinary course of business;

(iv) leases of Real Property (other than any Unencumbered Borrowing Base Property) and personal property assets related thereto to any TRS; and

(v) in order to resolve disputes that occur in the ordinary course of business, the Borrower and any Subsidiary of Borrower may discount or otherwise compromise, for less than the face value thereof, notes or accounts receivable;

(c) Dispositions of property by any Loan Party to the Borrower or to another Loan Party;

(d) Dispositions permitted by ***Section 7.04***; and

(e) Any other Disposition approved in writing by the Administrative Agent and the Required Lenders.

Notwithstanding the foregoing provisions of this ***Section 7.05***, no Loan Party shall sell or make any other Disposition of assets or property that will have the effect of causing such Loan Party (or any other Loan Party) to become liable under any tax protection or tax sharing agreement if the amount of such liability would exceed an amount equal to one percent (1%) of the total assets of such Loan Party without the prior written consent of the Administrative Agent.

7.06 **Restricted Payments.**

(a) Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(i) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, each Subsidiary may make Restricted Payments to the Borrower, the Guarantors and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(ii) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(iii) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Borrower and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests; and

(iv) so long as no Acceleration shall have occurred, each TRS may make Restricted Payments to its TRS parent entity to the extent necessary to pay any tax liabilities then due (after taking into account any losses, offsets and credits, as applicable); *provided that* any such Restricted Payments by a TRS shall only be made after it has paid all of its operating expenses currently due or anticipated within the current month and next following month;

(b) Notwithstanding the foregoing, the Loan Parties shall be permitted to make Restricted Payments of the type and to the extent permitted pursuant to ***Section 7.11(h)*** of this Agreement.

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 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, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, *provided that* the foregoing restriction shall not apply to transactions between or among the Borrower and any Guarantor or between and among any Guarantors, or between and among any Loan Party and the TRS or any manager engaged to manage one or more Unencumbered Borrowing Base Properties (if applicable).

7.09 **Burdensome Agreements**. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a)(i) limits the ability of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor, (ii) limits the ability of any Subsidiary to Guarantee the Indebtedness of the Borrower other

than (A) any requirement for the grant of a Guarantee in favor of the holders of any Unsecured Indebtedness that is equal and ratable to the Guarantee set forth in ***Section 11*** or (B) in connection with a property-specific financing involving a Non-Guarantor Subsidiary as the borrower or (iii) constitutes a Negative Pledge; *provided, however*, that ***clauses (ii)*** and ***(iii)*** shall not prohibit any Negative Pledge incurred or provided in favor of any holder of Indebtedness in respect of (A) capital leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets permitted hereunder, or (B) a property-specific financing involving only a Non-Guarantor Subsidiary as the borrower, in each case solely to the extent any such Negative Pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person other than any requirement for the grant of a Lien in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations.

7.10 **Use of Proceeds**. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 **Financial Covenants**.

(a) **Consolidated Leverage Ratio**. Permit the Consolidated Leverage Ratio to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of the Initial Compliance Date ~~and the last day of the first fiscal quarter ending after the Initial Compliance Date~~, exceed 8.50 to 1.00; (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed 8.00 to 1.00; (iii) as of the last day of the ~~fourth~~third fiscal quarter ending after the Initial Compliance Date, exceed 7.50 to 1.00; and (iv) as of the last day of any fiscal quarter thereafter, exceed 6.75 to 1.00; *provided that*, notwithstanding the foregoing, once during the term of this Agreement, the Borrower may deliver a written notice to the Administrative Agent in a Compliance Certificate timely delivered pursuant to ***Section 6.02(a)*** that the Consolidated Leverage Ratio as of the last day of the fiscal quarter (the "***Surge Date***") for which such Compliance Certificate was delivered and the next three (3) consecutive fiscal quarters (such period, the "***Surge Period***") may exceed 6.75 to 1.00 but not exceed 7.00 to 1.00 so long as (A) no Default has occurred and is continuing, (B) the Applicable Margin shall be increased as set forth in ***clause (c)*** of the definition thereof and (C) the Borrower has not delivered a written notice to the Administrative Agent terminating the Surge Period.

(b) **Consolidated Recourse Secured Indebtedness Limitation**. Permit Consolidated Recourse Secured Indebtedness to, at any time on or after the Initial Compliance Date, exceed an amount equal to five percent (5%) of Consolidated Total Asset Value; *provided that*, notwithstanding the foregoing, once during the term of this Agreement, so long as no Default has occurred and is continuing, for up to four (4) consecutive quarters, Consolidated Recourse Secured Indebtedness may exceed five percent (5%) but not exceed ten percent (10%) of Consolidated Total Asset Value.

(c) **Consolidated Secured Debt Limitation**. Permit Consolidated Secured Debt to, at any time on or after the Initial Compliance Date, exceed an amount equal to forty-five percent (45%) of Consolidated Total Asset Value.

(d) **Consolidated Fixed Charge Coverage Ratio**. Permit the Consolidated Fixed Charge Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date, 1.05 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.25 to 1.00, and (iii) as of the last day of any fiscal quarter thereafter, 1.50 to 1.00.

(e) **Consolidated Unsecured Interest Coverage Ratio**. Permit the Consolidated Unsecured Interest Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date ~~and~~, 1.25 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.50 to 1.00, (iii) as of the last day of the second fiscal quarter ending after the Initial Compliance Date, 1.75 to 1.00, and (~~ii~~iv) as of the last day of any fiscal quarter thereafter, 2.00 to 1.00.

(f) **Consolidated Tangible Net Worth**. Permit Consolidated Tangible Net Worth, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than the sum of (i) $1,400,772,000 (which amount is seventy-five percent (75%) of Consolidated Tangible Net Worth as of June 30, 2017) *plus* (ii) seventy-five percent (75%) of the Net Proceeds of all Equity Issuances by the Consolidated Parties after June 30, 2017.

(g) **Unsecured Leverage Ratio**. Permit the Unsecured Indebtedness (less Adjusted Unrestricted Cash as of such date) to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of the Initial Compliance Date ~~and the last day of the first fiscal quarter ending after the Initial Compliance Date~~, exceed sixty-seven and one-half of one percent (67.5%); (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed sixty five percent (65%); and (iii) as of the last day of any fiscal quarter thereafter, exceed sixty percent (60%) of Unencumbered Asset Value; *provided that*, notwithstanding the foregoing, so long as no Default has occurred and is continuing, as of the last day of the fiscal quarter in which any Material Acquisition occurs and the last day of the two (2) consecutive quarters thereafter, such ratio may exceed sixty percent (60%) but not exceed sixty five percent (65%) (such period being an "***Unsecured Leverage Increase Period***"); *provided further that* (A) the Borrower may not elect more than three (3) Unsecured Leverage Increase Periods during the term of this Agreement and (B) any such Unsecured Leverage Increase Periods shall be non-consecutive.

(h) **Restricted Payments**. Permit, for any fiscal year of the Consolidated Parties, the amount of Restricted Payments (excluding Restricted Payments payable solely in the common stock or other common Equity Interests of the Parent REIT or the Borrower) made by the Consolidated Parties to the holders of their Equity Interests (excluding any such holders of Equity Interests which are Loan Parties) during such period to exceed the FFO Distribution Allowance for such period; *provided that*, to the extent no Event of Default then exists or will result from such Restricted Payments (or if an Event of Default then exists or will result from such Restricted Payments, then so long as no Acceleration shall have occurred), each Loan Party and each other Subsidiary (including Pebblebrook Hotel Lessee) shall be permitted to make Restricted Payments to the Borrower and the Borrower shall be permitted to make Restricted Payments to Parent REIT, in each case to permit the Parent REIT to make Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain Parent REIT's status as a REIT and as necessary to pay any special or extraordinary tax liabilities then due (after taking into account any losses, offsets and credits, as applicable) on capital gains attributable to Parent REIT. In addition, so long as no Acceleration shall have occurred, each TRS may make

Restricted Payments to its parent entity to the extent necessary to pay any Tax then due in respect of the income of such TRS. Notwithstanding the foregoing, during the Waiver Period and at any time thereafter until the Consolidated Leverage Ratio is less than 6.75 to 1.00 as of the last day of any fiscal quarter, as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***, the Parent REIT shall not purchase, redeem, retire, or defease any of its Equity Interests except as expressly permitted in ***Section 7.20(e)***.

(i) **Minimum Liquidity**. At any time during the Waiver Period, permit Liquidity to be less than ~~$150,000,000~~200,000,000.

(j) **Waiver Period Financial Covenants; Adjustments**.

(i) During the ~~Waiver Period~~period of time commencing on the Second Amendment Effective Date up to, but excluding, the Initial Compliance Date the Parent REIT and the Borrower shall continue to deliver to the Administrative Agent duly completed Compliance Certificates, for informational purposes only, as and when required under ***Section 6.02(a)*** certifying as to the Borrower's calculations of the financial tests set forth in this ***Section 7.11***.

(ii) Immediately following the expiration of the Waiver Period, the financial covenants set forth in this ***Section 7.11*** (including the related defined terms) (other than the covenants set forth in ***clauses (d), (e), (f)*** and ***(i)*** thereof) shall be modified, solely for purposes of calculation of the financial covenants set forth in this ***Section 7.11*** and not for purposes of determining the Applicable Margin, as follows:

(A) in the event the Borrower elects to terminate the Waiver Period on the date occurring under ***clause (b)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the fiscal quarter ending June 30, ~~2021~~2022, the trailing quarter, annualized; (x) for the fiscal quarter ending September 30, ~~2021~~2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending December 31, ~~2021~~2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

(iii) From and after the Initial Compliance Date, the financial covenants set forth in ***Sections 7.11(d)*** and ***7.11(e)*** shall be modified as follows:

(A) in the event the Borrower elects to terminate the Waiver Period on the date occurring under ***clause (b)*** of the definition of "Waiver Period", the testing period for the covenants set forth in ***Sections 7.11(d)*** and ***7.11(e)*** shall be

measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the fiscal quarter ending March 31, 2022, the trailing quarter, annualized; (x) for the fiscal quarter ending June 30, 2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending September 30, 2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

The financial covenants in this ***Section 7.11*** shall be tested (on a Pro Forma Basis) and certified to by the Borrower in connection with each Credit Extension.

7.12 **Capital Expenditures**. Make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than normal replacements and maintenance which are properly charged to current operations and other reasonable and customary capital expenditures made in the ordinary course of the business of the Parent REIT and its Subsidiaries.

7.13 **Accounting Changes**. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year, except with the written consent of the Administrative Agent.

7.14 **Ownership of Subsidiaries; Certain Real Property Assets**. Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than the Parent REIT, the Borrower, any other Loan Party or a private REIT) to own any Equity Interests of any Unencumbered Borrowing Base Entity, except to qualify directors where required by Applicable Laws, (b) permit any Loan Party that owns an Unencumbered Borrowing Base Property to issue or have outstanding any shares of preferred Equity Interests, (c) permit, create, incur, assume or suffer to exist any Lien on any Equity Interests owned by the Borrower or any Loan Party of (i) any Loan Party or (ii) any TRS that leases an Unencumbered Borrowing Base Property or is the direct or indirect parent of any such TRS, (d) permit any Intermediate REIT to directly own or acquire any Real Property assets; *provided that* this ***clause (d)*** of ***Section 7.14*** shall not prohibit any Intermediate REIT from owning or acquiring any Equity Interests in any Subsidiary that owns any Real Property assets, (e) permit the Borrower to own less than ninety-nine percent (99%) of the outstanding common Equity Interests in Pebblebrook Hotel Lessee, or (f) permit the Parent REIT to own Equity Interests in any Person other than the Borrower.

7.15 **Leases**. Permit any Loan Party to enter into, terminate, cancel, amend, restate, supplement or otherwise modify any Material Lease relating to any Unencumbered Borrowing Base Property; *provided that* (i) such Unencumbered Borrowing Base Property may be subject to an Eligible Ground Lease entered into in accordance with and subject to the requirements of this Agreement, (ii) the applicable Unencumbered Borrowing Base Entity may lease such Unencumbered Borrowing Base Property owned (or ground leased) by it to a TRS pursuant to a form of Lease acceptable to the Administrative Agent, in its reasonable discretion, and (iii) the applicable Unencumbered Borrowing Base

Entity or the applicable TRS (if any) may enter into, terminate, cancel, amend, restate, supplement or otherwise modify any Material Lease relating to such Unencumbered Borrowing Base Property (including any Lease between such Unencumbered Borrowing Base Entity and such TRS respecting any Unencumbered Borrowing Base Property) to the extent that the entry into, termination, cancellation, amendment, restatement, supplement or modification is not reasonably likely to, in the aggregate with any other then-existing conditions or circumstances, have a Material Adverse Effect.

7.16 **Sale Leasebacks**. Permit any Loan Party to enter into any Sale and Leaseback Transaction with respect to any Unencumbered Borrowing Base Property.

7.17 **Sanctions**. Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise) of Sanctions.

7.18 **ERISA**. Be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to Section 4975 of the Code, (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (d) a "governmental plan" within the meaning of ERISA.

7.19 **Anti-Corruption Laws**. Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

7.20 **Enhanced Negative Covenants**. Notwithstanding anything to the contrary contained in this Agreement, during the Waiver Period the Loan Parties shall not, nor shall they permit any other Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable), directly or indirectly, to:

(a) make any Investments other than (i) Investments in one or more new Unencumbered Borrowing Base Properties (or in Equity Interests in Subsidiaries that own or will own new Unencumbered Borrowing Base Properties) solely with the proceeds of Excluded Net Proceeds or (ii) any other Investments otherwise permitted pursuant to ***Section 7.02*** not to exceed $100,000,000 in the aggregate;

(b) make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than (i) in connection with emergency repairs, life safety repairs or ordinary course maintenance repairs (ii) capital expenditures to complete ongoing renovations in an amount not to exceed $~~90,000,000~~155,000,000 in the aggregate during the period commencing with the Fourth Amendment Effective Date through the remainder of the Waiver Period;

(c) create, incur, assume or suffer to exist any Indebtedness not existing and permitted as of the Second Amendment Effective Date other than (i) to the extent the proceeds of such Indebtedness are used to fully or partially refinance or replace Indebtedness existing and permitted as of the Second Amendment Effective Date ~~and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.05(d)***~~; *provided*, however, that in

no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(i)*** be earlier than the existing maturity date of the Indebtedness being refinanced or replaced; *provided* further, that any amounts in excess of the amounts used to fully or partially refinance or replace Indebtedness are otherwise permitted to be incurred pursuant to this ***Section 7.20(c)***, (ii) Secured Non-Recourse Debt not to exceed $250,000,000 in the aggregate and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.05(d)***; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(ii)*** be earlier than one (1) year after the Maturity Date, or (iii) Indebtedness that is recourse to ~~a~~one or more Consolidated ~~Party not to exceed $250,000,000 in the aggregate~~Parties and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.05(d)***; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(iii)*** (other than (A) increases of any Specified Debt pursuant to the terms thereof and (B) Indebtedness under a 364-day facility not to exceed $100,000,000) be earlier than one (1) year after the Maturity Date;

(d) make any Disposition other than Dispositions (i) permitted by ***Section 7.05(b)(i)***, ***(ii)***, ***(iii)*** and ***(iv)***, or (ii) to a Person that is not a Consolidated Party or a Related Party of any Consolidated Party, (A) for fair market value in an arms' length transaction, (B) in which the price for such asset shall be paid to a Consolidated Party solely in cash, and (C) pursuant to which the Borrower has made the mandatory prepayment, if any, required pursuant to ***Section 2.05(d)***;

(e) declare or make any Restricted Payments other than (i) Restricted Payments to the holders of the common Equity Interests in the Parent REIT of not more than $0.01 per share, (ii) Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain the Parent REIT's status as a REIT, (iii) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Restricted Payments with respect to any preferred Equity Interests, (iv) Restricted Payments by Subsidiaries of the Borrower to Borrower and by Borrower to the Parent REIT the proceeds of which are used by the Parent REIT to make Restricted Payments permitted by ***clauses (i)*** through ***(iii)*** preceding and (v) the purchase or redemption by the Parent REIT of its preferred Equity Interests solely with Net Cash Proceeds from Permitted Preferred Issuances;

(f) voluntarily prepay the principal amount of (i) any Permitted Convertible Notes other than pursuant to a conversion thereof into Equity Interests of the Parent REIT or (ii) any Indebtedness incurred after the Fourth Amendment Effective Date; or

(g) create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, not existing and permitted as of the Second Amendment Effective Date other than (i) Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement, (ii) Liens permitted by ***Sections 7.01(d)***, ***(e)***, ***(f)***, ***(g)***, ***(h)***, ***(i)***, ***(k)*** and ***(o)***, (iii) Liens securing Indebtedness permitted under ***Section 7.20(c)(i)***; *provided that* (A) the amount secured or benefited thereby is not increased except as contemplated by ***Section 7.03(b)***, (B) the direct or any contingent obligor with respect thereto is not changed, (C) any renewal or extension of the obligations secured or benefited thereby is permitted by ***Section 7.03(b)***, and (D) to the extent such existing Indebtedness being refinanced or replaced is Secured Debt, incurred to refinance or replace Secured Debt secured by the same property or assets, and (iv) Liens securing Indebtedness permitted under ***Section 7.20(c)(ii)***.

8. 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 any L/C Obligation, or (ii) within three (3) days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants**. The Borrower fails to perform or observe any term, covenant or agreement contained in any of ***Section 6.03***, ***6.05(a)***, ***6.10***, ***6.11***, ***6.12***, ***6.15*** or ***Section 7*****,** or any Guarantor fails to perform or observe any term, covenant or agreement contained in ***Section 11*** hereof; or

(c) **Other Defaults**. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in ***subsection (a)*** or ***(b)*** above) contained in any Loan Document on its part to be performed or observed and such failure continues for (i) with respect to any failure to perform or observe ***Section 6.01*** or ***6.02***, five (5) days after such failure occurred; *provided that* if the auditor's opinion accompanying the audited financial statements for the fiscal year ended December 31, 2021 is subject to any "going concern" or like qualification or exception, then the Parent REIT shall have a period of forty-five (45) days from the delivery date of such statements for the auditor to reissue its opinion without any "going concern" or like qualification or exception and (ii) with respect to any failure to perform or observe any other covenant or agreement, thirty (30) days after the earlier of (A) Borrower's actual knowledge of such failure or (B) Borrower's receipt of notice as to such failure from the Administrative Agent or any Lender; or

(d) **Representations and Warranties**. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) **Cross-Default**. (i) Any Loan Party or any of its Subsidiaries (A) fails to make any payment when due after giving effect to any applicable grace period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap

Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any of its Subsidiaries 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 of its Subsidiaries 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; or

(f) **Insolvency Proceedings, Etc.** Any Loan Party or any of its 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 or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment**. (i) Any Loan Party or any of its 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 Subsidiaries (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA**. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under *Section 4201* of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) **Invalidity of Loan Documents**. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind in writing any provision of any Loan Document; or

(k) **Change of Control**. There occurs any Change of Control; or

(l) **REIT or QRS Status**. The Parent REIT shall, for any reason, lose or fail to maintain its status as a REIT or the Borrower shall, for any reason, lose or fail to maintain its status as any of the following: a REIT**,** a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS; or

(m) **Management and Franchise Agreements**. There occurs a monetary or material default under a management or franchise agreement with respect to an Unencumbered Borrowing Base Property (which material default shall include any default which would permit the manager or franchisor under any such management or franchise agreement to terminate such management or franchise agreement or would otherwise result in a material increase of the obligations of the Borrower or such Subsidiary of the Borrower that is a party to such management or franchise agreement) and such default is not remedied prior to the date which is the later of (i) the earlier of (A) if no other Default exists, sixty (60) days from the occurrence of the event or condition which caused, led to, or resulted in such default, or (B) the date that a Default (other than the subject Default relative to such management or franchise agreement) occurs and (ii) the last day of the cure period provided in such management or franchise agreement (as applicable); or

(n) **Collateral Documents**. Any Collateral Document shall for any reason fail to create a valid and perfected security interest in any portion of the Collateral purported to be covered thereby, with the priority required by the applicable Collateral Document, except as (i) permitted by the terms of any Loan Document or (ii) as a result of the release of such security interest in accordance with the terms of any Loan Document, it being understood and agreed that the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it or file any UCC (or equivalent) continuation statement shall not result in an Event of Default under this ***clause (n)***.

8.02 **Remedies Upon Event of Default**. If any Event of Default exists, 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 (any such action, an "***Acceleration***"):

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral 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 actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions

shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the 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 2.16*** and ***2.17***, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under ***Section 3***) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer) and amounts payable under ***Section 3***), ratably among them in proportion to the respective amounts described in this ***clause Second*** payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this ***clause Third*** payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings and Indebtedness of any Loan Party under Swap Contracts that are entered into by any Loan Party with any Lender or its Affiliate as a counterparty with respect to the Loans, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this ***clause Fourth*** held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to ***Sections 2.03*** and ***2.16***; 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 Applicable Laws.

Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to the Obligations otherwise set forth in this ***Section 8.03***. Subject to ***Sections 2.03(c)*** and ***2.16***, 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.

9. ADMINISTRATIVE AGENT

9.01 **Appointment and Authority**. Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this ***Section 9*** are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

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, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower 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, and its duties hereunder shall be administrative in nature. 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 then exists;

(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, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief 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 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 by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing 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 ***Section 4*** 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), 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 ***Section 9*** 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. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents 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 in the selection of such sub-agents.

9.06 **Resignation or Removal of Administrative Agent**

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(a) The Administrative Agent may at any time give notice of its resignation 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, with the approval of the Borrower (such approval not to be unreasonably withheld; *provided* that if a Default shall exist at the time, no approval of the Borrower shall be required), 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. 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 (or such earlier day as shall be agreed by the Required Lenders) (the "***Resignation Effective Date***"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to ***clause (d)*** of the definition thereof or in the case of fraud, misappropriation of funds or the commission of illegal acts by the Administrative Agent or where the Administrative Agent has been grossly negligent in performing (or failing to perform) its obligations hereunder or under any other Loan Document in any material respect, the Required Lenders (excluding the vote of the Administrative Agent, in its capacity as a Lender, as more particularly set forth in the proviso to the this sentence) may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, with the approval of the Borrower (such approval not to be unreasonably withheld; *provided* that if a Default shall exist at the time, no approval of the Borrower shall be required), appoint a successor; *provided, however*, that to the extent the Administrative Agent being replaced pursuant to this ***Section 9.06*** is also a Lender, such Person shall not be permitted to vote in connection with the removal of the Administrative Agent and appointment of a successor Administrative Agent pursuant to this paragraph of ***Section 9.06***. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "***Removal Effective Date***"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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 removed) Administrative Agent (other than as provided in ***Section 3.01(g)*** and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed 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***). 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 or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and ***Section 10.04*** shall continue in effect for the benefit of such retiring or removed 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 (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by (or removal of) Bank of America as Administrative Agent pursuant to this ***Section 9.06*** shall also constitute its resignation (or removal) as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) L/C Issuer and Swing Line Lender, (b) the retiring (or removed) L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring (or removed) L/C Issuer to effectively assume the obligations of the retiring (or removed) L/C Issuer with respect to such Letters of Credit.

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, neither the Joint Lead Arrangers nor the Sole Bookrunner listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

9.09 **Administrative Agent May File Proofs of Claim**. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the 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(i)*** and ***(j)***, ***2.09*** and ***10.04***) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under ***Sections 2.09*** and ***10.04***.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

9.10 **Collateral and Guaranty Matters**. Each of the Lenders (including each Lender in its capacity as a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion, to do or cause the following:

(a) to execute the Intercreditor Agreement on behalf of the Lenders;

(b) to release any Liens granted to the Administrative Agent by any Loan Party on any Collateral (i) upon the termination of the Revolving Credit Commitments and the payment and satisfaction in full of all Obligations, (ii) upon any Disposition of such Collateral permitted hereunder, (iii) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to ***Section 8.02***, or (iv) upon the occurrence of a Collateral Release Date in accordance with the terms and conditions of ***Section 6.17***; and

(c) to release any Guarantor from its obligations under ***Section 11*** hereof if such Person ceases to be required to be a Guarantor pursuant to the terms hereof.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Collateral or to release any Guarantor from its obligations under ***Section 11*** hereof pursuant to this ***Section 9.10***. In each case as specified in this ***Section 9.10***, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as Borrower may reasonably request to evidence the release of such Collateral or such Guarantor from its obligations hereunder, in each case in accordance with the terms of the Loan Documents and this ***Section 9.10***.

10. **MISCELLANEOUS**

10.01 **Amendments, Etc**. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders 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) waive any condition set forth in ***Section 4.01(a)***, ***(b)*** or ***(c)*** or, in the case of the initial Credit Extension, ***Section 4.02***, without the written consent of each Lender;

(b) without limiting the generality of ***clause (a)*** above, waive any condition set forth in ***Section 4.02*** as to any Credit Extension under a particular Facility without the written consent of the Required Revolving Lenders or the Required Term Lenders, as the case may be;

(c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to ***Section 8.02***) without the written consent of such Lender;

(d) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(e) 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 or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Margin that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend the definition of "*Default Rate*" or to waive any obligation of the Borrower to pay interest or Letter of Credit Fees at the Default Rate;

(f) change (i) ***Section 8.03*** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender; or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of ***Section 2.06(c)*** in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (A) if such Facility is the Term Facility, the Required Term Lenders and (B) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

(g) change (i) any provision of this ***Section 10.01*** or the definition of "*Required 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 (other than definitions specified in ***clause (ii)*** of this ***Section 10.01(g)***), without the written consent of each Lender; or (ii) the definition of "*Required Revolving Lenders*" or "*Required Term Lenders*" without the written consent of each Lender under the applicable Facility;

(h) release, without the written consent of each Lender, all or substantially all of the value of the guaranty under ***Section 11*** hereof, except to the extent the release of any Guarantor is permitted pursuant to ***Section 9.10*** (in which case such release may be made by the Administrative Agent acting alone); or

(i) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the Term Facility, the Required Term Lenders and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

and, *provided further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent and the Borrower (i) to add one or more additional term loan facilities to this Agreement subject to the limitations in ***Section 2.15*** 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, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

If any Lender is a Non-Consenting Lender, then the Borrower may replace such Non-Consenting Lender in accordance with ***Section 10.13***.

10.02 **Notices; Effectiveness; Electronic Communication.**

(a) **Notices Generally**. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in ***subsection (b)*** below), all notices and other communications provided for herein shall be in writing and shall be delivered

by hand or overnight courier service, mailed by certified or registered mail or sent by 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 any Loan Party, the Administrative Agent, the L/C Issuer or the Swing Line 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(es), facsimile number(s), electronic mail address(es) or telephone number(s) 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).

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 ***subsection (b)*** below, shall be effective as provided in such ***subsection (b)***.

(b) **Electronic Communications**. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided that* the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to ***Section 2*** if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent, the Swing Line Lender, 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; *provided further* that Committed Loan Notices may be sent via e-mail.

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, email or other communication is not sent during the normal business hours of the recipient, such notice, email 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 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 or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) **Change of Address, Etc**. Each of the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, 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 Laws, 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 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 or electronic Committed Loan Notices, Letter of Credit Applications and Swing Line 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. 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; Enforcement**. 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 or under any other Loan Document 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, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Applicable Laws.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with ***Section 8.02*** for the benefit of the Credit Parties; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with ***Section 10.08*** (subject to the terms of ***Section 2.13***), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided*, *further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to ***Section 8.02*** and (ii) in addition to the matters set forth in ***clauses (b)***, ***(c)*** and ***(d)*** of the preceding proviso and subject to ***Section 2.13***, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 **Expenses; Indemnity; Damage Waiver.**

(a) **Costs and Expenses**. The Borrower shall pay, on the Closing Date and thereafter within five (5) Business Days after written demand, (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the L/C Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this ***Section***, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. For the avoidance of doubt, this ***Section*** shall not provide any right to

payment with respect to increases in taxes or costs and expenses related solely to such increases in taxes.

(b) **Indemnification by the Borrower**. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "***Indemnitee***") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in ***Section 3.01***), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower 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 or any other Loan Party, and regardless of whether any Indemnitee is a party thereto**, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; *provided that* such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of ***Section 3.01(c)***, this ***Section*** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by Lenders**. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under ***subsection (a)*** or ***(b)*** of this ***Section*** to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swing Line Lender 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 share of the Total Credit Exposure of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made

severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), *provided, further* 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), the L/C Issuer or the Swing Line Lender 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), the L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this ***subsection (c)*** are subject to the provisions of ***Section 2.12(d)***.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Laws, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in ***subsection (b)*** above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments**. All amounts due under this ***Section*** shall be payable not later than ten (10) Business Days after demand therefor.

(f) **Survival**. The agreements in this ***Section*** and the indemnity provisions of ***Section 10.02(e)*** shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swing Line Lender, 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 is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under ***clause (b)*** of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 **Successors and Assigns.**

(a) **Successors and Assigns Generally**. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the 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 of a security interest subject to the restrictions of ***subsection (e)*** of this ***Section*** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in ***subsection (d)*** of this ***Section*** and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders**. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans (including for purposes of this ***subsection (b)***, participations in L/C Obligations and in Swing Line Loans) at the time owing to it); *provided that* any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts**.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in ***subsection (b)(i)(B)*** of this ***Section*** in the aggregate 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 Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Commitments is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, unless each of the Administrative Agent and, so long as no Event of Default then exists, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(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 Commitments assigned, except that this ***clause (ii)*** shall not (A) apply to the Swing Line Lender's rights and obligations in

respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations under separate Facilities on a non-pro-rata basis;

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld) shall be required unless (1) an Event of Default exists at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided that* the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Term Commitment or Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of the L/C Issuer and the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) **Assignment and Assumption**. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons**. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this ***clause (B)***, or (C) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) **Certain Additional Payments**. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the 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, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Laws without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to ***subsection (c)*** of this ***Section***, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of ***Sections 3.01***, ***3.04***, ***3.05***, and ***10.04*** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this ***subsection*** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with ***subsection (d)*** of this ***Section***.

(c) **Register**. The Administrative Agent, acting solely for this purpose as an 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 (or the equivalent thereof in electronic form) 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 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. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Swing Line Lender or the L/C Issuer, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, now owned and operated for the primary benefit of a natural Person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Loans (including such Lender's

participations in L/C Obligations and/or Swing Line Loans) owing to it); *provided that* (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations 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. For the avoidance of doubt, each Lender shall be responsible for the indemnity under ***Section 10.04(c)*** without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided that* such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to ***Section 10.01*** that affects such Participant. 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 ***clause (b)*** of this ***Section***; *provided* that such Participant (A) agrees to be subject to the provisions of ***Sections 3.06*** and ***10.13*** as if it were an assignee under ***paragraph (b)*** of this ***Section*** and (B) shall not be entitled to receive any greater payment under ***Section 3.01*** or ***3.04***, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of ***Section 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* that such Participant agrees to be subject to ***Section 2.13*** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under *Section 5f.103-1(c)* of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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

(f) **Resignation as L/C Issuer or Swing Line Lender after Assignment**. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitments and 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 Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; *provided, however*, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be; *provided*, *further*, that no Lender shall have any obligation to accept such an appointment as successor L/C Issuer or Swing Line Lender unless such Lender accepts such appointment in writing. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to ***Section 2.03(c)***). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to ***Section 2.04(c)***. Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (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 Swing Line 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, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

10.07 **Treatment of Certain Information; Confidentiality**. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this ***Section***, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to ***Section 2.15(c)*** or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this ***Section*** or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their

respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, from and after the Closing Date, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors for league table credit or other similar use, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this ***Section***, "***Information***" means all information received from the 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 written 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*** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Borrower 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 Laws, including United States Federal and state securities laws.

10.08 **Right of Setoff**. If an Event of Default exists, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after written notice to the Administrative Agent, to the fullest extent permitted by Applicable Laws, 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 or any other Loan Party against any and all of the obligations of the Borrower or 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 or 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 2.17*** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this ***Section*** are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the 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 Laws (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 Laws, (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 telecopy or other electronic imaging means 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, the L/C Issuer or the Swing Line Lender, 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 the Borrower is entitled to replace a Lender pursuant to the provisions of ***Section 3.06***, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, ***Section 10.06***), all of its interests, rights (other than its existing rights to payments pursuant to ***Section 3.01*** and ***3.04***) and obligations under this Agreement and

the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in ***Section 10.06(b)***;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under ***Section 3.05***) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the 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;

(d) such assignment does not conflict with Applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

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 (INCLUDING *SECTION 5-1401* AND *SECTION 5-1402* OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

(b) **SUBMISSION TO JURISDICTION**. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE CITY OF NEW YORK 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 COURTS. 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 APPLICABLE LAWS. 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**. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN ***PARAGRAPH (b)*** OF THIS ***SECTION***. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, 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 LAWS.

10.15 **Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ***SECTION***.

10.16 **No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders, are arm's-length commercial transactions between the Borrower , each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the 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 Arranger and each Lender 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, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, the Arrangers nor any Lender has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the

transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by Applicable Laws, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 **Electronic Execution of Assignments and Certain Other Documents**. The words "execution," "signed," "signature" and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, Swing Line Loan Notices waivers and consents) shall be deemed to include electronic signatures 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 Laws, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided that* notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

10.18 **USA PATRIOT Act**. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Act***"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

10.19 **Entire Agreement**. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

10.20 **Restatement of Original Credit Agreement**. The parties hereto agree that as of the Closing Date: (a) the Obligations hereunder represent the amendment, restatement, extension, and consolidation of the "*Obligations*" under the Original Credit Agreement; (b) this Agreement amends, restates, supersedes, and replaces the Original Credit Agreement in its entirety; and (c) any Guaranty executed pursuant to this Agreement amends, restates, supersedes, and replaces the "*Guaranty*" executed pursuant to the Original Credit Agreement. On the Closing Date, (i) the commitment of any "*Lender*" under the Original Credit Agreement that is not continuing as a Lender hereunder shall terminate and (ii) the Administrative Agent shall reallocate the Commitments hereunder to reflect the terms hereof.

10.21 **ERISA**. Each Lender as of the Closing Date represents and warrants as of the Closing Date to the Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, for the benefit of the Borrower or any other Loan Party, that such Lender is not and will not be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to Section 4975 of the Code, (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (d) a "governmental plan" within the meaning of ERISA.

10.22 **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.

10.23 **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 10.23***, 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).

11. GUARANTY

11.01 The Guaranty.

(a) Each of the Guarantors hereby jointly and severally guarantees to the Administrative Agent and each of the holders of the Obligations, as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations (the "***Guaranteed Obligations***") in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Guaranteed Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

(b) Notwithstanding any provision to the contrary contained herein, in any other of the Loan Documents or other documents relating to the Obligations, the obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate

amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

11.02 **Obligations Unconditional**. The obligations of the Guarantors under ***Section 11.01*** are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, compromise, release, impairment or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by Applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this ***Section 11.02*** that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this ***Section 11*** until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Applicable Laws, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents, or other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or other documents relating to the Guaranteed Obligations, or any other agreement or instrument referred to therein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Administrative Agent or any of the holders of the Guaranteed Obligations as security for any of the Guaranteed Obligations shall fail to attach or be perfected; or

(e) any of the Guaranteed Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest notice of acceptance of the guaranty given hereby and of Credit Extensions that may constitute obligations guaranteed hereby, notices of amendments, waivers and supplements to the Loan Documents and other documents relating to the Guaranteed Obligations, or the compromise, release or exchange of collateral or security, and all notices whatsoever, and any requirement that the Administrative Agent or any holder of the Guaranteed Obligations exhaust any right,

power or remedy or proceed against any Person under any of the Loan Documents or any other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein, or against any other Person under any other guarantee of, or security for, any of the Obligations.

11.03 **Reinstatement**. Neither the Guarantors' obligations hereunder nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Borrower, by reason of the Borrower's bankruptcy or insolvency or by reason of the invalidity or unenforceability of all or any portion of the Guaranteed Obligations. The obligations of the Guarantors under this ***Section 11*** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings pursuant to any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each holder of Guaranteed Obligations on demand for all reasonable out-of-pocket costs and expenses (including all reasonable fees, expenses and disbursements of any law firm or other outside counsel incurred by the Administrative Agent) incurred by the Administrative Agent or such holder of Guaranteed Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

11.04 **Certain Waivers**. Each Guarantor acknowledges and agrees that (a) the guaranty given hereby may be enforced without the necessity of resorting to or otherwise exhausting remedies in respect of any other security or collateral interests, and without the necessity at any time of having to take recourse against the Borrower hereunder or against any collateral securing the Guaranteed Obligations or otherwise, (b) it will not assert any right to require the action first be taken against the Borrower or any other Person (including any co-guarantor) or pursuit of any other remedy or enforcement any other right and (c) nothing contained herein shall prevent or limit action being taken against the Borrower hereunder, under the other Loan Documents or the other documents and agreements relating to the Guaranteed Obligations or from foreclosing on any security or collateral interests relating hereto or thereto, or from exercising any other rights or remedies available in respect thereof, if neither the Borrower nor the Guarantors shall timely perform their obligations, and the exercise of any such rights and completion of any such foreclosure proceedings shall not constitute a discharge of the Guarantors' obligations hereunder unless as a result thereof, the Guaranteed Obligations shall have been paid in full and the commitments relating thereto shall have expired or been terminated, it being the purpose and intent that the Guarantors' obligations hereunder be absolute, irrevocable, independent and unconditional under all circumstances.

11.05 **Remedies**. The Guarantors agree that, to the fullest extent permitted by Applicable Laws, as between the Guarantors, on the one hand, and the Administrative Agent and the holders of the Guaranteed Obligations, on the other hand, the Guaranteed Obligations may be declared to be forthwith due and payable as provided in ***Section 8.02*** (and shall be deemed to have become automatically due and payable in the circumstances provided in ***Section 8.02***) for purposes of ***Section 11.01***, notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Guaranteed Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Guaranteed Obligations being deemed to have become automatically due and payable), the Guaranteed Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of ***Section 11.01***.

11.06 **Rights of Contribution**. The Guarantors hereby agree as among themselves that, in connection with payments made hereunder, each Guarantor shall have a right of contribution from each

other Guarantor in accordance with Applicable Laws. Such contribution rights shall be subordinate and subject in right of payment to the Guaranteed Obligations until such time as the Guaranteed Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated, and none of the Guarantors shall exercise any such contribution rights until the Guaranteed Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated.

11.07 **Guaranty of Payment; Continuing Guaranty**. The guarantee in this ***Section 11*** is a guaranty of payment and performance, and not merely of collection, and is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

11.08 **Keepwell**. At the time the Guaranteed Obligations of any Specified Loan Party become effective with respect to any Swap Obligation, each Loan Party that is a Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under this Agreement and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Section 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 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

11.09 **Subordination**. If the Borrower or any other Loan Party is now or hereafter becomes indebted to one or more Guarantors including with respect to any Permitted Intercompany Mortgage (such indebtedness and all interest thereon and other obligations with respect thereto being referred to as "***Affiliated Debt***"), then such Affiliated Debt shall be subordinate in all respects to the full payment and performance of the Obligations, and no Guarantor shall be entitled to enforce or receive payment with respect to any Affiliated Debt until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated; *provided* that, so long as no Event of Default has occurred and is continuing, a Guarantor may receive payments with respect to any Affiliated Debt including the payment in full of same. Each Guarantor agrees that any Liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon the Borrower's or any other Loan Party's assets securing the payment of the Affiliated Debt shall be and remain subordinate and inferior to any Liens, security interests, judgment liens, charges or other encumbrances upon the Borrower's or any other Loan Party's assets securing the payment and performance of the Obligations. If an Event of Default exists, then, without the prior written consent of the Administrative Agent, no Guarantor shall exercise or enforce any creditor's rights of any nature against the Borrower or any other Loan Party to collect the Affiliated Debt (other than demand payment therefor) or enforce any such Liens, security interests, judgment liens, charges or other encumbrances. In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving the Borrower or any applicable Loan Party as a debtor, the Administrative Agent has the right and authority, either in its own name or as attorney-in-fact for any applicable Guarantor, to file such proof of debt, claim, petition or other documents and to take such other steps as are necessary to prove its rights hereunder and receive directly from the receiver, trustee or other court custodian, payments, distributions or other dividends which would otherwise be payable upon the Affiliated Debt. Each Guarantor hereby

assigns such payments, distributions and dividends to the Administrative Agent, and irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact (which appointment is coupled with an interest) with authority to make and file in the name of such Guarantor any proof of debt, amendment of proof of debt, claim, petition or other document in such proceedings and to receive payment of any sums becoming distributable on account of the Affiliated Debt, and to execute such other documents and to give acquittances therefor and to do and perform all such other acts and things for and on behalf of such Guarantor as may be reasonably necessary in the opinion of the Administrative Agent in order to have the Affiliated Debt allowed in any such proceeding and to receive payments, distributions or dividends of or on account of the Affiliated Debt.

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THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT

THIS THIRD AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this "***Amendment***") is entered into as of February 18, 2021, among **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership (the "***Borrower***"), **PEBBLEBROOK HOTEL TRUST**, a Maryland real estate investment trust (the "***Parent REIT***"), each Guarantor (defined below) party hereto, each Lender (defined below) party hereto, and **U.S. BANK NATIONAL ASSOCIATION**, as Administrative Agent (the "***Administrative Agent***;" the Administrative Agent and Lenders are each a "***Credit Party***" and collectively "***Credit Parties***").

R E C I T A L S

A. The Borrower, the Parent REIT, certain guarantors (each a "***Guarantor***" and collectively "***Guarantors***;" the Borrower, the Parent REIT and the Guarantors are each a "***Loan Party***" and collectively the "***Loan Parties***"), the Administrative Agent and certain lenders (each, a "***Lender***" and collectively, "***Lenders***") are parties to that certain Amended and Restated Credit Agreement dated as of October 13, 2017, as amended by that certain First Amendment to Amended and Restated Credit Agreement (the "***First Amendment***") dated as of June 29, 2020, and as further amended by that certain Second Amendment to Amended and Restated Credit Agreement (the "***Second Amendment***") dated as of December 10, 2020 (as amended by the First Amendment, the Second Amendment and as may be further modified, amended, renewed, extended, or restated from time to time, the "***Credit Agreement***").

B. The parties hereto desire to amend the Credit Agreement, subject to the terms and conditions set forth herein.

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

1. Terms and References. Unless otherwise stated in this Amendment (a) terms defined in the Credit Agreement have the same meanings when used in this Amendment, and (b) references to "*Sections*" are to the Credit Agreement's sections.

2. Amendments to the Credit Agreement. On and as of the date hereof, the Credit Agreement is hereby amended (including the schedules and exhibits thereto) to delete the red font stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the blue font double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the composite conformed copy of the Credit Agreement attached hereto as ***Exhibit A***.

3. Amendments to other Loan Documents.

(a) All references in the Loan Documents to the Credit Agreement shall henceforth include references to the Credit Agreement, as modified and amended hereby, and as may, from time to time, be further amended, modified, extended, renewed, and/or increased.

(b) Any and all of the terms and provisions of the Loan Documents are hereby amended and modified wherever necessary, even though not specifically addressed herein, so as to conform to the amendments and modifications set forth herein.

4. Conditions Precedent. This Amendment shall not be effective unless and until:

(a) the Administrative Agent receives fully executed counterparts of this Amendment signed by the Loan Parties, the Administrative Agent and the Required Lenders;

(b) the Administrative Agent receives a certificate of a Responsible Officer of each Loan Party certifying (i) the incorporation, formation and organization documents, as the case may be, of such Loan Party (or that there have been no changes thereto since the date last certified to the Administrative Agent), (ii) resolutions or other action of such Loan Party authorizing this Amendment and the other documents executed by the Loan Parties in connection herewith, (iii) the identity, authority, incumbency and signatures of each Responsible Officer executing this Amendment and any other document executed in connection herewith, and (iv) such other matters as the Administrative Agent may reasonably require;

(c) the Administrative Agent receives evidence dated within thirty (30) days as of the date hereof that each Loan Party is validly existing and in good standing in its jurisdiction of incorporation, formation or organization, as the case may be;

(d) the Administrative Agent receives a favorable opinion of counsel of Honigman LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender and in form and substance reasonably acceptable to the Administrative Agent;

(e) upon the reasonable request of any Lender made at least five (5) days prior to the date hereof, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested 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 two (2) days prior to the date hereof;

(f) at least five (5) days prior to the date hereof, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation as set forth in 31 C.F.R. §1010.230 (the "***Beneficial Ownership Regulation***") shall have delivered, to each Lender that so requests, a certification regarding beneficial ownership required by the Beneficial Ownership Regulation in relation to such Loan Party (a "***Beneficial Ownership Certification***");

(g) the representations and warranties in the Credit Agreement, as amended by this Amendment, and each other Loan Document are true and correct in all material respects on and as of the date of this Amendment as though made as of the date of this Amendment except to the extent that (i) any of them speak to a different specific date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided*, that for purposes of this Amendment, the representations and warranties contained in *subsections (a)* and *(b)* of *Section 5.05* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a)* and *(b)*, respectively, of *Section 6.01* of the Credit Agreement, or (ii) the facts on which any of them were based have been changed by transactions contemplated or permitted by the Credit Agreement;

(h) the Administrative Agent receives payment of all reasonable fees and expenses of the Administrative Agent in connection with this Amendment;

(i) the Borrower shall have paid to the Administrative Agent, for the benefit of the Credit Parties, all fees required to be paid on or before the date hereof in connection with this Amendment;

(j) the Borrower and the Parent REIT shall have entered into amendments to all Specified Debt, each in form and substance reasonably satisfactory to the Administrative Agent, as necessary to conform the applicable terms of such Specified Debt to the amendments set forth herein;

(k) the Administrative Agent and the holders (or an authorized representative thereof) of all Specified Debt shall have entered into an amendment to the Intercreditor Agreement, in form and substance reasonably satisfactory to the Administrative Agent, and each Lender party hereto hereby authorizes the Administrative Agent to enter into such amendment; and

(l) after giving effect to this Amendment, no Default or Event of Default exists.

5. Ratifications. Each Loan Party, (a) ratifies and confirms all provisions of the Loan Documents as amended by this Amendment, (b) ratifies and confirms that all guaranties, assurances, and liens granted, conveyed, or assigned to or for the benefit of the Credit Parties under the Loan Documents are not released, reduced, or otherwise adversely affected by this Amendment and continue to guarantee, assure, and secure full payment and performance of the present and future obligations of the Borrower under the Credit Agreement and the other Loan Documents, and (c) agrees to perform such acts and duly authorize, execute, acknowledge, deliver, file, and record such additional documents, and certificates as the Administrative Agent may request in order to create, perfect, preserve, and protect those guaranties, assurances, and liens.

6. Representations. Each Loan Party, represents and warrants to the Credit Parties that as of the date of this Amendment: (a) this Amendment has been duly authorized, executed, and delivered by each applicable Loan Party; (b) no action of, or filing with, any governmental authority is required to authorize, or is otherwise required in connection with, the execution, delivery, and performance by any Loan Party of this Amendment except for those which have been obtained; (c) the Loan Documents, as amended by this Amendment, are valid and binding upon each Loan Party and are enforceable against each Loan Party in accordance with their respective terms, except as limited by Debtor Relief Laws; (d) the execution, delivery, and performance by each applicable Loan Party of this Amendment does not require the consent of any other Person and do not and will not constitute a violation of any laws, agreements, or understandings to which any Loan Party is a party or by which any Loan Party is bound except for those which have been obtained; (e) all representations and warranties in the Loan Documents are true and correct in all material respects except to the extent that (i) any of them speak to a different specific date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided*, that for purposes of this Amendment, the representations and warranties contained in *subsections (a)* and *(b)* of *Section 5.05* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a)* and *(b)*, respectively, of *Section 6.01* of the Credit Agreement, or (ii) the facts on which any of them were based have been changed by transactions contemplated or permitted by the Credit Agreement; (f) the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects; and (g) no Default or Event of Default exists.

7. Continued Effect. Except to the extent amended hereby, all terms, provisions and conditions of the Credit Agreement and the other Loan Documents, and all documents executed in

connection therewith, shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

8. RELEASE. THE LOAN PARTIES HEREBY ACKNOWLEDGE THAT, AS OF THE DATE HEREOF, THE OBLIGATIONS UNDER THE CREDIT AGREEMENT AND UNDER THE OTHER LOAN DOCUMENTS ARE ABSOLUTE AND UNCONDITIONAL WITHOUT ANY RIGHT OF RESCISSION, SETOFF, COUNTERCLAIM, DEFENSE, OFFSET, CROSS-COMPLAINT, CLAIM OR DEMAND OF ANY KIND OR NATURE FROM THE ADMINISTRATIVE AGENT. EACH LOAN PARTY HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER DISCHARGES EACH OF THE CREDIT PARTIES AND ITS RESPECTIVE AGENTS, EMPLOYEES, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "*RELEASED PARTIES*") FROM ALL POSSIBLE CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES, AND LIABILITIES WHATSOEVER ARISING FROM OR WHETHER KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT, OR CONDITIONAL, AT LAW OR IN EQUITY, ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE DATE HEREOF WHICH ANY LOAN PARTY MAY NOW OR HEREAFTER HAVE AGAINST THE RELEASED PARTIES, IF ANY, AND IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING, OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE FOREGOING RELEASE DOES NOT APPLY TO ANY ACT OR OMISSION OF ANY RELEASED PARTY FIRST OCCURRING AFTER THE DATE HEREOF.

9. Electronic Signatures. This Amendment and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Amendment (each a "***Communication***"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each Loan Party agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Loan Party to the same extent as a manual signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Loan Party enforceable against such in accordance with the terms thereof to the same extent as if manually executed. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("***Electronic Copy***"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "***Electronic Record***" and "***Electronic Signature***"

shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10. Miscellaneous. Unless stated otherwise (a) the singular number includes the plural and *vice versa* and words of any gender include each other gender, in each case, as appropriate, (b) headings and captions may not be construed in interpreting provisions, (c) this Amendment must be construed -- and its performance enforced -- under New York law, (d) if any part of this Amendment is for any reason found to be unenforceable, all other portions of it nevertheless remain enforceable, and (e) this Amendment may be executed in any number of counterparts (originals or facsimile copies followed by originals) with the same effect as if all signatories had signed the same document, and all of those counterparts must be construed together to constitute the same document.

11. ENTIRETIES. THE CREDIT AGREEMENT AS AMENDED BY THIS AMENDMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES ABOUT THE SUBJECT MATTER OF THE CREDIT AGREEMENT AS AMENDED BY THIS AMENDMENT AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

12. Parties. This Amendment binds and inures to each Loan Party and each Credit Party, and their respective successors and permitted assigns.

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EXECUTED as of the date first stated above.

BORROWER:

PEBBLEBROOK HOTEL, L.P., a Delaware limited partnership

By: **PEBBLEBROOK HOTEL TRUST**, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond Martz
Name: Raymond Martz
Title: Executive Vice President and Chief Financial Officer

PARENT REIT:

PEBBLEBROOK HOTEL TRUST, a Maryland Real Estate Investment Trust

By: /s/ Raymond Martz
Name: Raymond Martz
Title: Executive Vice President and Chief Financial Officer

GUARANTORS:

HUSKIES OWNER LLC, a Delaware limited liability company
BLUE DEVILS OWNER LLC, a Delaware limited liability company
PORTLAND HOTEL TRUST, a Maryland real estate investment trust

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Vice President and Secretary

BEARCATS HOTEL OWNER LP, a Delaware limited partnership
BEAVERS OWNER LLC, a Delaware limited liability company
BRUINS HOTEL OWNER LP, a Delaware limited partnership
CREEDENCE HOTEL OWNER LP, a Delaware limited partnership
CRUSADERS HOTEL OWNER LP, a Delaware limited partnership
DONS HOTEL OWNER LP, a Delaware limited partnership
GOLDEN BEARS OWNER LLC, a Delaware limited liability company
GOLDEN EAGLES OWNER LLC, a Delaware limited liability company
HAZEL OWNER LLC, a Delaware limited liability company
HOYAS OWNER LLC, a Delaware limited liability company
JAYHAWK OWNER LLC, a Delaware limited liability company
MENUDO OWNER LLC, a Delaware limited liability company
MINERS HOTEL OWNER LP, a Delaware limited partnership
NKOTB OWNER LLC, a Delaware limited liability company
RAMBLERS HOTEL OWNER LP, a Delaware limited partnership
RAZORBACKS OWNER LLC, a Delaware limited liability company
RHCP HOTEL OWNER LP, a Delaware limited partnership
RUNNING REBELS OWNER LLC, a Delaware limited liability company
SOUTH 17TH STREET OWNERCO, L.P., a Delaware limited partnership
TERRAPINS OWNER LLC, a Delaware limited liability company
WILDCATS OWNER LLC, a Delaware limited liability company
WOLFPACK OWNER LLC, a Delaware limited liability company
WOLVERINES OWNER LLC, a Delaware limited liability company

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

CHAMBER MAID, LP, a Delaware limited partnership
FUN TO STAY, LP, a Delaware limited partnership
GEARY DARLING, LP, a Delaware limited partnership
GLASS HOUSES, a Maryland Real Estate Investment Trust
HARBORSIDE, LLC, a Florida limited liability company
LET IT FLHO, LP, a Delaware limited partnership
LHOBERGE, LP, a Delaware limited partnership
LHO BACKSTREETS, L.L.C., a Delaware limited liability company
LHO CHICAGO RIVER, L.L.C., a Delaware limited liability company
LHO GRAFTON HOTEL, L.P., a Delaware limited partnership
LHO HARBORSIDE HOTEL, L.L.C., a Delaware limited liability company
LHO HOLLYWOOD LM, L.P., a Delaware limited partnership
LHO LE PARC, L.P., a Delaware limited partnership
LHO MICHIGAN AVENUE FREEZEOUT, L.L.C., a Delaware limited liability company
LHO MISSION BAY HOTEL, L.P., a California limited partnership
LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership
LHO SAN DIEGO FINANCING, L.L.C., a Delaware limited liability company
LHO San Diego Hotel One, L.P., a Delaware limited partnership
LHO SANTA CRUZ HOTEL ONE, L.P., a Delaware limited partnership
LHO TOM JOAD CIRCLE DC, L.L.C., a Delaware limited liability company
LHO WASHINGTON HOTEL FOUR, L.L.C., a Delaware limited liability company
LHO WASHINGTON HOTEL SIX, L.L.C., a Delaware limited liability company
LOOK FORWARD, LLC, a Delaware limited liability company
PDX PIONEER, LLC, a Delaware limited liability company
RW NEW YORK, LLC, a Delaware limited liability company
SEASIDE HOTEL, LP, a Delaware limited partnership
SERENITY NOW, LP, a Delaware limited partnership
SF TREAT, LP, a Delaware limited partnership
SOULDRIVER, L.P., a Delaware limited partnership
SUNSET CITY, LLC, a Delaware limited liability company
WESTBAN HOTEL INVESTORS, LLC, a Delaware limited liability company

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

DON'T LOOK BACK, LLC, a Delaware limited liability company

By: **LOOK FORWARD, LLC**, a Delaware limited liability company, its manager

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

LASALLE HOTEL OPERATING PARTNERSHIP, L.P., a Delaware limited partnership

By: **PING MERGER OP GP, LLC**, a Delaware limited liability company, its general partner

By: **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership, its sole member

By: **PEBBLEBROOK HOTEL TRUST**, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Executive Vice President and Chief Financial Officer

ADMINISTRATIVE AGENT:

U.S. BANK NATIONAL ASSOCIATION, as the Administrative Agent and a Lender

By: /s/ Lori Y. Jenson
Name: Lori Y. Jenson
Title: Senior Vice President

LENDERS:

REGIONS BANK, as a Lender

By: /s/ Ghi S. Gavin
Name: Ghi S. Gavin
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ William R. Lynch III
Name: William R. Lynch III
Title: Senior Vice President

EXHIBIT A

CONFORMED CREDIT AGREEMENT

[See attached]

Published CUSIP Number: 70509WAL2

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 13, 2017

among
PEBBLEBROOK HOTEL, L.P.,
as the Borrower,

PEBBLEBROOK HOTEL TRUST,
as the Parent REIT and a Guarantor,

CERTAIN SUBSIDIARIES OF THE BORROWER,
as Guarantors,

U.S. BANK NATIONAL ASSOCIATION,
as Administrative Agent,

and

The Other Lenders Party Hereto

REGIONS BANK,
as Syndication Agent

PNC BANK, NATIONAL ASSOCIATION,
as Managing Agent

U.S. BANK NATIONAL ASSOCIATION
as Sole Lead Arranger and Sole Bookrunner

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AMENDED AND RESTATED CREDIT AGREEMENT

This **AMENDED AND RESTATED CREDIT AGREEMENT** ("***Agreement***") is entered into as of October 13, 2017, among **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership (the "***Borrower***"), **PEBBLEBROOK HOTEL TRUST**, a Maryland real estate investment trust (the "***Parent REIT***"), the other Persons party hereto from time to time as Guarantors (as such term is defined herein), each lender from time to time party hereto (collectively, the "***Lenders***" and individually, a "***Lender***"), and **U.S. BANK NATIONAL ASSOCIATION**, as Administrative Agent.

The Borrower, Parent REIT, Administrative Agent, and certain Lenders are parties to that certain Credit Agreement dated as of April 13, 2015 (as amended, the "***Original Credit Agreement***").

The Borrower, Parent REIT, Administrative Agent and Lenders desire to amend and restate the Original Credit Agreement in its entirety.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. DEFINITIONS AND ACCOUNTING TERMS

1.01 **Defined Terms**. As used in this Agreement, the following terms shall have the meanings set forth below:

"***Acceleration***" has the meaning specified in ***Section 8.02***.

"***Adjusted NOI***" means, as of any date of calculation, the sum of Net Operating Incomes for all Real Properties for the most recently-ended Calculation Period (and, if specifically required, including adjustments for subsequent events or conditions on a Pro Forma Basis).

"***Adjusted Unrestricted Cash***" means, on any date, an amount, not less than zero ($0), equal to the Borrower's Unrestricted Cash *less* (a) with respect to the calculation of the Consolidated Leverage Ratio, $10,000,000, and (b) with respect to the calculation of the Unsecured Leverage Ratio, $100,000,000.

"***Administrative Agent***" means U.S. Bank National Association in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"***Administrative Agent's Office***" means the Administrative Agent's address and, as appropriate, account as set forth on ***Schedule 10.02***, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"***Administrative Questionnaire***" means an Administrative Questionnaire in substantially the form of ***Exhibit D-2*** or any other form approved 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.

"***Affiliated Debt***" has the meaning specified in ***Section 11.09***.

"***Aggregate Commitments***" means the Commitments of all the Lenders.

"***Agreement***" has the meaning specified in the introductory paragraph.

"***Anti-Corruption Laws***" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

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

"***Applicable Margin***" means:

(a) Subject to ***clause (b)*** below, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to ***Section 6.02(a)***:

Pricing Level	Consolidated Leverage Ratio	Eurodollar Rate Loans	Base Rate Loans
I	< 3.5x	1.40%	0.40%
II	≥3.5x and <4.0x	1.45%	0.45%
III	≥4.0x and <5.0x	1.55%	0.55%
IV	≥ 5.0x and < 5.5x	1.75%	0.75%
V	≥5.5x and <6.0x	1.85%	0.85%
VI	≥6.0x	2.20%	1.20%

Any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the last day of the fiscal quarter for which such Compliance Certificate has been timely delivered pursuant to ***Section 6.02(a)***; *provided, however*, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level VI shall apply as of the first Business Day after the last day of the fiscal quarter for which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is actually delivered. The Applicable Margin in effect from the Closing Date until adjusted as set forth above shall be set at a Pricing Level II.

Notwithstanding anything to the contrary contained in this ***clause (a)***, the determination of the Applicable Margin under this ***clause (a)*** for any period shall be subject to the provisions of ***Section 2.07(b)***.

(b) If the Parent REIT or the Borrower attains at least one public or private Investment Grade Rating from either Moody's or S&P, then the Borrower may, upon written notice to the Administrative Agent, make an irrevocable one time written election to exclusively use the below table based on the Debt Rating of the Parent REIT or the Borrower (setting forth the date for such election to be effective), and thereafter the Applicable Margin shall be determined based on the applicable rate per annum set forth in the below table notwithstanding any failure of the Parent REIT or the Borrower to maintain an Investment Grade Rating or any failure of the Parent REIT or the Borrower to maintain a Debt Rating:

Debt Rating	Eurodollar Rate Loans	Base Rate Loans
≥ A-/A3	0.90%	0.00%
BBB+/Baa1	0.95%	0.00%
BBB/Baa2	1.10%	0.10%
BBB-/Baa3	1.35%	0.35%
<BBB-/Baa3 or Unrated	1.75%	0.75%

If at any time the Parent REIT and/or the Borrower has two (2) Debt Ratings, and such Debt Ratings are split, then: (i) 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 Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used; and (ii) if the difference between such Debt Ratings is two (2) ratings categories (e.g., Baa1 by Moody's and BBB- by S&P), the Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the rating that is one higher than the lower of the applicable Debt Ratings were used. If at any time the Parent REIT and/or the Borrower has three (3) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest of such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Ratings-Based Applicable Margin 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 (2) ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch) or more, the Ratings-Based Applicable Margin 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 Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the second highest Debt Rating of the three (3) were used. If the Borrower has elected to use the above table set forth in this ***clause (b)*** and the Parent REIT and/or the Borrower no longer has a private or public Debt Rating from either Moody's or S&P, then the Ratings-Based Applicable Margin shall be deemed to be < BBB-/Baa3 or Unrated. Each change in the Applicable Margin resulting from a change in a Debt Rating shall be effective, in the case of an upgrade, during the period commencing on the date of delivery by the Borrower to the Administrative Agent of notice thereof pursuant to ***Section 6.02(j)*** and ending on the date immediately preceding the effective date of the next such change and, in the case of a downgrade, during the period commencing on the date of the announcement thereof and ending on the date immediately preceding the effective date of the next such change.

(c) Notwithstanding the foregoing, for the period of time commencing on the first Business Day immediately following the Surge Date and ending on the earlier of (i) the last day of the fourth (4^{th}) fiscal quarter following the Surge Date and (ii) the first Business Day immediately following the last day of the fiscal quarter for which a Compliance Certificate has been timely delivered pursuant to ***Section 6.02(a)*** containing a written notice to the

Administrative Agent terminating the Surge Period, the Applicable Margin (whether based on the Consolidated Leverage Ratio or the applicable Debt Rating) shall be increased by thirty-five basis points (0.35%).

(d) Notwithstanding the foregoing, (i) for the period of time commencing on the First Amendment Effective Date ~~through and including the last day of the Waiver Period~~up to, but excluding, the Third Amendment Effective Date, the Applicable Margin shall be a percentage per annum equal to (~~i~~A) two and one-fifth of one percent (2.20%) with respect to Eurodollar Rate Loans, and (~~ii~~B) one and one-fifth of one percent (1.20%) with respect to Base Rate Loans and (ii) for the period of time commencing on the Third Amendment Effective Date through and including the last day of the Waiver Period, the Applicable Margin shall be a percentage per annum equal to (A) two and thirty-five hundredths percent (2.35%) with respect to Eurodollar Rate Loans and (B) one and thirty-five hundredths percent (1.35%) with respect to Base Rate Loans.

"***Applicable Percentage***" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender's Commitment at such time; *provided*, *however*, that upon the initial funding of the Loans on the Closing Date, the Applicable Percentage of each Lender shall be the ratio of the outstanding principal amount of all Loans held by such Lender to the aggregate outstanding principal amount of the Loans of all Lenders. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on ***Schedule 2.01*** or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"***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.

"***Arranger***" means U.S. Bank, in its capacity as sole lead arranger and sole bookrunner.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an 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 D-1*** or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

"***Attributable Indebtedness***" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"***Audited Financial Statements***" means the audited consolidated balance sheet of the Consolidated Parties for the fiscal year ended December 31, 2016, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Consolidated Parties, including the notes thereto.

"***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 Facility***" means the facility evidenced by that certain Fourth Amended and Restated Credit Agreement, dated as of the date hereof, among the Borrower, the Parent REIT, certain lenders party thereto, and Bank of America, N.A., as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Bank of America Term Facility***" means the facility evidenced by that certain Credit Agreement, dated as of October 31, 2018, among the Borrower, the Parent REIT, certain lenders party thereto, and Bank of America, N.A., as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Base Rate***" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus one-half of one percent (0.50%), (b) the rate of interest in effect for such day as publicly announced from time to time by U.S. Bank as its "prime rate," and (c) the Eurodollar Rate plus one percent (1%). The "prime rate" is a rate set by U.S. Bank based upon various factors including U.S. Bank'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 U.S. Bank shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to ***Section 3.03*** hereof, then the Base Rate shall be the greater of ***clauses (a)*** and ***(b)*** above and shall be determined without reference to ***clause (c)*** above. For the avoidance of doubt, in no circumstance shall the Base Rate be less than one and one-quarter of one percent (1.25%) per annum.

"***Base Rate Loan***" means a Loan that bears interest based on the Base 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.

"***BHC Act Affiliate***" has the meaning specified in ***Section 10.23(b)***.

"***Borrower***" has the meaning specified in the introductory paragraph.

"***Borrower Materials***" has the meaning specified in ***Section 6.02***.

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

"***Business Day***" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Applicable Laws of, or are in fact closed in, New York, New

York, Charlotte, North Carolina or Dallas, Texas and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

"***Calculation Period***" means, as of any date of determination commencing with the delivery of the Required Financial Information for the fiscal quarter ending June 30, 2017, the most recent four (4) fiscal quarter period for which the Borrower has provided the Required Financial Information; *provided that*, for calculations made on a Pro Forma Basis, the amounts calculated for the applicable Calculation Period shall be adjusted as set forth in ***Section 1.03(c)***, but shall otherwise relate to the applicable Calculation Period (as defined above).

"***Capitalization Rate***" means (a) 7.25% for: (i) the LaPlaya Beach Resort & Club; (ii) Real Properties in the central business districts of New York, New York, San Diego, California, San Francisco, California, Washington, D.C., and Boston, Massachusetts; and (iii) Los Angeles, California urban Real Properties (including Real Properties located in Santa Monica, California); and (b) 7.75% for all other Real Properties.

"***Capital One Facility***" means the facility evidenced by that certain Credit Agreement, dated as of the date hereof, among the Borrower, the Parent REIT, certain lenders party thereto, and Capital One, National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Cash Equivalents***" means any of the following types of Investments, to the extent owned by any Consolidated Party:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i)(A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in ***clause (c)*** of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of any Consolidated Party, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in ***clauses (a)***, ***(b)*** and ***(c)*** of this definition.

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

"***Change of Control***" means an event or series of events by which:

(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 twenty-five percent (25%) or more of the equity securities of the Borrower or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Borrower or Parent REIT 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);

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower or Parent REIT 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 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 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 passage of thirty (30) days from the date upon which any Person or two (2) or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower or Parent REIT, or control over the equity securities of the Borrower or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Borrower or Parent REIT 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) representing twenty-five percent (25%) or more of the combined voting power of such securities.

"***Closing Date***" means the first date all the conditions precedent in ***Section 4.01*** are satisfied or waived in accordance with ***Section 10.01***.

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

"***Collateral***" has the meaning specified in ***Section 6.17***.

"***Collateral Documents***" means, collectively, the Pledge Agreement and all other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations, including all other security agreements, pledge agreements, deeds of trust, pledges, powers of attorney, consents, assignments, notices, financing statements and all other written matter whether heretofore, now, or hereafter executed by the Borrower or any of its Subsidiaries and delivered to the Administrative Agent to create, perfect or evidence Liens to secure the Obligations.

"***Collateral Period***" means any period after the First Amendment Effective Date commencing on the occurrence of a Collateral Trigger Date and ending on the Collateral Release Date.

"***Collateral Release***" has the meaning specified in ***Section 6.17***.

"***Collateral Release Certificate***" has the meaning specified in ***Section 6.17***.

"***Collateral Release Date***" means any date after the expiration of the Waiver Period on which (a) no Default or Event of Default is continuing, (b) the Borrower delivers a Collateral Release Certificate as required by ***Section 6.17***, and (c) the Consolidated Leverage Ratio is either (i) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (ii) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***.

"***Collateral Trigger Date***" means any date during the Waiver Period, on which (a) the Liquidity of the Consolidated Parties does not exceed $~~300,000,000~~400,000,000 after the Third Amendment Effective Date (the "***First Limited Collateral Trigger Event***"), (b) the Liquidity of the Consolidated Parties does not exceed $300,000,000 after the First Amendment Effective Date (the "***Second Limited Collateral Trigger Event***"), (c) the Liquidity of the Consolidated Parties does not exceed $250,000,000 after the First Amendment Effective Date, or (~~e~~d) the Total Revolving Credit Outstandings (under and as defined in the Bank of America Facility) exceed $400,000,000 at any time on or after the fourth (4th) Business Day following the First Amendment Effective Date.

"***Commitment***" means, as to each Lender, its obligation to make Loans to the Borrower pursuant to ***Section 2.01*** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on ***Schedule 2.01*** or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"***Committed Loan Notice***" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to ***Section 2.02(a)***, which 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.

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

"***Compliance Certificate***" means a certificate substantially in the form of ***Exhibit C***.

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

"***Consolidated Adjusted EBITDA***" means, for any period, EBITDA less an annual replacement reserve equal to four percent (4.0%) of gross property revenues (excluding revenues with respect to third party space or retail leases).

"***Consolidated Fixed Charge Coverage Ratio***" means, as of any date of determination, the ratio of (a) Consolidated Adjusted EBITDA for the Calculation Period ending on such date *to* (b) Consolidated Fixed Charges for such period.

"***Consolidated Fixed Charges***" means, for any period, the sum of (a) Consolidated Interest Charges for such period, *plus* (b) current scheduled principal payments on Consolidated Funded Indebtedness for such period (including, for purposes hereof, current scheduled reductions in commitments, but excluding any payment of principal under the Loan Documents and any "balloon" payment or final payment at maturity that is significantly larger than the scheduled payments that preceded it), *plus* (c) dividends and distributions paid in cash on preferred stock by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, if any, for such period, in each case, determined in accordance with GAAP; *provided that*, to the extent the calculations under ***clauses (a)***, ***(b)*** and ***(c)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Consolidated Party).

"***Consolidated Funded Indebtedness***" means, as of any date of determination, without duplication, the sum of (a) the outstanding principal amount of all obligations of the Consolidated Parties on a consolidated basis, whether current or long-term, for borrowed money (including all obligations hereunder and under the other Loan Documents) and all obligations of the Consolidated Parties on a consolidated basis evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness of the Consolidated Parties on a consolidated basis, (c) all obligations of the Consolidated Parties on a consolidated basis arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations of the Consolidated Parties on a consolidated basis in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (e) Attributable Indebtedness of the Consolidated Parties on a consolidated basis in respect of capital leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees of the Consolidated Parties on a consolidated basis with respect to outstanding Indebtedness of the types specified in ***clauses (a)*** through ***(e)*** above of Persons other than the Parent REIT or any Subsidiary, (g) without duplication, all Indebtedness of the Consolidated Parties on a consolidated basis of the types referred to in ***clauses (a)*** through ***(f)*** above of any partnership or joint venture in which the Parent REIT or a Subsidiary is a general partner or joint venturer, and (h) without duplication, the aggregate amount of Unconsolidated Affiliate Funded Indebtedness for all Unconsolidated Affiliates. Notwithstanding the foregoing, Consolidated Funded Indebtedness shall exclude Excluded Capital Leases.

"***Consolidated Interest Charges***" means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates with respect to such period under capital leases (other than Excluded Capital Leases) that is treated as interest in accordance with GAAP; *provided that*, to the extent the calculations under ***clauses (a)*** and ***(b)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Consolidated Party).

"***Consolidated Leverage Ratio***" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness less Adjusted Unrestricted Cash as of such date *to* (b) EBITDA for the Calculation Period most recently ended.

"***Consolidated Net Income***" means, for any period, the sum of (a) the net income of the Consolidated Parties on a consolidated basis (excluding extraordinary gains, extraordinary losses and gains and losses from the sale of assets) for such period, calculated in accordance with GAAP, *plus* (b) without duplication, an amount equal to the aggregate of net income (excluding extraordinary gains and extraordinary losses) for such period, calculated in accordance with GAAP, of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"***Consolidated Parties***" means a collective reference to the Parent REIT and its consolidated Subsidiaries and "***Consolidated Party***" means any one of the Consolidated Parties.

"***Consolidated Recourse Secured Indebtedness***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt that is recourse to any Consolidated Party or any Unconsolidated Affiliate (except to the extent such recourse is limited to customary non-recourse carve-outs); *provided that*, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Consolidated Party).

"***Consolidated Secured Debt***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt; *provided that*, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Consolidated Party).

"***Consolidated Tangible Net Worth***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, Shareholders' Equity on that date, *minus* the amount of Intangible Assets, *plus* the amount of accumulated depreciation; *provided that* there shall be excluded from the calculation of "Consolidated Tangible Net Worth" any effects resulting from the application of FASB ASC No. 715: Compensation – Retirement Benefits; *provided*, further, that, to the extent the calculation of foregoing amounts includes amounts allocable to Unconsolidated Affiliates, such

calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

"***Consolidated Total Asset Value***" means, without duplication, as of any date of determination, for the Consolidated Parties on a consolidated basis, the sum of: (a) the Operating Property Value of all Real Properties (other than Development/Redevelopment Properties); (b) the amount of all Unrestricted Cash; (c) the book value of all Development/Redevelopment Properties, mortgage or real estate-related loan assets and undeveloped or speculative land; (d) the contract purchase price for all assets under contract for purchase (to the extent included in Indebtedness); and (e) the Borrower's applicable Unconsolidated Affiliate Interests of the preceding items for its Unconsolidated Affiliates.

"***Consolidated Unsecured Interest Coverage Ratio***" means, as of any date of determination, the ratio of (a) Net Operating Income from the Unencumbered Borrowing Base Properties for the Calculation Period ending on such date *to* (b) Unsecured Interest Charges for such period; *provided that*, unless otherwise approved by the Required Lenders, there shall be excluded from the calculation of Consolidated Unsecured Interest Coverage Ratio: (i) any excess above forty percent (40%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Major MSA and (ii) any excess above thirty-three percent (33%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Other MSA.

"***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 Entity***" has the meaning specified in ***Section 10.23(b).***

"***Credit Parties***" means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to ***Section 9.05***, and the other Persons to whom the Obligations are owing from time to time.

"***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.

"***Debt Rating***" means the current published or private long term unsecured senior, non-credit enhanced debt rating of the Parent REIT or the Borrower by S&P, Moody's or Fitch.

"***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 (a) the Base Rate *plus* (b) the Applicable Margin, if any, applicable to Base Rate Loans *plus* (c) two percent (2.0%) per annum; *provided, however*, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus two percent (2.0%) per annum.

"***Default Right***" has the meaning specified in ***Section 10.23(b)***.

"***Defaulting Lender***" means, subject to ***Section 2.12(b)***, any Lender that (a) has failed to (i) fund all or any portion of its Loans within three (3) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this ***clause (c)*** upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; *provided that* a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of ***clauses (a)*** through ***(d)*** above, 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 2.12(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.

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

"***Development/Redevelopment Property***" means Real Property with respect to which development activities are being undertaken by the applicable owner thereof. A Real Property shall cease to be a Development/Redevelopment Property on the last day of the sixth (6th) full fiscal quarter after opening or reopening (or such earlier date as elected by the Borrower by written notice to the Administrative Agent).

"***Disposition***" or "***Dispose***" means the sale, transfer, license, lease (excluding the lease of any Unencumbered Borrowing Base Property and personal property assets related thereto to any TRS pursuant to a form of Lease approved by the Administrative Agent, in its reasonable discretion) or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or

otherwise) of any property by any Person (including any sale leaseback transaction), 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. For the avoidance of doubt, leases of personal or Real Property (other than sale and leaseback transactions) entered into in the ordinary course of business shall not be deemed to be Dispositions.

"***Dividing Person***" has the meaning assigned to it in the definition of "*Division.*"

"***Division***" means the division of the assets, liabilities and/or obligations of a Person (the "***Dividing Person***") among two or more Persons (whether pursuant to a "*plan of division*" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"***Dollar***" and "***$***" mean lawful money of the United States.

"***EBITDA***" means, for any period, the sum of (a) an amount equal to Consolidated Net Income for such period *plus* (b) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by the Consolidated Parties and Unconsolidated Affiliates for such period, (iii) depreciation and amortization expense of the Consolidated Parties and Unconsolidated Affiliates, (iv) other non-recurring expenses of the Consolidated Parties and Unconsolidated Affiliates reducing such Consolidated Net Income which do not represent a cash item in such period or any future period, (v) without duplication of any of the foregoing, amounts deducted from net income as a result of fees or expenses incurred in connection with acquisitions permitted under the Loan Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, (vi) all non-cash items with respect to straight-lining of rents materially decreasing Consolidated Net Income for such period, and (vii) all other non-cash items decreasing Consolidated Net Income (including non-cash expenses or losses with respect to Excluded Capital Leases), *minus* (c) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits of the Consolidated Parties and Unconsolidated Affiliates for such period, (ii) all non-cash items with respect to straight-lining of rents materially increasing Consolidated Net Income for such period, and (iii) all other non-cash items increasing Consolidated Net Income for such period (including non-cash revenues or gains with respect to Excluded Capital Leases); *provided that*, to the extent the calculations under ***clauses (a)***, ***(b)*** and ***(c)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

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

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

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

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

"***Eligible Ground Lease***" means a ground or similar building lease with respect to an Unencumbered Borrowing Base Property executed by the Borrower or a Subsidiary of the Borrower, as lessee, (a) that has a remaining lease term (including extension or renewal rights) of at least thirty-five (35) years, calculated as of the date such property becomes an Unencumbered Borrowing Base Property, (b) that is in full force and effect, (c) that may be transferred and/or assigned without the consent of the lessor (or as to which (i) such lease may be transferred and/or assigned with the consent of the lessor and (ii) such consent shall not be unreasonably withheld or delayed or is subject to certain customary and reasonable requirements), and (d) pursuant to which (i) no default or terminating event exists thereunder, and (ii) no event has occurred which but for the passage of time, or notice, or both would constitute a default or terminating event thereunder.

"***Environmental Laws***" means any and all applicable Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or Governmental Authority 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, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Laws, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Equity Interests***" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; *provided* that neither Permitted Convertible Notes (prior to conversion thereof) nor Permitted Convertible Notes Swap Contracts shall constitute Equity Interests of the Parent REIT.

"***Equity Issuance***" means the issuance or sale by any Person of any of its Equity Interests or any capital contribution to such Person by any holder of its Equity Interests.

"***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 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) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to *Section 4063* of ERISA during a plan year in which such entity 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 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 a Pension Plan or the treatment of a Pension Plan amendment as a termination under *Section 4041* or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any 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; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of *Sections 430*, 431 and 432 of the Code or *Sections 303*, *304* and *305* of ERISA; or (h) 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 or any ERISA Affiliate.

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

"***Eurodollar Rate***" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) ("***LIBOR***") or a comparable or successor rate, which rate is approved by the Administrative Agent (in consultation with the Borrower), 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) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

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

provided that (i) 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, (ii) 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) for the avoidance of doubt, in no circumstance shall the Eurodollar Rate be less than one-quarter of one percent (0.25%) per annum for each Eurodollar Rate Loan that has not been identified by the Borrower in writing as being subject to a Swap Contract.

"***Eurodollar Rate Loan***" means a Loan that bears interest at a rate based on ***clause (a)*** of the definition of Eurodollar Rate.

"***Event of Default***" has the meaning specified in ***Section 8.01***.

"***Excess Un-Reinvested Proceeds***" has the meaning specified in the definition of Excluded Net Proceeds.

"***Excluded Capital Lease***" means any long-term ground lease or building lease that is treated as a capital lease in accordance with GAAP.

"***Excluded Net Proceeds***" means (a) Net Cash Proceeds from the issuance of any common Equity Interests of the Parent REIT after the First Amendment Effective Date in an aggregate amount of up to ~~$300,000,000~~500,000,000 to be used to acquire one or more Unencumbered Borrowing Base Properties, (b) Net Cash Proceeds of Dispositions after the First Amendment Effective Date in the aggregate amount of up to ~~$200,000,000~~500,000,000 that the Borrower has designated in writing as being held for reinvestment in one or more new Unencumbered Borrowing Base Properties; *provided* that, if any such Net Cash Proceeds in excess of $200,000,000 are not reinvested in one or more new Unencumbered Borrowing Base Properties on or before March 31, 2022 (the "***Excess Un-Reinvested Proceeds***"), then such Excess Un-Reinvested Proceeds shall no longer be qualified as Excluded Net Proceeds and shall be used to make a mandatory prepayment required hereunder in accordance with ***Section 2.03(b)***, and (c) Net Cash Proceeds from Permitted Preferred Issuances which are contemporaneously (or not later than thirty (30) days after the issuance thereof) being used to redeem existing preferred Equity Interests of the Parent REIT.

"***Excluded Swap Obligations***" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to ***Section 11.08*** and any other "keepwell, support or other agreement" for the benefit of such Guarantor and any and all Guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, then such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

"***Excluded Taxes***" means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under ***Section 10.13***) or (ii) such Lender changes its Lending Office, except in

each case to the extent that, pursuant to ***Section 3.01(a)(ii)*** or ***3.01(c)***, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with ***Section 3.01(e)*** and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"***FAS 141R Changes***" means those changes made to a buyer's accounting practices by the Financial Accounting Standards Board's Statement of Financial Accounting Standard No. 141R, *Business Combinations*, which is effective for annual reporting periods that begin in calendar year 2009.

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

"***FATCA***" means *Sections 1471* through *1474* of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to *Section 1471(b)(1)* of the Code.

"***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 by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that* (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one one-hundredth of one percent (1/100 of 1%)) charged to U.S. Bank on such day on such transactions as determined by the Administrative Agent.

"***Fee Letters***" means (a) the letter agreement, dated March 23, 2015, among the Parent REIT, the Borrower, U.S. Bank and Capital One, National Association, (b) the letter agreement, dated March 23, 2015, among the Parent REIT, the Borrower and U.S. Bank, (c) the letter agreement, dated October 10, 2017, among the Parent REIT, the Borrower and U.S. Bank, and (d) any other fee letter among the Borrower, the Parent REIT and U.S. Bank.

"***FFO Distribution Allowance***" means, for any fiscal year of the Consolidated Parties, an amount equal to ninety-five percent (95%) of Funds From Operations for such fiscal year.

"***First Amendment Effective Date***" means June 29, 2020.

"***First Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.

"***Fitch***" means Fitch, Inc. and any successor thereto.

"***Foreign Lender***" means any Lender that is organized under the Applicable Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"***FRB***" means the Board of Governors of the Federal Reserve System of the United States.

"***Fully Satisfied***" means, with respect to the Obligations as of any date, that, as of such date, (a) all principal of and interest accrued to such date which constitute Obligations shall have been irrevocably paid in full in cash, (b) all fees, expenses and other amounts then due and payable which constitute Obligations shall have been irrevocably paid in cash and (c) the Aggregate Commitments shall have expired or been terminated in full (in each case, other than inchoate indemnification liabilities arising under the Loan Documents).

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

"***Funds From Operations***" means, for any period, Consolidated Net Income, plus depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures as hereafter provided; *provided that*, to the extent such calculations include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests. Without limiting the foregoing, notwithstanding contrary treatment under GAAP, for purposes hereof, (a) "Funds From Operations" shall include, and be adjusted to take into account, (i) the Parent REIT's interests in unconsolidated partnerships and joint ventures, on the same basis as consolidated partnerships and subsidiaries, as provided in the "white paper" issued in April 2002 by the National Association of Real Estate Investment Trusts, as may be amended from time to time, and (ii) amounts deducted from net income as a result of pre-funded fees or expenses incurred in connection with acquisitions permitted under the Loan Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, and (b) net income (or loss) of the Consolidated Parties on a consolidated basis shall not include gains (or, if applicable, losses) resulting from or in connection with (i) restructuring of indebtedness, (ii) sales of property, (iii) sales or redemptions of preferred stock, (iv) non-cash asset impairment charges or (v) other non-cash items including items with respect to Excluded Capital Leases.

"***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.

"***Glass Houses***" means Glass Houses, a Maryland real estate investment trust.

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

"***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 obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such

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

"***Guarantors***" means, collectively, the Parent REIT, all Subsidiaries of the Borrower as of the Closing Date and as identified on the signature pages hereto as a "Guarantor" as of the Closing Date (excluding all Non-Guarantor Subsidiaries as of the Closing Date), each Person that is required to be a Guarantor pursuant to ***Section 6.12*** (including any Subsidiary that owns an Unencumbered Borrowing Base Property), unless such subsidiary is a Non-Guarantor Subsidiary or has otherwise been released from its obligations pursuant to ***Section 6.13***, and, with respect to the payment and performance by each Specified Loan Party of its obligations under ***Section 11*** with respect to all Swap Obligations, the Borrower, in each case together with their successors and permitted assigns.

"***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 Laws.

"***Hedge Bank***" means any Lender or Affiliate of a Lender, in its capacity as a party to a Swap Contract that is not otherwise prohibited under ***Section 6*** or *7*.

"***Immaterial Subsidiary***" means any Subsidiary whose assets constitute less than one percent (1%) of Consolidated Total Asset Value; *provided that* if at any time the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" exceeds ten percent (10%) of all Consolidated Total Asset Value, then the Borrower shall designate certain "*Immaterial Subsidiaries*" as Guarantors such that the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" which are not Guarantors does not exceed ten percent (10%) of all Consolidated Total Asset Value.

"***Impacted Loans***" has the meaning specified in ***Section 3.03(a)***.

"***Increase Effective Date***" has the meaning given to such term in ***Section 2.11(d)***.

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

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

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

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

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business and, in each case, not overdue by more than ninety (90) days after such trade account payable was created, except to the extent that any such trade payables are being disputed in good faith);

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

(f) capital leases (other than Excluded Capital 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 or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include, without duplication, the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease (other than an Excluded Capital Lease) or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

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

"***Indemnitees***" has the meaning specified in ***Section 10.04(b)***.

"***Information***" has the meaning specified in ***Section 10.07***.

"***Initial Compliance Date***" means (a) if the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of Waiver Period, ~~June 30, 2021~~(i) March 31, 2022 with respect to the financial covenants set forth in ***Sections 7.11(d)***, ***7.11(e)***, and ***7.11(j)(iii)*** and (ii) June 30, 2022 with

respect to the financial covenants set forth in ***Section 7.11*** (other than the covenants set forth in ***clauses (d)***, ***(e)*** and ***(j)(iii)*** thereof) or (b) if the Waiver Period ends on the date occurring under ***clause (b)*** of the definition of Waiver Period, the last day of the applicable fiscal quarter set forth in the Compliance Certificate delivered pursuant to such ***clause (b)***.

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

"***Intercreditor Agreement***" means that certain Intercreditor Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, the Parent REIT, certain grantors and guarantors party thereto, the Administrative Agent, Bank of America, N.A., Capital One, National Association, Truist Bank, and each additional pari passu collateral agent from time to time party thereto.

"***Interest Payment Date***" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided, however*, that if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

"***Interest Period***" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months 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 Maturity Date.

"***Intermediate REIT***" means (a) Glass Houses and (b) any Subsidiary of the Borrower that is formed as a real estate investment trust under its jurisdiction of formation, which Subsidiary does not own any assets (other than any Equity Interests in any Subsidiary that owns any Real Property assets); *provided that* such Subsidiary (i) shall not incur or guarantee any other Indebtedness, and (ii) may receive Restricted Payments paid in cash from its Subsidiaries so long as such Restricted Payments are immediately distributed upon receipt to the Borrower.

"***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.

"***Investment Grade Rating***" means a Debt Rating for the Parent REIT or the Borrower of BBB- or better from S&P, Baa3 or better from Moody's or BBB- or better from Fitch.

"***IP Rights***" has the meaning specified in ***Section 5.18***.

"***Joinder Agreement***" means a Joinder Agreement substantially in the form of ***Exhibit E***, executed and delivered by a new Guarantor in accordance with the provisions of ***Section 6.12***.

"***Lease***" means a lease, sublease, license, concession agreement or other agreement providing for the use or occupancy of any portion of any Real Property (and any personal property related thereto that is covered by such lease, sublease, license, concession agreement or other agreement) owned or ground leased by any Loan Party, including all amendments, supplements, restatements, assignments and other modifications thereto.

"***Lender***" has the meaning specified in the introductory paragraph.

"***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, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

"***LIBOR***" has the meaning specified in the definition of Eurodollar 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).

~~"***Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.~~

"***Liquidity***" means, as of any date of determination, the sum of (a) cash and Cash Equivalents not subject to any Liens, Negative Pledges or other restrictions *plus* (b) undrawn availability under this Agreement or under any other credit facilities of the Consolidated Parties (to the extent available to be drawn at the date of determination in accordance with this Agreement or the other applicable credit facility).

"***Liquidity Compliance Certificate***" means a certificate substantially in the form of ***Exhibit H*** or in such other form as may be agreed by the Borrower and the Administrative Agent.

"***Loan***" means an extension of credit by a Lender to the Borrower under ***Section 2***.

"***Loan Documents***" means this Agreement, each Note, the Intercreditor Agreement, each Collateral Document and the Fee Letters.

"***Loan Parties***" means, collectively, the Borrower and each Guarantor.

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

"***Major MSA***" means the metropolitan statistical area of any of the following: (a) New York City, New York; (b) Chicago, Illinois; (c) Washington, DC; (d) Los Angeles, California (excluding Santa Monica, California); (e) Boston, Massachusetts; (f) San Diego, California; and (g) San Francisco, California.

"***Material Acquisition***" means the acquisition by any Consolidated Party, in a single transaction or in a series of related transactions, of one or more Real Properties or Persons owning Real Properties in which the total investment with respect to such acquisition is equal to or greater than ten percent (10%) of Consolidated Total Asset Value at such time.

"***Material Adverse Effect***" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Parent REIT, the Borrower and their Subsidiaries taken as a whole; (b) a material impairment of the ability of the Borrower and the other Loan Parties taken as a whole to perform their respective obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"***Material Lease***" means as to any Unencumbered Borrowing Base Property (a) any Lease of such Unencumbered Borrowing Base Property (and any personal property assets related thereto) between the applicable Loan Party that owns such Unencumbered Borrowing Base Property and any TRS, (b) any Lease which, individually or when aggregated with all other Leases at such Unencumbered Borrowing Base Property with the same tenant or any of its Affiliates, accounts for ten percent (10%) or more of such Unencumbered Borrowing Base Property's revenue, or (c) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Property.

"***Maturity Date***" means April 13, 2022.

"***Moody's***" means Moody's Investors Service, Inc. and any successor thereto.

"***Multiemployer Plan***" means any employee benefit plan of the type described in *Section 4001(a)(3)* of ERISA that is subject to Title IV of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

"***Multiple Employer Plan***" means any employee benefit plan which has two (2) or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two (2) of whom are not under common control, as such a plan is described in *Section 4064* of ERISA.

"***Negative Pledge***" means a provision of any agreement (other than this Agreement or any other Loan Document) that prohibits the creation of any Lien on any assets of a Person; *provided, however*, that neither (a) an agreement that establishes a maximum ratio of unsecured debt to unencumbered assets, or

of secured debt to total assets, or that otherwise conditions a Person's ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets nor (b) any requirement for the grant in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations, shall constitute a "*Negative Pledge*" for purposes of this Agreement.

"***Net Cash Proceeds***" means:

(a) with respect to any Disposition by any Consolidated Party, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction, including any accrued interest, repayment fees or charges due in connection with such repayment (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Consolidated Party in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two (2) years of the date of the relevant transaction as a result of any gain recognized in connection therewith; *provided that*, if the amount of any estimated taxes pursuant to ***subclause (C)*** exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds;

(b) with respect to the sale or issuance of any Equity Interest by any Consolidated Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Consolidated Party in connection therewith; and

(c) with respect to the incurrence or issuance of any Indebtedness by any Consolidated Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the sum of (A) the principal amount of any Indebtedness that is refinanced, replaced and/or repaid with the proceeds of such Indebtedness, including any accrued interest, repayment fees or charges due in connection with such refinancing, replacement and/or repayment (other than Indebtedness under the Loan Documents) and (B) the reasonable and customary out-of-pocket expenses incurred by such Consolidated Party in connection therewith.

"***Net Operating Income***" means, with respect to any Real Property and for the most recently ended Calculation Period, an amount equal to (a) the aggregate gross revenues from the operations of such Real Property during the applicable Calculation Period, *minus* (b) the sum of (i) all expenses and other proper charges incurred in connection with the operation of such Real Property during such period pro-rated as appropriate (including real estate taxes, but excluding any management fees, debt service charges, income taxes, depreciation, amortization and other non-cash expenses), and (ii) actual management fees paid during such period, and (iii) an annual replacement reserve equal to four percent (4.0%) of the aggregate revenues from the operations of such Real Property (excluding revenues with respect to third party space or retail leases).

"***New Property***" means each Real Property acquired by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) from the date of acquisition for a period of six (6) full fiscal quarters after the acquisition thereof; *provided, however*, that, upon the Seasoned Date for any New Property (or any earlier date selected by Borrower), such New Property shall be converted to a Seasoned Property and shall cease to be a New Property.

"***Net Proceeds***" means, with respect to any Equity Issuance by any Consolidated Party, the amount of cash received by such Consolidated Party in connection with any such transaction after deducting therefrom the aggregate, without duplication, of the following amounts to the extent properly attributable to such transaction and such amounts are usual, customary, and reasonable: (a) brokerage commissions; (b) attorneys' fees; (c) finder's fees; (d) financial advisory fees; (e) accounting fees; (f) underwriting fees; (g) investment banking fees; and (h) other commissions, costs, fees, expenses and disbursements related to such Equity Issuance, in each case to the extent paid or payable by such Consolidated Party.

"***Non-Consenting Lender***" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of ***Section 10.01*** and (b) has been approved by the Required Lenders.

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

"***Non-Guarantor Subsidiary***" means any Subsidiary (whether direct or indirect) of the Borrower, other than any Subsidiary which owns an Unencumbered Borrowing Base Property, which (a) is a TRS; (b) is an Intermediate REIT; (c) is (i) formed for or converted to the specific purpose of holding title to Real Property assets which are collateral for Indebtedness owing or to be owed by such Subsidiary, *provided that* such Indebtedness must be incurred or assumed within ninety (90) days (or such longer period as the Administrative Agent may agree in writing) of such formation or conversion or such Subsidiary shall cease to qualify as a Non-Guarantor Subsidiary, and (ii) expressly prohibited in writing from guaranteeing Indebtedness of any other person or entity pursuant to (A) a provision in any document, instrument or agreement evidencing such Indebtedness of such Subsidiary or (B) a provision of such Subsidiary's Organization Documents, in each case, which provision was included in such Organization Document or such other document, instrument or agreement at the request of the applicable third party creditor and as an express condition to the extension or assumption of such Indebtedness; *provided that* a Subsidiary meeting the requirements set forth in this ***clause (c)*** shall only remain a "Non-Guarantor Subsidiary" for so long as (1) each of the foregoing requirements set forth in this ***clause (c)*** are satisfied, (2) such Subsidiary does not guarantee any other Indebtedness and (3) the Indebtedness with respect to which the restrictions noted in ***clause (c)*** (ii) are imposed remains outstanding; *provided further that* in no event shall any party to a Permitted Intercompany Mortgage encumbering an Unencumbered Borrowing Base Property be a Non-Guarantor Subsidiary; (d)(i) becomes a Subsidiary following the Closing Date, (ii) is not a Wholly Owned Subsidiary of the Borrower, and (iii) with respect to which the Borrower and its Affiliates, as applicable, do not have sufficient voting power to cause such Subsidiary to become a Guarantor hereunder; or (e) is an Immaterial Subsidiary.

"***Note***" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of ***Exhibit B***.

"***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 any Swap

Contract entered into by any Loan Party with any Lender or its Affiliate as a counterparty with respect to the Loans, 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 the "Obligations" with respect to a Guarantor shall exclude any Excluded Swap Obligations of such Guarantor.

"***OFAC***" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"***Operating Property Value***" means, at any date of determination, (a) for each Seasoned Property, (i) the Adjusted NOI for such Real Property divided by (ii) the applicable Capitalization Rate, and (b) for each New Property, the GAAP book value for such New Property (until the Seasoned Date or such earlier date as elected by the Borrower by written notice to the Administrative Agent).

"***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.

"***Original Credit Agreement***" has the meaning specified in the introductory paragraph.

"***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 MSA***" means any metropolitan statistical area other than a Major MSA. For the avoidance of doubt, Santa Monica, California shall constitute an Other MSA.

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to ***Section 3.06***).

"***Outstanding Amount***" means, with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

"***Parent REIT***" has the meaning specified in the introductory paragraph.

"***Pari Passu Obligations***" has the meaning specified in the Intercreditor Agreement.

"***Participant***" has the meaning specified in ***Section 10.06(d)***.

"***PATRIOT Act***" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time, and any successor statute.

"***PBGC***" means the Pension Benefit Guaranty Corporation.

"***Pebblebrook Hotel Lessee***" means Pebblebrook Hotel Lessee, Inc., a Delaware corporation, and its permitted successors.

"***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 or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a Multiple Employer Plan, has made contributions at any time during the immediately preceding five (5) plan years.

Permitted Convertible Notes" means senior convertible debt securities of the Parent REIT (a) that are unsecured, (b) that do not have the benefit of any Guarantee of any Subsidiary, (c) that are otherwise permitted under ***Section 7.03*** and, if applicable, ***Section 7.19***, (d) the Net Cash Proceeds of which are applied during the Waiver Period, if applicable, in accordance with this Agreement and the Intercreditor Agreement, (e) that are not subject to any sinking fund or any prepayment, redemption or repurchase requirements, whether scheduled, triggered by specified events or at the option of the holders thereof (it being understood that none of (i) a customary "change in control" or "fundamental change" put, (ii) a right to convert such securities into common shares of the Parent REIT, cash or a combination thereof as the Parent REIT may elect or (iii) an acceleration upon an event of default will be deemed to constitute such a sinking fund or prepayment, redemption or repurchase requirement), and (f) that have the benefit of covenants and events of default customary for comparable convertible securities (as determined by the Parent REIT in good faith).

Permitted Convertible Notes Swap Contract" means a Swap Contract entered into by the Parent REIT in connection with, and prior to or concurrently with, the issuance of any Permitted Convertible Notes pursuant to which the Parent REIT acquires a call or a capped call option requiring the counterparty thereto to deliver to the Parent REIT common shares of the Parent REIT, the cash value of such shares or a combination of such shares and cash from time to time upon exercise of such option; provided that the terms, conditions and covenants of each such Swap Contract shall be such as are typical and customary for Swap Contracts of such type (as determined by the Parent REIT in good faith).

"***Permitted Intercompany Mortgage***" means a loan by a Loan Party to another Loan Party secured by a Lien in Real Property so long as such loan is subordinated to the Obligations pursuant to ***Section 11.09*** or otherwise on terms acceptable to the Administrative Agent; *provided that* in no event shall there be more than five (5) Permitted Intercompany Mortgages at any time.

"***Permitted Liens***" has the meaning specified in ***Section 7.01***.

"***Permitted Preferred Issuances***" means the issuance after the First Amendment Effective Date by the Parent REIT of preferred Equity Interests that (a) are not subject to mandatory redemption or are otherwise not treated as Indebtedness pursuant to GAAP and (b) to the extent used to purchase or redeem existing preferred Equity Interests, have a yield to maturity yield (including any voluntary or involuntary

liquidation preference and any accrued and unpaid dividends) not greater than any preferred Equity Interest purchased or redeemed with the proceeds thereof.

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

"***Plan***" means any "*employee benefit plan*" (as such term is defined in *Section 3(3)* of ERISA) other than a Multiemployer Plan established by the Borrower 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***.

"***Pledge Agreement***" means any pledge or security agreement entered into, after the First Amendment Effective Date between the Borrower, certain Subsidiaries of the Borrower party thereto, and the Administrative Agent, for the benefit of the Administrative Agent and the other Credit Parties (as required by this Agreement or any other Loan Document), substantially in the form of ***Exhibit I***.

"***Pledged Subsidiary***" has the meaning specified in the Pledge Agreement.

"***PNC Facility***" means the facility evidenced by that certain Amended and Restated Credit Agreement, dated as of the date hereof, among the Borrower, the Parent REIT, certain lenders party thereto, and PNC Bank, National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Pro Forma Basis***" means, for purposes of calculating (utilizing the principles set forth in ***Section 1.03(c)***) compliance with each of the financial covenants set forth in ***Section 7.11*** in respect of a proposed transaction, that such transaction shall be deemed to have occurred as of the first day of the four (4) fiscal-quarter period ending as of the most recent fiscal quarter end preceding the date of such transaction with respect to which the Administrative Agent has received the Required Financial Information. As used herein, "***transaction***" shall mean (a) any Borrowing, (b) any incurrence or assumption of Indebtedness as referred to in ***Section 7.03(f)***, (c) any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to ***Section 7.05(a)*** or ***(b)*** or any other Disposition as referred to in ***Section 7.05***, or (d) any acquisition of any Person (whether by merger or otherwise) or other property. In connection with any calculation relating to the financial covenants set forth in ***Section 7.11*** upon giving effect to a transaction on a Pro Forma Basis:

(i) for purposes of any such calculation in respect of any incurrence or assumption of Indebtedness as referred to in ***Section 7.03(f)***, any Indebtedness which is retired in connection with such incurrence or assumption shall be excluded and deemed to have been retired as of the first day of the applicable period;

(ii) for purposes of any such calculation in respect of any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to ***Section 7.05*** or any other Disposition as referred to in ***Section 7.05***, (A) income statement items (whether positive or negative) attributable to the Person or property disposed of shall be excluded, (B) any Indebtedness which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the first day of the applicable period, and (C) pro forma adjustments shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the

Consolidated Parties and (3) factually supportable (in the reasonable judgment of the Administrative Agent); and

(iii) for purposes of any such calculation in respect of any acquisition of any Person (whether by merger or otherwise) or other property, (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall be deemed to be included as of the first day of the applicable period, and (B) pro forma adjustments (with the calculated amounts annualized to the extent the period from the date of such acquisition through the most-recently ended fiscal quarter is not at least twelve (12) months or four (4) fiscal quarters, in the case of any applicable period that is based on twelve months or four (4) fiscal quarters) shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the reasonable judgment of the Administrative Agent).

"***Public Lender***" has the meaning specified in ***Section 6.02***.

"***QFC***" has the meaning specified in ***Section 10.23(b)***.

"***QRS***" means a Person qualifying for treatment either as a "qualified REIT subsidiary" under *Section 856(i)* of the Code, or as an entity disregarded as an entity separate from its owner under Treasury Regulations under *Section 7701* of the Code.

"***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.

"***Real Properties***" means, at any time, a collective reference to each of the facilities and real properties owned or leased by the Borrower or any other Subsidiary or in which any such Person has an interest at such time; and "***Real Property***" means any one of such Real Properties.

"***Recipient***" means 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.

"***Register***" has the meaning specified in ***Section 10.06(c)***.

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

"***Related Parties***" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, 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.

"***Required Financial Information***" means, with respect to each fiscal period or quarter of the Borrower, (a) the financial statements required to be delivered pursuant to ***Section 6.01(a)*** or ***(b)*** for such

fiscal period or quarter of the Parent REIT, and (b) the Compliance Certificate required by ***Section 6.02(a)*** to be delivered with the financial statements described in ***clause (a)*** above.

"***Required Lenders***" means, at any time, Lenders having Total Credit Exposures representing at least fifty-one percent (51%) of the Total Credit Exposures of all Lenders; *provided*, that at any time if there are only two (2) Lenders, "*Required Lenders*" shall mean both such Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"***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, vice president of finance, treasurer, or controller of a 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 and, solely for purposes of notices given pursuant to ***Section 2***, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Parent REIT or any Subsidiary or any Unconsolidated Affiliate, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Parent REIT's shareholders, partners or members (or the equivalent Person thereof); *provided that*, to the extent the calculation of the amount of any dividend or other distribution for purposes of this definition of "Restricted Payment" includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

"***Risk Based Capital Guidelines***" means (a) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the date of this Agreement.

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

"***Sale and Leaseback Transaction***" means any arrangement pursuant to which any Consolidated Party, directly or indirectly, becomes liable as lessee, guarantor or other surety with respect to any lease, whether an operating lease or a capital lease, of any property (a) which such Consolidated Party has sold or transferred (or is to sell or transfer) to a Person which is not a Consolidated Party or (b) which such Consolidated Party intends to use for substantially the same purpose as any other property which has been sold or transferred (or is to be sold or transferred) by such Consolidated Party to another Person which is not a Consolidated Party in connection with such lease.

"***Sanctioned Country***" means, at any time, any country or territory which is itself the subject or target of any comprehensive Sanctions.

"***Sanctioned Person***" means, at any time, (a) any Person or group listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person or group operating, organized or resident in a Sanctioned Country, (c) any agency, political subdivision or instrumentality of the government of a Sanctioned Country or (d) any Person fifty percent (50%) or more owned, directly or indirectly, by any of the above.

"***Sanction(s)***" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"***Seasoned Date***" means the first day on which an acquired Real Property has been owned for six (6) full fiscal quarters following the date of acquisition of such Real Property.

"***Seasoned Property***" means (a) each Real Property (other than a New Property) owned by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) and (b) upon the occurrence of the Seasoned Date of any New Property, such Real Property.

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

"***Second Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.

"***Secured Debt***" means, for any given calculation date, without duplication, the total aggregate principal amount of any Indebtedness of the Consolidated Parties on a consolidated basis that is secured in any manner by any lien (other than Permitted Liens of the type described in ***Section 7.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)***, ***(g)***, ***(h)*** and ***(j)***); *provided that* (a) Indebtedness in respect of obligations under any capitalized lease shall not be deemed to be "Secured Debt" and (b) Secured Debt shall exclude Excluded Capital Leases and any Indebtedness in respect of the Pari Passu Obligations.

"***Secured Non-Recourse Debt***" means Secured Debt that is not recourse to the Parent REIT or any of its Subsidiaries (except to the extent such recourse is limited to customary non-recourse carve-outs).

"***Senior Notes***" means the Borrower's 4.70% Senior Notes Series A Due December 1, 2023 and 4.93% Senior Notes Series B Due December 1, 2025 evidenced by that certain Note Purchase and Guarantee Agreement dated November 12, 2015 (as the same may be amended, restated, modified or supplemented from time to time).

"***Shareholders' Equity***" means, as of any date of determination, the sum of (a) consolidated shareholders' equity of the Consolidated Parties as of that date determined in accordance with GAAP *plus* (b) without duplication, an amount equal to the aggregate shareholders' equity of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"***Solvent***" and "***Solvency***" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its

debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"***Specified Debt***" means the Senior Notes, the Bank of America Term Facility, the Bank of America Facility, the Capital One Facility, the US Bank Lessee Line of Credit, and any other agreement creating or evidencing Indebtedness for borrowed money (excluding any Secured Non-Recourse Debt) entered into on or after the Closing Date by any Consolidated Party, or in respect of which any Consolidated Party is an obligor or otherwise provides a Guarantee or other credit support (other than customary non-recourse carve outs), which is either (a) incurred pursuant to ***Section 7.19(c)(iii)*** or (b) in a principal amount outstanding or available for borrowing equal to or greater than $25,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency).

"***Specified Loan Party***" means any Loan Party that is not an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to ***Section 11.08***).

"***Subsidiary***" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "***Subsidiary***" or to "***Subsidiaries***" shall refer to a Subsidiary or Subsidiaries of the Parent REIT.

"***Subsidiary TRS***" means any TRS other than Pebblebrook Hotel Lessee.

"***Surge Date***" has the meaning specified in ***Section 7.11(a)***.

"***Surge Period***" has the meaning specified in ***Section 7.11(a)***.

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

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

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

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

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

"***Third Amendment Effective Date***" means February 18, 2021.

"***Threshold Amount***" means $25,000,000.

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

"***Total Outstandings***" means the aggregate Outstanding Amount of all Loans.

"***TRS***" means each of (a) Pebblebrook Hotel Lessee and (b) each other taxable REIT subsidiary that is a Wholly Owned Subsidiary of Pebblebrook Hotel Lessee.

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

"***UCC***" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"***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 Kington 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.

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

"***Unconsolidated Affiliate Funded Indebtedness***" means, as of any date of determination for any Unconsolidated Affiliate, the product of (a) the sum of (i) the outstanding principal amount of all obligations of such Unconsolidated Affiliate, whether current or long-term, for borrowed money and all obligations of such Unconsolidated Affiliate evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all purchase money Indebtedness of such Unconsolidated Affiliate, (iii) all obligations of such Unconsolidated Affiliate arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (iv) all obligations of such Unconsolidated Affiliate in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (v) Attributable Indebtedness of such Unconsolidated Affiliate in respect of capital leases and Synthetic Lease Obligations, (vi) without duplication, all Guarantees of such Unconsolidated Affiliate with respect to outstanding Indebtedness of the types specified in ***clauses (i)*** through ***(v)*** above of Persons other than such Unconsolidated Affiliate, and (vii) all Indebtedness of such Unconsolidated Affiliate of the types referred to in ***clauses (i)*** through ***(vi)*** above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Unconsolidated Affiliate is a general partner or joint venturer, multiplied by (b) the respective Unconsolidated Affiliate Interest of each Consolidated Party in such Unconsolidated Affiliate.

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

"***Unencumbered Asset Value***" means, as of any date of determination, the Operating Property Value of all Unencumbered Borrowing Base Properties (other than Development/Redevelopment Properties).

"***Unencumbered Borrowing Base Entity***" means, as of any date of determination, any Person that owns (or leases as ground lessee pursuant to an Eligible Ground Lease) an Unencumbered Borrowing Base Property.

"***Unencumbered Borrowing Base Properties***" means, as of any date, a collective reference to each Real Property listed in the most recent Compliance Certificate delivered by the Borrower hereunder that meets the following criteria:

(i) such Real Property is, or is expected to be, a "luxury", "upper upscale", or "upscale" full or select service hotel located in the United States;

(ii) such Real Property is wholly-owned, directly or indirectly, by the Borrower or a Subsidiary of the Borrower in fee simple or ground leased pursuant to an Eligible Ground Lease (and such Real Property, whether owned in fee simple by the Borrower or a Subsidiary of the Borrower or ground leased pursuant to an Eligible Ground Lease, is leased to the applicable TRS);

(iii) if such Real Property is owned or ground leased pursuant to an Eligible Ground Lease by a Subsidiary of the Borrower, then (A) such Subsidiary is a Guarantor (unless such Subsidiary has been released as, or is not required to be, a Guarantor pursuant to the terms of

Section 6.13), (B) the Borrower directly or indirectly owns at least ninety percent (90%) of the issued and outstanding Equity Interests of such Subsidiary, and (C) such Subsidiary is controlled exclusively by the Borrower and/or one or more Wholly Owned Subsidiaries of the Borrower (including control over operating activities of such Subsidiary and the ability of such Subsidiary to dispose of, grant Liens in, or otherwise encumber assets, incur, repay and prepay Indebtedness, provide Guarantees and make Restricted Payments, in each case without any requirement for the consent of any other Person);

(iv) such Real Property is free of any Liens (other than Permitted Liens of the type described in ***Section 7.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)***, ***(g)***, ***(h)*** and ***(j)***) or Negative Pledges;

(v) such Real Property is free of all material title defects;

(vi) if such Real Property is subject to an Eligible Ground Lease, then there is no default by the lessee under the Eligible Ground Lease and such Eligible Ground Lease is in full force and effect;

(vii) such Real Property is free of all material structural defects;

(viii) such Real Property complies in all material respects with all applicable Environmental Laws and is not subject to any material Environmental Liabilities;

(ix) neither all nor any material portion of such Real Property is subject to any proceeding for the condemnation, seizure or appropriation thereof, nor the subject of negotiations for sale in lieu thereof;

(x) such Real Property has not otherwise been removed as an "Unencumbered Borrowing Base Property" pursuant to the provisions of this Agreement; and

(xi) the Borrower has executed and delivered to the Administrative Agent all documents and taken all actions reasonably required by the Administrative Agent to confirm the rights created or intended to be created under the Loan Documents and the Administrative Agent has received all other evidence and information that it may reasonably require;

provided that, if any Real Property does not meet all of the foregoing criteria, then, upon the request of the Borrower, such Real Property may be included as an "Unencumbered Borrowing Base Property" with the written consent of the Required Lenders.

"***United States***" and "***U.S.***" mean the United States of America.

"***Unrestricted Cash***" means as of any date of determination, all cash of the Borrower on such date that (a) does not appear (or would not be required to appear) as "restricted" on a balance sheet of the Borrower, (b) is not subject to a Lien in favor of any Person other than Liens securing the Pari Passu Obligations on an equal and ratable basis and statutory Liens in favor of any depositary bank where such cash is maintained, (c) does not consist of or constitute "deposits" or sums legally held by the Borrower in trust for another Person, (d) is not subject to any contractual restriction or obligation regarding the payment thereof for a particular purpose (including insurance proceeds that are required to be used in connection with the repair, restoration or replacement of any property of the Borrower), and (e) is otherwise generally available for use by the Borrower.

"***Unsecured Indebtedness***" means all Indebtedness which is not Secured Debt.

"***Unsecured Interest Charges***" means, as of any date of determination, Consolidated Interest Charges on the Unsecured Indebtedness for the most recently ended Calculation Period.

"***Unsecured Leverage Increase Period***" has the meaning specified in ***Section 7.11(g)***.

"***U.S. Bank***" means U.S. Bank National Association and its successors.

"***US Bank Lessee Line of Credit***" means the facility evidenced by that certain ~~Third~~Fourth Amended and Restated Revolving Credit Note, dated as of the ~~First~~Third Amendment Effective Date, among Pebblebrook Hotel Lessee, as maker, and U.S. Bank National Association, as payee (as the same may be amended, restated, modified or supplemented from time to time).

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

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

"***Waiver Period***" means the period commencing on the First Amendment Effective Date and ending on the earlier to occur of (a) the date the Borrower is required to deliver a duly completed Compliance Certificate for the fiscal quarter ending June 30, ~~2021~~2022 pursuant to ***Section 6.02(a)*** (or, if earlier, the date on which the Borrower delivers such Compliance Certificate pursuant to ***Section 6.02(a)*** evidencing, to the Administrative Agent's reasonable satisfaction, the Borrower's compliance with the financial covenants contained in ***Section 7.11*** as of June 30, ~~2021~~2022) and (b) the date the Borrower delivers a Compliance Certificate in accordance with ***Section 6.02(a)*** with respect to any fiscal quarter ending after the First Amendment Effective Date but prior to June 30, ~~2021~~2022 evidencing, to the Administrative Agent's reasonable satisfaction, the Borrower's compliance with the financial covenants contained in ***Section 7.11*** as of the last day of such fiscal quarter as if such covenants had applied for such quarter, together with a written notice to the Administrative Agent irrevocably electing to terminate the Waiver Period concurrently with such delivery.

"***Wholly Owned Subsidiary***" means, with respect to any direct or indirect Subsidiary of any Person, that one hundred percent (100%) of the Equity Interests with ordinary voting power issued by such Subsidiary (other than directors' qualifying shares and investments by foreign nationals mandated by Applicable Laws) is beneficially owned, directly or indirectly, by such Person.

"***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, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

(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).

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 and its Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(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); *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 and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any change to GAAP occurring after the Closing Date as a result of the adoption of any proposals set forth in the Proposed Accounting Standards Update, Leases (Topic 840), issued by the Financial Accounting Standards Board on August 17, 2010, or any other proposals issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) was not required to be so treated under GAAP as in effect on the Closing Date.

(c) **Financial Covenant Calculation Conventions**. Notwithstanding the above, the parties hereto acknowledge and agree that, for purposes of all calculations made under the financial covenants set forth in ***Section 7.11*** (including without limitation for purposes of the definitions of "Pro Forma Basis" set forth in ***Section 1.01***), (i) after consummation of any Disposition or removal of an Unencumbered Borrowing Base Property pursuant to ***Section 1.06*** (A) income statement items (whether income or expense) and capital expenditures attributable to the property disposed of or removed shall, to the extent not otherwise excluded in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in ***Section 1.01***, be excluded as of the first day of the applicable period and (B) Indebtedness which is retired shall be excluded and deemed to have been retired as of the first day of the applicable period and (ii) after consummation of any acquisition (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall, to the extent not otherwise included in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in ***Section 1.01***, be included to the extent relating to any period applicable in such calculations, (B) to the extent not retired in connection with such acquisition, Indebtedness of the Person or property acquired shall be deemed to have been incurred as of the first day of the applicable period, (iii) in connection with any incurrence of Indebtedness, any Indebtedness which is retired in connection with such incurrence shall be excluded and deemed to have been retired as of the first day of the applicable period and (iv) pro forma adjustments may be included to the extent that such adjustments would give effect to items that are (1) directly attributable to the relevant transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the opinion of the Administrative Agent).

(d) **Consolidation of Variable Interest Entities**. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

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

1.05 **Times of Day; Rates**. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility, 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 "***Eurodollar Rate***" or with respect to any rate that is an alternative or replacement for or successor to any such rate or the effect of any of the foregoing.

1.06 **Addition/Removal of Unencumbered Borrowing Base Properties.**

(a) The Unencumbered Borrowing Base Properties and the Eligible Ground Leases as of the Closing Date are listed on ***Schedule 5.23***.

(b) The Borrower may from time to time add an additional Real Property as an Unencumbered Borrowing Base Property in a Compliance Certificate delivered to the Administrative Agent in accordance with the terms of ***Section 6.03(e)***; *provided that* no Real Property shall be included as an Unencumbered Borrowing Base Property in any Compliance Certificate delivered to the Administrative Agent or in any calculation of any of the components of the financial covenants set forth in ***Section 7.11*** that refer to "Unencumbered Borrowing Base Properties" unless such Real Property satisfies the eligibility criteria set forth in the definition of "Unencumbered Borrowing Base Property."

(c) Notwithstanding anything contained herein to the contrary, to the extent any property previously-qualifying as an Unencumbered Borrowing Base Property ceases to meet the criteria for qualification as such, such property shall be immediately removed from all financial covenant related calculations contained herein. Any such property shall immediately cease to be an "Unencumbered Borrowing Base Property" hereunder and the Borrower shall provide a Compliance Certificate to the Administrative Agent in accordance with the terms of ***Section 6.03(e)*** removing such Real Property from the list of Unencumbered Borrowing Base Properties.

(d) The Loan Parties may voluntarily remove any Unencumbered Borrowing Base Property from qualification as such (but only in connection with a proposed financing, sale or other Disposition otherwise permitted hereunder) by deleting such Unencumbered Borrowing Base Property in a Compliance Certificate delivered to the Administrative Agent in accordance with the terms of ***Section 6.03(e)***, if, and to the extent: (i) the Loan Parties shall, immediately following such removal, be in compliance (on a Pro Forma Basis) with all of the covenants contained in ***Section 7*** of this Agreement and (ii) no Default exists or would result therefrom. So

long as no Default exists or would result therefrom, the Administrative Agent shall release any Subsidiary that owns any Unencumbered Borrowing Base Property that is being removed pursuant to this ***clause (d)*** from its obligations (accrued or unaccrued) under ***Section 11*** and the Administrative Agent shall promptly, and in any event within five (5) Business Days, execute a Release of Guarantor in the form of ***Exhibit G*** attached hereto if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal.

2. THE COMMITMENTS AND BORROWINGS

2.01 **The Loans**. Subject to the terms and conditions set forth herein, each Lender severally agrees to make a single loan to the Borrower on the Closing Date in an amount not to exceed such Lender's Commitment. The Borrowing on the Closing Date shall consist of Loans made simultaneously by the Lenders in accordance with their respective Commitment. Amounts borrowed under this ***Section 2.01*** and repaid or prepaid may not be reborrowed. Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein. The Commitments shall be automatically and permanently reduced to zero after the borrowing of Loans pursuant to this ***Section 2.01*** on the Closing Date.

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

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (x) telephone or (y) 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 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans; *provided, however*, that if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one (1), two (2), three (3) or six (6) months in duration as provided in the definition of "*Interest Period*," the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four (4) Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three (3) Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing 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, Eurodollar Rate Loans having an Interest Period of one (1) month. Any such automatic conversion to Eurodollar Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar 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.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and 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 Eurodollar Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in ***Section 4.01***, 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 U.S. Bank 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 Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in U.S. Bank's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than eight (8) Interest Periods in effect.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or a 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.

2.03 **Prepayments.**

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided that* (i) such notice must be in a form reasonably acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base

Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 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) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). 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. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to ***Section 3.05***. Subject to ***Section 2.12***, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages.

(b) During the Waiver Period, and subject to the terms of the Intercreditor Agreement, if any Consolidated Party makes any Disposition (other than Dispositions permitted by ***Section 7.05(b)(i)***, ***(ii)***, ***(iii)*** and ***(iv)***), issues any Equity Interests, or incurs any Indebtedness, the Borrower shall, within three (3) Business Days of (i) receipt by such Consolidated Party of the proceeds thereof or (ii) the date any Excess Un-Reinvested Proceeds no longer qualify as Excluded Net Proceeds, make a mandatory repayment of the Pari Passu Obligations in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds received in connection with such Disposition, such issuance of Equity Interests, or such Indebtedness, other than Excluded Net Proceeds.

(c) Each mandatory repayment of the Pari Passu Obligations required under ***clause (b)*** above shall be applied to such Pari Passu Obligations (including the Obligations) as set forth in the Intercreditor Agreement. The portion of such mandatory repayments to be applied to this facility in accordance with the Intercreditor Agreement shall be applied to payment of the Outstanding Amount of Loans ratably among the Lenders in accordance with their Applicable Percentages.

2.04 **Repayment of Loans.** The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of all Loans outstanding on such date.

2.05 **Interest.**

(a) Subject to the provisions of ***subsection (b)*** below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period *plus* the Applicable Margin 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 Margin.

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

(ii) If any amount (other than principal of any Loan) payable by the 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, 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.

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

(c) 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.

2.06 **Fees**. The Borrower shall pay to the Administrative Agent the fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.07 **Computation of Interest and Fees; Retroactive Adjustments of Applicable Margin.**

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided that* any Loan that is repaid on the same day on which it is made shall, subject to ***Section 2.09(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.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders promptly on 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 of the United States, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights

of the Administrative Agent or any Lender, as the case may be, under ***Section 2.05(b)*** or under ***Section 8***. The Borrower's obligations under this paragraph shall survive until the date that is one (1) year after the date of the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.08 **Evidence of Debt.** The Loans 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 Loans 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 and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.09 **Payments Generally; Administrative Agent's Clawback.**

(a) **General**. All payments to be made by the Borrower shall be made free and clear of and 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 immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (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, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) **Clawback**.

(i) **Funding by Lenders; Presumption by Administrative Agent**. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with ***Section 2.02*** (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by ***Section 2.02***) and may, in reliance upon such assumption, make available to the 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 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, 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 Base Rate Loans. 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. 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 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 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 the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

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

(c) **Failure to Satisfy Conditions Precedent**. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this ***Section 2***, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in ***Section 4*** 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, with interest earned thereon at the Federal Funds Rate until returned.

(d) **Obligations of Lenders Several**. The obligations of the Lenders hereunder to make 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.

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

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

(ii) the provisions of this ***Section*** 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) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this ***Section*** shall apply).

2.11 **Increase in Total Credit Exposure.**

(a) **Request for Increase**. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may, from time to time, request an increase in the Total Credit Exposure of all Lenders by an amount (for all such requests) not exceeding $85,000,000; *provided that* (i) any such request for an increase shall be in a minimum amount of $5,000,000 and, if greater than $5,000,000, in whole increments of $1,000,000 in excess thereof, unless the Administrative Agent and the Borrower agree otherwise, (ii) the Borrower's right to request an increase in the Total Credit Exposure pursuant to this ***Section 2.11*** shall be exercisable no more than three (3) times and (iii) after giving effect to such increase, the Total Credit Exposure of all Lenders shall not exceed $150,000,000 less the amount of any prepayments of the Outstanding Amount. At the time of sending such notice, the

Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders).

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

(c) **Notification by Administrative Agent; Additional Lenders**. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent (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.

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

(e) **Conditions to Effectiveness of Increase**. As a condition precedent to such increase, (i) the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (y) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in ***Section 5*** and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this ***Section 2.11***, the representations and warranties contained in ***subsections (a)*** and ***(b)*** of ***Section 5.05*** shall be deemed to refer to the most recent statements furnished pursuant to ***clauses (a)*** and ***(b)***, respectively, of ***Section 6.01***, and (B) no Default exists or would result therefrom, and (ii)(x) upon the reasonable request of any Lender made at least ten (10) days prior to the Increase Effective Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested 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 three (3) days prior to the Increase Effective Date and (y) at least three (3) days prior to the Increase Effective Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party. To the extent that the increase of the Commitments shall take the form of a new term loan tranche, this Agreement shall be amended, in form and substance satisfactory to the Administrative Agent, to include such terms as are customary for a

term loan commitment. The Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to ***Section 3.05***) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Total Credit Exposure of any Lender under this ***Section***, and each Loan Party shall execute and deliver such documents or instruments as the Administrative Agent may require to evidence such increase in the Total Credit Exposure of any Lender and to ratify each such Loan Party's continuing obligations hereunder and under the other Loan Documents.

(f) **Conflicting Provisions**. This ***Section*** shall supersede any provisions in ***Section 2.10*** or ***10.01*** to the contrary.

2.12 **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 Laws:

(i) **Waivers and Amendments**. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "***Required Lenders***" and ***Section 10.01***.

(ii) **Defaulting Lender Waterfall**. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to ***Section 8*** or otherwise) or received by the Administrative Agent from a 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 such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no 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 deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the 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 such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no 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 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 made at a time when the conditions set forth in ***Section 4.01*** 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 until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure**. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; *provided that* no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided*, *further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

3. TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) **Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes**.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to ***subsection (e)*** below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code 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 ***subsection (e)*** below, (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, 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 applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any Applicable Laws other than the Code to withhold or deduct any Taxes from any payment,

then (A) such Loan Party or the Administrative Agent, as required by such Applicable Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to ***subsection (e)*** below, (B) such Loan Party or the Administrative Agent, to the extent required by such Applicable Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified 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 applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) **Payment of Other Taxes by the Borrower**. Without limiting the provisions of ***subsection (a)*** above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) **Tax Indemnifications**.

(i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this ***Section 3.01***) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. The Borrower shall, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to ***Section 3.01(c)(ii)*** below.

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

delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this ***clause (ii)***.

(d) **Evidence of Payments**. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this ***Section 3.01***, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Applicable Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) **Status of Lenders; Tax Documentation**.

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

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

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

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

time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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

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

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

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in *Section 1471(b)* or *1472(b)* of the 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 (D)***, "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Obligations as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation *Section 1.1471-2(b)(2)(i)*.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this ***Section 3.01*** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the 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 any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this ***Section 3.01***, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this ***Section 3.01*** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this ***subsection***, in no event will the applicable Recipient be required to pay any amount to the Borrower pursuant to this ***subsection*** the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This ***subsection*** shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) **Survival**. Each party's obligations under this ***Section 3.01*** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

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

3.03 **Inability to Determine Rates.**

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to this ***clause (i)***, "***Impacted Loans***"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in

the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, 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, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in ***clause (i)*** of this ***Section 3.03(a)***, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under ***clause (i)*** of the first sentence of this ***Section 3.03(a)***, (ii) the Administrative Agent or 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 (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

3.04 **Increased Costs; Reserves on Eurodollar 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, any Lender (except any reserve requirement contemplated by ***Section 3.04(e)***);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in ***clauses (b)*** through ***(d)*** of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the

Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender 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 requirements or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by 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), 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.

(c) **Certificates for Reimbursement**. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in ***subsection (a)*** or ***(b)*** of this ***Section 3.04*** and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this ***Section 3.04*** shall not constitute a waiver of such Lender's right to demand such compensation, *provided that* the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this ***Section 3.04*** for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of 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 nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Reserves on Eurodollar Rate Loans**. The Borrower shall pay to each Lender, 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 Eurodollar Rate 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), which 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 from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

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 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; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to ***Section 10.13***;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

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 Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06 **Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office**. Each Lender may make any Loan to the Borrower through any Lending Office; *provided that* the exercise of this option shall not affect the obligation of the Borrower to repay the Loan in accordance with the terms of this Agreement. If any Lender requests compensation under ***Section 3.04***, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to ***Section 3.01***, or if any Lender gives a notice pursuant to ***Section 3.02***, then, at the request of Borrower, 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 Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to ***Section 3.01*** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with ***Section 3.06(a)***, the Borrower may replace such Lender in accordance with ***Section 10.13***.

3.07 **Survival**. All of the Borrower's obligations under this ***Section 3*** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

4. CONDITIONS PRECEDENT TO BORROWINGS

4.01 **Conditions of Initial Borrowing**. The obligation of each Lender to advance the Borrowings on the Closing Date of its Loans hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Borrower to be true and correct as of the Closing Date and such other documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of the Loan Parties is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;

(v) a favorable opinion of Honigman Miller Schwartz and Cohn LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may request;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in ***Sections 4.01(d)***, ***(e)*** and ***(f)*** have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in

the aggregate, a Material Adverse Effect; and (C) a calculation of the Consolidated Leverage Ratio as of the last day of the fiscal quarter of the Borrower ended on June 30, 2017;

(viii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of the Borrower ended on June 30, 2017, signed by a Responsible Officer of the Borrower;

(ix) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(x) a certificate executed by a Responsible Officer of the Borrower as of the Closing Date, in form and substance satisfactory to the Administrative Agent, regarding the Solvency of (A) the Borrower, (B) each of the other Loan Parties, and (C) the Consolidated Parties on a consolidated basis; and

(xi) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders reasonably may require.

(b) Any fees required to be paid hereunder or under the Fee Letters on or before the Closing Date shall have been paid (provided such fees may be paid from the proceeds of such initial Loan).

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute 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).

(d) The representations and warranties of the Borrower and each other Loan Party contained in ***Section 5*** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Loan, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this ***Section 4.01***, 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***.

(e) No Default shall exist, or would result from, such proposed Borrowing or from the application of the proceeds thereof.

(f) The Borrower shall be in compliance (on a Pro Forma Basis taking into account the applicable Loan) with the financial covenants set forth in ***Section 7.11***.

(g) There shall not have occurred any event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(h) The absence of any condition, circumstance, action, suit, investigation or proceeding pending or, to the knowledge of the Borrower and/or Guarantors, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(i) The Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof.

(j) The Parent REIT and the Borrower shall have entered into (i) the PNC Facility, the Bank of America Facility, the Capital One Facility and the US Bank Lessee Line of Credit and (ii) a conforming amendment to the Senior Notes, each in form and substance reasonably satisfactory to the Administrative Agent.

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, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 **Existence, Qualification and Power**. Each Consolidated Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Applicable Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Applicable 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 (b)(i)*** or ***(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 such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, except in each case, to the extent such violation, breach, Lien or payment could not reasonably be expected to have a Material Adverse Effect, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Applicable Laws.

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.

5.04 **Binding Effect**. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.05 **Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Consolidated Parties, on a consolidated basis, 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 indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of the date thereof, including liabilities for taxes, commitments and Indebtedness, that in each case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Consolidated Parties. Except as otherwise set forth on ***Schedule 5.05***, such financial statements set forth all indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of December 31, 2016, including liabilities for taxes, commitments and Indebtedness, that in each case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Consolidated Parties.

(b) The unaudited consolidated balance sheets of the Consolidated Parties dated June 30, 2017, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Consolidated Parties as of the date thereof and their results of operations for the period covered thereby, subject, in the case of ***clauses (i)*** and ***(ii)***, to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 **Litigation**. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Responsible Officer of any Consolidated Party after due and diligent investigation, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Consolidated Party or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in ***Schedule 5.06***, if determined adversely, could (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, and there has been no material adverse change in the status of, or the financial effect on, any Consolidated Party with respect to the matters described on ***Schedule 5.06***.

5.07 **No Default**. No Consolidated Party is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default exists or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 **Ownership of Property; Liens; Investments.**

(a) Each Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, each of the Unencumbered Borrowing Base Properties and/or all other real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party is subject to no Liens, other than Liens set forth on ***Schedule 5.08(b)*** and Liens permitted by ***Section 7.01***.

(c) ***Schedule 5.08(c)*** sets forth a complete and accurate list of all Investments held by any Consolidated Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

5.09 **Environmental Compliance.**

(a) The Consolidated Parties conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Laws on their respective businesses, operations and Real Properties, and as a result thereof the Consolidated Parties have reasonably concluded that, except as specifically disclosed in ***Schedule 5.09***, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in ***Schedule 5.09*** and except as would not reasonably be expected to have a Material Adverse Effect, (i) none of the real properties currently or to the knowledge of any Responsible Officer of any Consolidated Party, formerly owned or operated by any Consolidated Party, is listed or, to the knowledge of any Responsible Officer of any Consolidated Party, proposed for listing on the United States Environmental Protection Agency's (EPA) National Priorities List or on the EPA Comprehensive Environmental Response, Compensation, and Liability Information Sharing database or any analogous state or local list, nor to the knowledge of any Responsible Officer of any Consolidated Party is any adjacent property on such list, (ii) no Consolidated Party has operated and, to the knowledge of any Responsible Officer of any Consolidated Party, there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been transported, treated, stored or disposed on any Real Property currently owned or operated by any Consolidated Party or, to the knowledge of any Responsible Officer of any Consolidated Party, on any real property formerly owned or operated by any Consolidated Party, (iii) or to the knowledge of any Responsible Officer of any Consolidated Party, there is no friable asbestos or asbestos-containing material on any Real Property currently owned or operated by any Consolidated Party, and (iv) Hazardous Materials have not been transported, released, discharged or disposed of on any real property currently or formerly owned or operated by any Consolidated Party.

(c) Except as otherwise set forth on ***Schedule 5.09***, no Consolidated Party is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Laws; and to the knowledge of the Responsible Officers of the Consolidated Parties all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any real property currently or formerly owned or operated by any Consolidated Party have been disposed of in a manner not reasonably expected to result in a Material Adverse Effect.

(d) Except as otherwise set forth on ***Schedule 5.09***, each of the Unencumbered Borrowing Base Properties and, to the knowledge of the Responsible Officers of the Loan Parties, all operations at such Unencumbered Borrowing Base Properties are in compliance with all Environmental Laws in all material respects, there is no material violation of any Environmental Laws with respect to such Unencumbered Borrowing Base Properties or, to the knowledge of any Responsible Officer of any Loan Party, the businesses operated thereon, and there are no conditions relating to such Unencumbered Borrowing Base Properties or the businesses that could reasonably be expected to result in a Material Adverse Effect.

(e) Except as otherwise set forth on ***Schedule 5.09***, none of the Unencumbered Borrowing Base Properties contains, or to the knowledge of any Responsible Officer of any Loan Party has previously contained, any Hazardous Materials at, on or under such Unencumbered Borrowing Base Properties in amounts or concentrations that constitute or constituted a violation of Environmental Laws that could have a Material Adverse Effect.

(f) Except as otherwise set forth on ***Schedule 5.09***, no Loan Party has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding Hazardous Materials or compliance with Environmental Laws with regard to any of its Unencumbered Borrowing Base Properties or the businesses located thereon, nor does any Responsible Officer of any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(g) No Consolidated Party is subject to any judicial proceeding or governmental or administrative action and, to the knowledge of the Responsible Officers of the Consolidated Parties, no such proceeding or action is threatened in writing, under any Environmental Laws that could reasonably be expected to give rise to a Material Adverse Effect, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Laws with respect to the Consolidated Parties, the Unencumbered Borrowing Base Properties or, to the knowledge of any Responsible Officer of any Consolidated Party, the businesses located thereon that could be reasonably expected to give rise to a Material Adverse Effect.

5.10 **Insurance**. The properties of the Consolidated Parties are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Consolidated Party operates. The insurance coverage of the Consolidated Parties with respect to the Unencumbered Borrowing Base Properties as of

the Closing Date is outlined as to carrier, policy number, expiration date, type and amount on ***Schedule 5.10***.

5.11 **Taxes**. The Consolidated Parties have filed all Federal and state income and other material tax returns and reports required to be filed, and have paid all Federal and state income and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Consolidated Party that would, if made, have a Material Adverse Effect. No Consolidated Party nor any Subsidiary thereof is party to any tax sharing agreement; *provided, however*, that any tax protection agreement entered into with a contributor of property to a Consolidated Party (but only to the extent the indemnity or other obligation to such contributor under such tax protection agreement is limited to any capital gains tax that would be due upon a sale or other Disposition of such contributed property and either (i) is limited to an amount that does not exceed one percent (1%) of the total assets of such Consolidated Party or (ii) exceeds one percent (1%) but less than five percent (5%) of the total assets of such Consolidated Party but which indemnity is only triggered by a sale or other Disposition of such contributed property) shall not be considered a tax sharing agreement.

5.12 **ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws, except to the extent that the failure to so comply would result in, or could reasonably be expected to result in, a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under *Section 401(a)* of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under *Section 401(a)* of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under *Section 501(a)* of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Consolidated Party, nothing has occurred that would prevent or cause the loss of the tax-qualified status of any such Pension Plan.

(b) There are no pending or, to the best knowledge of each Consolidated 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, and neither the Consolidated Parties nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) there has been no failure to satisfy the minimum funding standard applicable to a Pension Plan under *Section 412* of the Code and *Section 302* of ERISA for any plan year, and no waiver of the minimum funding standards applicable to a Pension Plan under *Section 412* of the Code and *Section 302* of ERISA for any plan year has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in *Section 430(d)(2)* of the Code) is sixty percent (60%) or higher and neither the Consolidated Parties nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the

funding target attainment percentage for any such Pension Plan to drop below sixty percent (60%) as of the most recent valuation date; (iv) neither the Consolidated Parties nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Consolidated Parties nor any ERISA Affiliate has engaged in a transaction that could be subject to *Section 4069* or *Section 4212(c)* of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Consolidated Parties nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than those listed on ***Schedule 5.12(d)*** hereto.

(e) Neither the Borrower nor any of its Subsidiaries is (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to *Section 4975* of the Code, (iii) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (iv) a "governmental plan" within the meaning of ERISA.

5.13 **Subsidiaries; Equity Interests**. The corporate capital and ownership structure of the Consolidated Parties is as described in ***Schedule 5.13(a)*** (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof). Set forth on ***Schedule 5.13(b)*** is a complete and accurate list (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof) with respect to each Consolidated Party of (i) jurisdiction of organization, (ii) number of ownership interests (if expressed in units or shares) of each class of Equity Interests outstanding, (iii) number and percentage of outstanding ownership interests (if expressed in units or shares) of each class owned (directly or indirectly) by the Parent REIT, the Borrower and their Subsidiaries, (iv) all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto and (v) an identification of which such Consolidated Parties are Guarantors hereunder and which Unencumbered Borrowing Base Properties are owned by each such Loan Party. The outstanding Equity Interests of the Consolidated Parties are, to the extent applicable depending on the organizational nature of such Person, validly issued, fully paid and non-assessable and are owned by the Parent REIT, the Borrower or a Subsidiary thereof (as applicable), directly or indirectly, in the manner set forth on ***Schedule 5.13(b)***, free and clear of all Liens (other than Permitted Liens or, in the case of the Equity Interests of the Loan Parties, statutory Liens or Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement). Other than as set forth in ***Schedule 5.13(b)*** (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof), no Consolidated Party (other than the Parent REIT) has outstanding any securities convertible into or exchangeable for its Equity Interests nor does any such Consolidated Party have outstanding any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to its Equity Interests. The copy of the Organization Documents of each Loan Party provided pursuant to ***Section 4.01(a)(iv)*** is a true and correct copy of each such document as of the Closing Date, each of which is valid and in full force and effect.

5.14 **Margin Regulations; Investment Company Act.**

(a) The Consolidated Parties are not engaged and will not engage, principally or as one of their 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) None of the Consolidated Parties nor any Person Controlling such Consolidated Parties is required to be registered as an "*investment company*" under the Investment Company Act of 1940.

5.15 **Disclosure**. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any other Consolidated Party is subject, and all other matters known to any Responsible Officer of any Consolidated Party (other than matters of a general economic nature), that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Consolidated Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided that*, with respect to projected financial information, the Consolidated Parties represent only that such information was prepared in good faith based upon assumptions believed by the Consolidated Parties to be reasonable at the time (it being recognized by the Lenders that projections as to future events are not to be viewed as facts and that actual results may differ).

5.16 **Compliance with Laws**. Each Consolidated Party thereof is in compliance in all material respects with the requirements of all Applicable 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 Applicable Laws or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 **Taxpayer Identification Number**. The Borrower's true and correct U.S. taxpayer identification number is set forth on ***Schedule 10.02***.

5.18 **Intellectual Property; Licenses, Etc**. The Borrower and the other Consolidated Parties 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. To the knowledge of any Responsible Officer of any Consolidated 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 or any other Consolidated Party infringes upon any rights held by any other Person, except for such infringements that would not have a Material Adverse Effect. Except as specifically disclosed in ***Schedule 5.18***, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of any Responsible Officer of any Consolidated Party, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.19 **Solvency**. (a) As of the Closing Date and immediately prior to the initial Borrowing, the Borrower is Solvent, each other Loan Party is Solvent, and the Consolidated Parties, on a consolidated basis, are Solvent, (b) as of the date and immediately prior to each Subsidiary becoming a Guarantor

pursuant to ***Section 6.12***, such Subsidiary is Solvent, and (c) following the initial Borrowing, the Borrower is Solvent, each other Loan Party is Solvent, and the Consolidated Parties, on a consolidated basis, are Solvent if the contribution rights that each such party will have against such other parties and the subrogation rights that each such party may have, if any, against the Borrower are taken into account.

5.20 **Casualty, Etc**. None of the Unencumbered Borrowing Base Properties have been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.21 **Labor Matters**. As of the Closing Date, there are no collective bargaining agreements or Multiemployer Plans covering the employees of any Consolidated Party or any of their Subsidiaries. No Consolidated Party or any of their Subsidiaries has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last year, which could (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

5.22 **REIT Status**. The Parent REIT is qualified as a REIT and the Borrower is qualified as a REIT, a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS, and each of their Subsidiaries that is a corporation is either a TRS or a QRS. As of the Closing Date, the Subsidiaries of the Parent REIT and the Borrower that are taxable REIT subsidiaries, as such term is used in the Code, are identified on ***Schedule 5.22***.

5.23 **Unencumbered Borrowing Base Properties**. Each Unencumbered Borrowing Base Property listed in each Compliance Certificate delivered by the Borrower to the Administrative Agent in accordance with the terms of this Agreement fully qualifies as an Unencumbered Borrowing Base Property as of the date of such Compliance Certificate.

5.24 **Anti-Corruption Laws; Sanctions; Anti-Terrorism Laws**.

(a) Each Consolidated Party and, to their knowledge, any Related Party, is in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. No Consolidated Party nor, to their knowledge, any Related Party is a Sanctioned Person. No Loan, use of the proceeds of any Loan or other transactions contemplated hereby will violate Anti-Corruption Laws or applicable Sanctions.

(b) Neither the making of the Loans hereunder nor the use of the proceeds thereof will violate the PATRIOT Act, the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or successor statute thereto. The Consolidated Parties and, to their knowledge, all Related Parties are in compliance in all material respects with the PATRIOT Act.

5.25 **Affected Financial Institutions**. Neither the Parent REIT, nor any of its Subsidiaries, is an Affected Financial Institution.

5.26 **Covered Entities**. No Loan Party is a Covered Entity.

6. **AFFIRMATIVE COVENANTS**. So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall not be Fully Satisfied, the Borrower shall, and shall cause each Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable) to:

6.01 **Financial Statements**. Deliver to the Administrative Agent, for distribution to the Lenders:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Parent REIT (commencing with the fiscal year ended December 31, 2017), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in 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 (i) certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties in accordance with GAAP, and (ii) audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and 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; and

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Parent REIT (commencing with the fiscal quarter ended September 30, 2017), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and the related consolidated of changes in shareholders' equity, and cash flows for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties 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(c)***, 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)*** or ***(b)*** above at the times specified therein.

6.02 **Certificates; Other Information**. Deliver to the Administrative Agent (for distribution of the same to each Lender):

(a) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication

including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), and (ii) a profit and loss summary showing the operating condition for each of the Unencumbered Borrowing Base Properties (in form and with such detail as is reasonably satisfactory to the Administrative Agent);

(b) if a Default exists, promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Consolidated Party by independent accountants in connection with the accounts or books of any Consolidated Party, or any audit of any of them, subject to applicable professional guidelines;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the shareholders of the Parent REIT, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or the Parent REIT 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;

(d) promptly after the furnishing thereof, copies of any report furnished to any holder of debt securities of any Loan Party (or any Subsidiary thereof if such debt securities are recourse (other than customary non-recourse carve outs) to such Loan Party) pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to ***Section 6.01*** or any other clause of this ***Section 6.02***;

(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 or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(f) not later than five (5) Business Days after receipt thereof by any Loan Party, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement regarding or related to any breach or default by any party thereto or any other event that could materially impair the value of the interests or the rights of any Loan Party or otherwise have a Material Adverse Effect and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may request;

(g) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party with respect to an Unencumbered Borrowing Base Property with any Environmental Laws that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any Unencumbered Borrowing Base Property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Laws;

(h) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, an update to ***Schedules 5.06***, ***5.09***, ***5.12(d)*** or ***5.13(a)*** or ***(b)*** to the extent the information provided by any such schedules has changed since the most recent update thereto;

provided that the Borrower shall, promptly upon the Administrative Agent's written request therefor, provide any information or materials requested by the Administrative Agent to confirm or evidence the matters reflected in such updated schedules;

(i) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, copies of Smith Travel Research (STR Global) summary STAR Reports for each Unencumbered Borrowing Base Property for the fiscal quarter to which such financial statements relate;

(j) promptly, of any change in any public or private Debt Rating;

(k) annually, on or before December 31, written evidence of the current Debt Ratings by any of Moody's, S&P and/or Fitch, if such rating agency has provided to the Parent REIT or the Borrower a private debt rating, which evidence shall be reasonably acceptable to the Administrative Agent;

(l) promptly following any request therefor, provide 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;

(m) not later than seven (7) Business Days after the last Business Day of each month during the Waiver Period, a Liquidity Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Parent REIT (which delivery may, unless the Administrative Agent requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), together with documentation reasonably satisfactory to the Administrative Agent to verify the calculations set forth in such certificate; and

(n) promptly, such additional information regarding the business, financial or corporate affairs of the Loan Parties or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to ***Section 6.01(a)*** or ***(b)*** or ***Section 6.02(c)*** (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 posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on ***Schedule 10.02***; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided that*: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent upon its request (either in its discretion or at the direction of the Required Lenders) to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and 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 of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower

with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "***Borrower Materials***") by posting Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "***Platform***") and (b) certain of the Lenders (each, a "***Public Lender***") may have personnel who do not wish to receive material non-public information with respect to the Borrower 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 hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower 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 Side Information;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

6.03 **Notices**. Promptly notify the Administrative Agent (who shall promptly notify each Lender):

(a) of the occurrence of any Default;

(b) of (i)(A) any breach or non-performance of, or any default under, a material Contractual Obligation of any Loan Party; (B) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party, including pursuant to any Environmental Laws; or (C) any other matter, which, in the case of any of ***clause (A)***, ***(B)*** or ***(C)***, individually or in the aggregate, has resulted in or could reasonably be expected to result in a Material Adverse Effect; and (ii) any material written dispute or any material litigation, investigation, proceeding or suspension between the Borrower or any Loan Party and any Governmental Authority;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party, including any determination by the Borrower referred to in ***Section 2.07(b)***;

(e) of any voluntary addition or removal of an Unencumbered Borrowing Base Property or other event or circumstance that results in a Real Property previously qualifying as an Unencumbered Borrowing Base Property ceasing to qualify as such; *provided that* such notification shall be accompanied by an updated Compliance Certificate with calculations showing the effect of such addition or removal on the financial covenants contained herein; and

(f) of any adverse changes to any insurance policy obtained by any Loan Party with respect to or in connection with any Unencumbered Borrowing Base Property in accordance with ***Section 6.15***, including, without limitation, any reduction in the amount or scope of coverage or any increase in any deductible or other self-retention amount thereunder.

Each notice pursuant to this ***Section 6.03*** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein (including, in the case of any notice pursuant to ***Section 6.03(a)***, a description of any and all provisions of this Agreement and any other Loan Document that the Responsible Officers of the Borrower believe have been breached) and stating what action the Borrower has taken and proposes to take with respect thereto.

6.04 **Payment of Obligations**. Pay and discharge as the same shall become due and payable, all of its material obligations and liabilities, including (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Consolidated Parties; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, unless the same are being contested in good faith by appropriate proceedings diligently conducted (the commencement and continuation of which proceedings shall suspend the collection of any such contested amount from such Consolidated Party, and suspend the enforcement thereof against, the applicable property), and adequate reserves in accordance with GAAP are being maintained by such Consolidated Party and, as to any Loan Party, such claims are bonded (to the extent requested by the Administrative Agent).

6.05 **Preservation of Existence, Etc**. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization except in a transaction permitted by ***Section 7.04*** or ***7.05***; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 **Maintenance of Properties**. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty (as to which insurance satisfying the criteria hereunder was maintained at the time of such casualty) excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07 **Maintenance of Insurance**. Maintain with financially sound and reputable insurance companies not Affiliates of any Consolidated Party, insurance with respect to the properties and business of the Consolidated Parties against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and, in the case of insurance maintained by the Loan Parties, providing for not less than thirty (30) days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance.

6.08 **Compliance with Laws and Contractual Obligations**. Comply in all material respects with the requirements of all Applicable Laws (including without limitation, Anti-Corruption Laws and applicable Sanctions), all Contractual Obligations 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 Applicable Laws, Contractual Obligation 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 each Consolidated Party.

6.10 **Inspection Rights**. Permit representatives of the Administrative Agent to visit and inspect any property of any Loan Party, 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 may, if it so chooses, be present at or may participate in any such discussions), at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to such Loan Party with the costs and expenses of the Administrative Agent being for its own account if no Event of Default then exists; *provided, however*, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 **Use of Proceeds**. Use the proceeds of the Loans for working capital, capital expenditures and other general corporate purposes (including, without limitation, property acquisitions and Restricted Payments not prohibited under ***Section 7.06***) not in contravention of any Applicable Laws or of any Loan Document.

6.12 **Additional Guarantors**. Unless such Subsidiary is not required to become a Guarantor pursuant to ***Section 6.13***, notify the Administrative Agent at the time that any Person becomes a Subsidiary of the Borrower, another Loan Party or any Intermediate REIT (other than, in each case, a Non-Guarantor Subsidiary), and promptly thereafter (and in any event on the earlier to occur of (a) the date on which such Person Guarantees any other Specified Debt or (b) concurrently with the delivery of each Compliance Certificate pursuant to ***Section 6.02(a)***, or such later date as the Administrative Agent may agree in writing), cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a counterpart of this Agreement, a Joinder Agreement, a Guarantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), a Grantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), or such other document as the Administrative Agent shall deem appropriate for such purpose, and (ii) deliver to the Administrative Agent documents of the types referred to in ***Section 4.01(a)(iii)***, ***4.01(a)(iv)***, ***4.01(a)(vi)*** and ***4.01(a)(vii)***, together with a favorable opinion of counsel of such Person, all such documentation and opinion to be in form, content and scope reasonably satisfactory to the Administrative Agent.

6.13 **Release of Guarantors**. At any time after the later of (a) the expiration of the Waiver Period or (b) the Collateral Release Date, if applicable, if the Parent REIT achieves at least two (2) Investment Grade Ratings, then, at the written request of the Borrower, the Guarantors (other than the Parent REIT) shall be released and discharged from all obligations (accrued or unaccrued) hereunder (other than those that expressly survive termination hereof), *provided that* any Subsidiary of the Borrower, another Loan Party or any Intermediate REIT (other than, in each case, a Non-Guarantor

Subsidiary) that (a) owns or ground leases any Real Property that qualifies as an Unencumbered Borrowing Base Property and (b) is liable for any recourse Indebtedness (whether secured or unsecured, and including any guarantee obligations in respect of indentures or otherwise) shall nonetheless be required to be a Guarantor hereunder in order for each Real Property owned or ground leased by such Subsidiary to be treated as an Unencumbered Borrowing Base Property.

6.14 **Further Assurances**. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution or acknowledgment thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

6.15 **Additional Insurance Requirements for Unencumbered Borrowing Base Properties.**

(a) Obtain and maintain, with respect to each Unencumbered Borrowing Base Property (or cause the applicable TRS that is party to any Lease regarding each such Unencumbered Borrowing Base Property to obtain and maintain), at its (or their) sole expense the following:

(i) property insurance with respect to all insurable property located at or on or constituting a part of such Unencumbered Borrowing Base Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism (to the extent commercially available) and such other insurable hazards as the Administrative Agent may require, in an amount not less than one hundred percent (100%) of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent the applicable Loan Parties and the Administrative Agent from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non reporting) form during and with respect to any construction on or with respect to such Unencumbered Borrowing Base Property;

(ii) if and to the extent any portion of any of the improvements are, under the Flood Disaster Protection Act of 1973 ("***FDPA***"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by the Administrative Agent, but in no event less than the amount sufficient to meet the requirements of Applicable Laws and the FDPA, as such requirements may from time to time be in effect;

(iii) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of the applicable Loan Party as named insured and the Administrative Agent as additional insured;

(iv) statutory workers' compensation insurance with respect to any work on or about such Unencumbered Borrowing Base Property (including employer's liability

insurance, if required by the Administrative Agent), covering all employees of the applicable Loan Party and/or its applicable Subsidiaries and any contractor;

(v) if there is a general contractor, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in ***clause (iv)*** above, for the benefit of the general contractor as named insured and the applicable Loan Party and the Administrative Agent as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the premises (including employer's liability insurance, if required by the Administrative Agent), covering all employees of the general contractor and any contractor; and

(vi) such other insurance (and related endorsements) as may from time to time be required by the Administrative Agent (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance (if then customarily carried by owners of premises similarly situated), wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements.

(b) All insurance policies obtained by any Loan Party with respect to or in connection with any Unencumbered Borrowing Base Property shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to the Administrative Agent, and shall require not less than thirty (30) days' prior written notice to the Administrative Agent of any cancellation of coverage.

(c) All insurance companies providing coverage pursuant to ***clause (a)*** of this ***Section 6.15*** or any other general coverage required pursuant to any Loan Documents must be licensed to do business in the state in which the applicable Unencumbered Borrowing Base Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better.

(d) All insurance policies maintained, or caused to be maintained, by any Loan Party or its applicable Subsidiaries with respect to any Unencumbered Borrowing Base Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by such Loan Party or its applicable Subsidiaries or the Administrative Agent and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(e) If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this ***Section 6.15*** or any other provision of any Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any debtor relief law, or if in Administrative Agent's opinion the financial responsibility of such insurer is or becomes inadequate, such Loan Party shall, in each instance promptly upon its discovery thereof or upon the request of the Administrative Agent therefor, and at the Loan Party's expense, promptly obtain and deliver (or cause to be obtained and delivered) to the

Administrative Agent a like policy (or, if and to the extent permitted by the Administrative Agent, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this ***Section 6.15*** or any other provision of any Loan Document, as the case may be.

(f) A copy of the original policy and such evidence of insurance as may be acceptable to the Administrative Agent shall be delivered to the Administrative Agent with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to the Administrative Agent, with all premiums fully paid current, at least ten (10) Business Days before the termination of the policy it renews or replaces. The applicable Loan Party shall pay (or cause to be paid) all premiums on policies required hereunder as they become due and payable and promptly deliver to the Administrative Agent evidence satisfactory to the Administrative Agent of the timely payment thereof.

(g) If any loss occurs at any time when the applicable Loan Party has failed to perform the covenants and agreements set forth in this ***Section 6.15*** with respect to any insurance payable because of loss sustained to any part of the premises whether or not such insurance is required by the Administrative Agent, then the Administrative Agent shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for the applicable Loan Party, to the same extent as if it had been made payable to the Administrative Agent.

(h) Each Loan Party shall at all times comply (and shall cause each applicable TRS to comply) in all material respects with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting any Unencumbered Borrowing Base Property.

6.16 **PATRIOT Act Compliance**. The Borrower shall, and shall cause each Subsidiary to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with the PATRIOT Act.

6.17 **Collateral**.

(a) During any Collateral Period, on or prior to the times specified below (or such later date as the Administrative Agent shall reasonably determine), the Borrower will cause, subject to ***clause (f)*** below, all of the issued and outstanding Equity Interests of each Guarantor (other than the Parent REIT) (collectively, the "***Collateral***"), to be, subject to the terms of the Intercreditor Agreement, subject to a perfected Lien in favor of the Administrative Agent to secure the Obligations in accordance with the terms and conditions of the Collateral Documents:

(i) within thirty (30) days of the Collateral Trigger Date; and

(ii) contemporaneously with the occurrence of any date any Subsidiary shall be required to become a Guarantor pursuant to ***Section 6.12*** hereof.

(b) During a Collateral Period, and without limiting the foregoing, the Borrower will, and will cause each Loan Party that owns any Collateral to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements), which may be required by applicable Law and which the

Administrative Agent may, from time to time during a Collateral Period, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the reasonable expense of the Borrower; *provided*, *however*, that no Pledged Subsidiary shall be permitted to certificate its Equity Interests or make an election under *Article 8* of the UCC unless such certificates are promptly delivered to the Administrative Agent, together with an endorsement in blank. Without limiting the foregoing, the Borrower shall cause each Loan Party that owns any Collateral to execute and deliver to the Administrative Agent a Grantor Joinder Agreement (as defined in the Intercreditor Agreement).

(c) During a Collateral Period, without limiting the release provisions set forth in ***clause (d)*** below, the Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release, the Equity Interests in any Pledged Subsidiary from the Pledge Agreement with respect to any Unencumbered Borrowing Base Property that is being removed pursuant to ***Section 1.06(d)*** if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal, so long as no Default or Event of Default exists or would result therefrom. The Administrative Agent agrees to furnish to the Borrower, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, after the Borrower's request and at the Borrower's reasonable expense, any release, termination, or other agreement or document evidencing the foregoing release as may be reasonably requested by the Borrower.

(d) The Borrower may deliver to the Administrative Agent, on or prior to the date that is five (5) Business Days (or such shorter period of time as agreed to by the Administrative Agent) before the date on which the Collateral Release is to be effected, written notice that it is requesting the Collateral Release, which notice shall identify the Collateral to be released and the proposed effective date for the Collateral Release, together with a certificate signed by a Responsible Officer of the Borrower (such certificate, a "***Collateral Release Certificate***"), certifying that:

(i) the Consolidated Leverage Ratio is either (A) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (B) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***; and

(ii) at the time of the delivery of notice requesting such release, on the proposed effective date of the Collateral Release and immediately before and immediately after giving effect to the Collateral Release, (A) no Default or Event of Default has occurred and is continuing or would result therefrom and (B) the representations and warranties contained in ***Section 5*** and the other Loan Documents are true and correct in all material respects on and as of the effective date of the Collateral Release, 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 as of such earlier date, and except that for purposes of this ***Section 6.17***, 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***.

(e) On or after any Collateral Release Date, the Administrative Agent shall, subject to the satisfaction of the requirements of ***clause (d)*** above, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release all of the Liens granted to the Administrative Agent pursuant to the requirements of this ***Section 6.17***, and the Collateral Documents (the "***Collateral Release***"). Upon the release of any Collateral pursuant to this ***Section 6.17***, the Administrative Agent shall (to the extent applicable) promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, deliver to the Borrower, upon the Borrower's request and at the Borrower's reasonable expense, such documentation as may be reasonably satisfactory to the Administrative Agent and otherwise necessary or advisable to evidence the release of such Collateral from the Loan Documents.

(f) Notwithstanding the foregoing, (i) if a Collateral Trigger Date occurs in connection with a First Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals fifty percent (50%) of the amount of the aggregate amount of ~~Unsecured Indebtedness~~the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the First Limited Collateral Trigger Event and (ii) if a Collateral Trigger Date occurs in connection with a Second Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals the amount of the aggregate amount of the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the Second Limited Collateral Trigger Event.

7. **NEGATIVE COVENANTS**. So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall not be Fully Satisfied, the Loan Parties shall not, nor shall they permit any other Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable), directly or indirectly, to:

7.01 **Liens**. Create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, other than the following (collectively, the "***Permitted Liens***"):

(a) Liens that secure the Obligations;

(b) Liens that secure Indebtedness of the Consolidated Parties on a pari passu basis with the Lien described in ***Section 7.01(a)***;

(c) Liens existing on the date hereof and listed on ***Schedule 5.08(b)*** and any renewals or extensions thereof, *provided that* (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by ***Section 7.03(b)***, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by ***Section 7.03(b)***;

(d) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) 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 are maintained on the books of the applicable Person;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(g) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting any Real Property owned by any Loan Party 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 and which, with respect to Unencumbered Borrowing Base Properties, have been reviewed and approved by the Administrative Agent (such approval to be in the reasonable judgment of the Administrative Agent);

(i) Liens securing judgments for the payment of money not constituting an Event of Default under ***Section 8.01(h)***;

(j) (i) the interests of any ground lessor under an Eligible Ground Lease and the interests of any TRS under a lease of any Unencumbered Borrowing Base Property and (ii) Liens in connection with Permitted Intercompany Mortgages;

(k) Liens on any assets (other than any Unencumbered Borrowing Base Property and related assets) securing Indebtedness permitted by ***Section 7.03(f)***, including Liens on such Real Property existing at the time such Real Property is acquired by the applicable Loan Party or any Non-Guarantor Subsidiary;

(l) Liens on the Equity Interests of any Non-Guarantor Subsidiary; *provided*, no such Liens shall be permitted with respect to the Equity Interests of Pebblebrook Hotel Lessee, any entity which is the lessee with respect to an Unencumbered Borrowing Base Property or the direct or indirect parent thereof;

(m) other Liens on assets (other than Unencumbered Borrowing Base Properties) securing claims or other obligations of the Loan Parties and their Subsidiaries (other than Indebtedness) in amounts not exceeding $5,000,000 in the aggregate;

(n) any interest of title of a lessor under, and Liens arising from or evidenced by protective UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, operating leases permitted hereunder; and

(o) Liens, if any, arising under the Bank of America Facility, in favor of the letter of credit issuer and/or the swing line lender thereunder to cash collateralize or otherwise secure the obligations of a defaulting lender to fund risk participations thereunder.

Notwithstanding anything contained in this ***Section 7.01***, each of the Parent REIT and the Borrower shall not, and shall not permit any other Consolidated Party to, secure any Indebtedness outstanding under or pursuant to any Specified Debt unless and until the Obligations (including any Guarantee in connection therewith) shall concurrently be secured equally and ratably with such Indebtedness pursuant to documentation reasonably acceptable to the Administrative Agent in substance and in form including an intercreditor agreement and opinions of counsel to the Parent REIT, the Borrower and/or any other Consolidated Party, as the case may be, from counsel and in a form that is reasonably acceptable to the Administrative Agent.

7.02 **Investments**. Make any Investments, except:

(a) Investments by the Consolidated Parties (other than by the Parent REIT) in (i) Unencumbered Borrowing Base Properties, and (ii) other real properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels, and which real properties shall, upon the making of such Investments, be wholly owned by such Consolidated Party;

(b) Investments held by the Borrower or such Loan Party or other Subsidiary in the form of cash or Cash Equivalents;

(c) Investments existing as of the Closing Date and set forth in ***Schedule 5.08(c)***;

(d) Advances to officers, directors and employees of the Borrower, the Loan Parties and other Subsidiaries in aggregate amounts not to exceed (i) $500,000 at any time outstanding for employee relocation purposes, and (ii) $100,000 at any time outstanding for travel, entertainment, and analogous ordinary business purposes;

(e) Investments of (i) the Borrower in any Guarantor (including (A) Investments by the Borrower in any private REIT, so long as Borrower owns one hundred percent (100%) of the "common" Equity Interests in such private REIT and (B) Investments by the Borrower in a Guarantor in the form of an intercompany loan), (ii) any Guarantor in the Borrower or in another Guarantor (including Investments by a Guarantor in the Borrower or in another Guarantor in the form of an intercompany loan), and (iii) the Borrower, any Guarantor or any Non-Guarantor Subsidiary in Non-Guarantor Subsidiaries (including Investments by the Borrower, any Guarantor or any Non-Guarantor Subsidiary in a Non-Guarantor Subsidiary in the form of an intercompany loan) that own, directly or indirectly, and operate Real Properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels; *provided*, notwithstanding the foregoing or any other provision herein or in any other Loan Document to the contrary, the Parent REIT shall not own any Equity Interests in any Person other than the Borrower;

(f) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and

Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(g) Guarantees permitted by ***Section 7.03***;

(h) Other Investments of the Borrower and its Subsidiaries in:

(i) Real properties consisting of undeveloped or speculative land (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than five percent (5%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary;

(ii) Incoming-producing real properties (other than hotels or similar hospitality properties) (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than ten percent (10%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary;

(iii) Development/Redevelopment Properties (valued at cost for purposes of this ***clause (h)***; *provided that* all costs and expenses associated with all existing development activities with respect to such Development/Redevelopment Properties (budget to completion) shall be included in determining the aggregate Investment of the Borrower or such Subsidiary with respect to such activities) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value and which Development/Redevelopment Properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary and;

(iv) Unconsolidated Affiliates (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than twenty percent (20%) of Consolidated Total Asset Value;

(v) mortgage or real estate-related loan assets (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value; and

(vi) Equity Interests (including preferred Equity Interests) in any Person (other than any Affiliate of the Borrower) (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value;

provided, however, that the collective aggregate value of the Investments owned pursuant to ***items (i)*** through ***(vi)*** of this ***clause (h)*** above shall not at any time exceed thirty-five percent (35%) of Consolidated Total Asset Value;

(vii) Investments in fixed or capital assets to the extent not prohibited under ***Section 7.12***; and

(i) Investments in any Person as a result of any merger or consolidation completed in compliance with ***Section 7.04***.

7.03 **Indebtedness**. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on ***Schedule 7.03*** and any refinancings, refundings, renewals or extensions thereof; *provided that* the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(c) Guarantees of (i) the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor, (ii) the Parent REIT or the Borrower, in respect of Indebtedness otherwise permitted hereunder of any Non-Guarantor Subsidiary if, in the case of any Guarantee pursuant to this ***clause (ii)***, (x) no Default shall exist immediately before or immediately after the making of such Guarantee, and (y) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the making of such Guarantee, and (iii) Non-Guarantor Subsidiaries made in the ordinary course of business;

(d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract, *provided that* (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) unsecured Indebtedness in the form of trade payables incurred in the ordinary course of business;

(f) Indebtedness of any Loan Party or Non-Guarantor Subsidiary incurred or assumed after the date hereof that is either unsecured or is secured by Liens on any assets of such Loan Party (other than any Unencumbered Borrowing Base Property) or of such Non-Guarantor Subsidiary; *provided*, such Indebtedness shall be permitted under this ***Section 7.03(f)*** only if: (i) no Default shall exist immediately before or immediately after the incurrence or assumption of such Indebtedness, and (ii) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the incurrence or assumption of such Indebtedness; and

(g) Indebtedness consisting of intercompany loans permitted under ***Section 7.02(e)***.

7.04 **Fundamental Changes**. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division), except for Dispositions permitted under ***Section 7.05*** (other than under ***Section 7.05(e)***) or except that, so long as no Default exists or would result therefrom:

(a) any Guarantor may merge with the Borrower or any other Guarantor, *provided that* when any Guarantor is merging with the Borrower, the Borrower shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party; and

(c) (i) any Non-Guarantor Subsidiary may merge with any other Person or Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any other Person; *provided* such merger or Disposition shall be permitted under this ***Section 7.04(c)(i)*** only if there exists no violation of the financial covenants hereunder on a Pro Forma Basis after such merger or Disposition, and (ii) any Non-Guarantor Subsidiary may merge with a Loan Party; *provided that* the Loan Party shall be the continuing or surviving Person.

7.05 **Dispositions**. Make any Disposition of any assets or property, except:

(a) Dispositions in the ordinary course of business (other than those Dispositions permitted under ***clause (b)*** of this ***Section 7.05***), so long as (i) no Default shall exist immediately before or immediately after such Disposition, and (ii) the Consolidated Parties will be in compliance, on a Pro Forma Basis following such Disposition, with (x) the covenants set forth in ***Sections 7.01***, ***7.02***, ***7.03***, and ***7.11*** of this Agreement, (y) all restrictions on Outstanding Amounts contained herein, and (z) the requirements of ***Section 1.06*** (in the case of any Disposition with respect to an Unencumbered Borrowing Base Property), in each case as demonstrated by a Compliance Certificate with supporting calculations delivered to the Administrative Agent on or prior to the date of such Disposition showing the effect of such Disposition;

(b) Any of the following:

(i) Dispositions of obsolete, surplus or worn out property or other property not necessary for operations, whether now owned or hereafter acquired, in the ordinary course of business and for no less than fair market value;

(ii) Dispositions of equipment or real property to the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property, in each case in the ordinary course of business and for no less than fair market value;

(iii) Dispositions of inventory and Investments of the type described in ***Section 7.02(b)*** and ***(c)*** in the ordinary course of business;

(iv) leases of Real Property (other than any Unencumbered Borrowing Base Property) and personal property assets related thereto to any TRS; and

(v) in order to resolve disputes that occur in the ordinary course of business, the Borrower and any Subsidiary of Borrower may discount or otherwise compromise, for less than the face value thereof, notes or accounts receivable;

(c) Dispositions of property by any Loan Party to the Borrower or to another Loan Party;

(d) Dispositions permitted by ***Section 7.04***; and

(e) Any other Disposition approved in writing by the Administrative Agent and the Required Lenders.

Notwithstanding the foregoing provisions of this ***Section 7.05***, no Loan Party shall sell or make any other Disposition of assets or property that will have the effect of causing such Loan Party (or any other Loan Party) to become liable under any tax protection or tax sharing agreement if the amount of such liability would exceed an amount equal to one percent (1%) of the total assets of such Loan Party without the prior written consent of the Administrative Agent.

7.06 **Restricted Payments.**

(a) Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(i) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, each Subsidiary may make Restricted Payments to the Borrower, the Guarantors and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(ii) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(iii) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Borrower and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests; and

(iv) so long as no Acceleration shall have occurred, each TRS may make Restricted Payments to its TRS parent entity to the extent necessary to pay any tax liabilities then due (after taking into account any losses, offsets and credits, as applicable); *provided that* any such Restricted Payments by a TRS shall only be made after it has paid all of its operating expenses currently due or anticipated within the current month and next following month;

(b) Notwithstanding the foregoing, the Loan Parties shall be permitted to make Restricted Payments of the type and to the extent permitted pursuant to ***Section 7.11(h)*** of this Agreement.

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 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, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate,

provided that the foregoing restriction shall not apply to transactions between or among the Borrower and any Guarantor or between and among any Guarantors, or between and among any Loan Party and the TRS or any manager engaged to manage one or more Unencumbered Borrowing Base Properties (if applicable).

7.09 **Burdensome Agreements**. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a)(i) limits the ability of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor, (ii) limits the ability of any Subsidiary to Guarantee the Indebtedness of the Borrower other than (A) any requirement for the grant of a Guarantee in favor of the holders of any Unsecured Indebtedness that is equal and ratable to the Guarantee set forth in ***Section 11*** or (B) in connection with a property-specific financing involving a Non-Guarantor Subsidiary as the borrower or (iii) constitutes a Negative Pledge; *provided, however*, that ***clauses (ii)*** and ***(iii)*** shall not prohibit any Negative Pledge incurred or provided in favor of any holder of Indebtedness in respect of (A) capital leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets permitted hereunder, or (B) a property-specific financing involving only a Non-Guarantor Subsidiary as the borrower, in each case solely to the extent any such Negative Pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person other than any requirement for the grant of a Lien in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations.

7.10 **Use of Proceeds**. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 **Financial Covenants**.

(a) **Consolidated Leverage Ratio**. Permit the Consolidated Leverage Ratio to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of ~~the Initial Compliance Date and the last day of the first fiscal quarter ending after~~ the Initial Compliance Date, exceed 8.50 to 1.00; (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed 8.00 to 1.00; (iii) as of the last day of the ~~fourth~~third fiscal quarter ending after the Initial Compliance Date, exceed 7.50 to 1.00; and (iv) as of the last day of any fiscal quarter thereafter, exceed 6.75 to 1.00; *provided that*, notwithstanding the foregoing, once during the term of this Agreement, the Borrower may deliver a written notice to the Administrative Agent in a Compliance Certificate timely delivered pursuant to ***Section 6.02(a)*** that the Consolidated Leverage Ratio as of the last day of the fiscal quarter (the "***Surge Date***") for which such Compliance Certificate was delivered and the next three (3) consecutive fiscal quarters (such period, the "***Surge Period***") may exceed 6.75 to 1.00 but not exceed 7.00 to 1.00 so long as (A) no Default has occurred and is continuing, (B) the Applicable Margin shall be increased as set forth in ***clause (c)*** of the definition thereof and (C) the Borrower has not delivered a written notice to the Administrative Agent terminating the Surge Period.

(b) **Consolidated Recourse Secured Indebtedness Limitation**. Permit Consolidated Recourse Secured Indebtedness to, at any time on or after the Initial Compliance Date, exceed an amount equal to five percent (5%) of Consolidated Total Asset Value; *provided*

that, notwithstanding the foregoing, once during the term of this Agreement, so long as no Default has occurred and is continuing, for up to four (4) consecutive quarters, Consolidated Recourse Secured Indebtedness may exceed five percent (5%) but not exceed ten percent (10%) of Consolidated Total Asset Value.

(c) **Consolidated Secured Debt Limitation**. Permit Consolidated Secured Debt to, at any time on or after the Initial Compliance Date, exceed an amount equal to forty-five percent (45%) of Consolidated Total Asset Value.

(d) **Consolidated Fixed Charge Coverage Ratio**. Permit the Consolidated Fixed Charge Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date, 1.05 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.25 to 1.00, and (iii) as of the last day of any fiscal quarter thereafter, 1.50 to 1.00.

(e) **Consolidated Unsecured Interest Coverage Ratio**. Permit the Consolidated Unsecured Interest Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date ~~and~~, 1.25 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.50 to 1.00, (iii) as of the last day of the second fiscal quarter ending after the Initial Compliance Date, 1.75 to 1.00, and (~~ii~~iv) as of the last day of any fiscal quarter thereafter, 2.00 to 1.00.

(f) **Consolidated Tangible Net Worth**. Permit Consolidated Tangible Net Worth, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than the sum of (i) $1,400,772,000 (which amount is seventy-five percent (75%) of Consolidated Tangible Net Worth as of June 30, 2017) *plus* (ii) seventy-five percent (75%) of the Net Proceeds of all Equity Issuances by the Consolidated Parties after June 30, 2017.

(g) **Unsecured Leverage Ratio**. Permit the Unsecured Indebtedness (less Adjusted Unrestricted Cash as of such date) to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of the Initial Compliance Date ~~and the last day of the first fiscal quarter ending after the Initial Compliance Date~~, exceed sixty-seven and one-half of one percent (67.5%); (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed sixty five percent (65%); and (iii) as of the last day of any fiscal quarter thereafter, exceed sixty percent (60%) of Unencumbered Asset Value; *provided that*, notwithstanding the foregoing, so long as no Default has occurred and is continuing, as of the last day of the fiscal quarter in which any Material Acquisition occurs and the last day of the two (2) consecutive quarters thereafter, such ratio may exceed sixty percent (60%) but not exceed sixty five percent (65%) (such period being an "***Unsecured Leverage Increase Period***"); *provided further that* (A) the Borrower may not elect more than three (3) Unsecured Leverage Increase Periods during the term of this Agreement and (B) any such Unsecured Leverage Increase Periods shall be non-consecutive.

(h) **Restricted Payments**. Permit, for any fiscal year of the Consolidated Parties, the amount of Restricted Payments (excluding Restricted Payments payable solely in the common stock or other common Equity Interests of the Parent REIT or the Borrower) made by the Consolidated Parties to the holders of their Equity Interests (excluding any such holders of Equity Interests which are Loan Parties) during such period to exceed the FFO Distribution Allowance for such period; *provided that*, to the extent no Event of Default then exists or will result from

such Restricted Payments (or if an Event of Default then exists or will result from such Restricted Payments, then so long as no Acceleration shall have occurred), each Loan Party and each other Subsidiary (including Pebblebrook Hotel Lessee) shall be permitted to make Restricted Payments to the Borrower and the Borrower shall be permitted to make Restricted Payments to Parent REIT, in each case to permit the Parent REIT to make Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain Parent REIT's status as a REIT and as necessary to pay any special or extraordinary tax liabilities then due (after taking into account any losses, offsets and credits, as applicable) on capital gains attributable to Parent REIT. In addition, so long as no Acceleration shall have occurred, each TRS may make Restricted Payments to its parent entity to the extent necessary to pay any Tax then due in respect of the income of such TRS. Notwithstanding the foregoing, during the Waiver Period and at any time thereafter until the Consolidated Leverage Ratio is less than 6.75 to 1.00 as of the last day of any fiscal quarter, as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***, the Parent REIT shall not purchase, redeem, retire, or defease any of its Equity Interests except as expressly permitted in ***Section 7.19(e)***.

(i) **Minimum Liquidity**. At any time during the Waiver Period, permit Liquidity to be less than ~~$150,000,000~~200,000,000.

(j) **Waiver Period Financial Covenants; Adjustments**.

(i) During the ~~Waiver Period~~period of time commencing on the Second Amendment Effective Date up to, but excluding, the Initial Compliance Date the Parent REIT and the Borrower shall continue to deliver to the Administrative Agent duly completed Compliance Certificates, for informational purposes only, as and when required under ***Section 6.02(a)*** certifying as to the Borrower's calculations of the financial tests set forth in this ***Section 7.11***.

(ii) Immediately following the expiration of the Waiver Period, the financial covenants set forth in this ***Section 7.11*** (including the related defined terms) (other than the covenants set forth in ***clauses (d), (e), (f)*** and ***(i)*** thereof) shall be modified, solely for purposes of calculation of the financial covenants set forth in this ***Section 7.11*** and not for purposes of determining the Applicable Margin, as follows:

(A) in the event the Borrower elects to terminate the Waiver Period on the date occurring under ***clause (b)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the fiscal quarter ending June 30, ~~2021~~2022, the trailing quarter, annualized; (x) for

the fiscal quarter ending September 30, ~~2021~~2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending December 31, ~~2021~~2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

(iii) From and after the Initial Compliance Date, the financial covenants set forth in ***Sections 7.11(d)*** and ***7.11(e)*** shall be modified as follows:

(A) in the event the Borrower elects to terminate the Waiver Period on the date occurring under ***clause (b)*** of the definition of "Waiver Period", the testing period for the covenants set forth in ***Sections 7.11(d)*** and ***7.11(e)*** shall be measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the fiscal quarter ending March 31, 2022, the trailing quarter, annualized; (x) for the fiscal quarter ending June 30, 2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending September 30, 2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

The financial covenants in this ***Section 7.11*** shall be tested (on a Pro Forma Basis) and certified to by the Borrower in connection with each Borrowing.

7.12 **Capital Expenditures**. Make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than normal replacements and maintenance which are properly charged to current operations and other reasonable and customary capital expenditures made in the ordinary course of the business of the Parent REIT and its Subsidiaries.

7.13 **Accounting Changes**. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year, except with the written consent of the Administrative Agent.

7.14 **Ownership of Subsidiaries; Certain Real Property Assets**. Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than the Parent REIT, the Borrower, any other Loan Party or a private REIT) to own any Equity Interests of any Unencumbered Borrowing Base Entity, except to qualify directors where required by Applicable Laws, (b) permit any Loan Party that owns an Unencumbered Borrowing Base Property to issue or have outstanding any shares of preferred Equity Interests, (c) permit, create, incur, assume or suffer to exist any Lien on any Equity Interests owned by the Borrower or any Loan Party of (i) any Loan Party or (ii) any TRS that leases an Unencumbered Borrowing Base Property or is the direct or indirect parent of any such TRS, (d) permit any Intermediate REIT to directly own or acquire any Real Property assets; *provided that* this ***clause (d)*** of ***Section 7.14*** shall not prohibit any Intermediate REIT from owning or acquiring any Equity Interests in any Subsidiary that owns any Real Property assets, (e) permit the Borrower to own less than ninety-nine

percent (99%) of the outstanding common Equity Interests in Pebblebrook Hotel Lessee, or (f) permit the Parent REIT to own Equity Interests in any Person other than the Borrower.

7.15 **Leases**. Permit any Loan Party to enter into, terminate, cancel, amend, restate, supplement or otherwise modify any Material Lease relating to any Unencumbered Borrowing Base Property; *provided that* (i) such Unencumbered Borrowing Base Property may be subject to an Eligible Ground Lease entered into in accordance with and subject to the requirements of this Agreement, (ii) the applicable Unencumbered Borrowing Base Entity may lease such Unencumbered Borrowing Base Property owned (or ground leased) by it to a TRS pursuant to a form of Lease acceptable to the Administrative Agent, in its reasonable discretion, and (iii) the applicable Unencumbered Borrowing Base Entity or the applicable TRS (if any) may enter into, terminate, cancel, amend, restate, supplement or otherwise modify any Material Lease relating to such Unencumbered Borrowing Base Property (including any Lease between such Unencumbered Borrowing Base Entity and such TRS respecting any Unencumbered Borrowing Base Property) to the extent that the entry into, termination, cancellation, amendment, restatement, supplement or modification is not reasonably likely to, in the aggregate with any other then-existing conditions or circumstances, have a Material Adverse Effect.

7.16 **Sale Leasebacks**. Permit any Loan Party to enter into any Sale and Leaseback Transaction with respect to any Unencumbered Borrowing Base Property.

7.17 **Sanctions**. The Borrower will not request any Loan, and the Borrower shall not use, and the Borrower shall not make available to its Subsidiaries and its or their respective directors, officers, employees and agents, the proceeds of any Loan (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (b) in any manner that would result in the violation of any applicable Sanctions.

7.18 **ERISA**. Be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to *Section 4975* of the Code, (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (d) a "governmental plan" within the meaning of ERISA.

7.19 **Enhanced Negative Covenants**. Notwithstanding anything to the contrary contained in this Agreement, during the Waiver Period the Loan Parties shall not, nor shall they permit any other Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable), directly or indirectly, to:

(a) make any Investments other than (i) Investments in one or more new Unencumbered Borrowing Base Properties (or in Equity Interests in Subsidiaries that own or will own new Unencumbered Borrowing Base Properties) solely with the proceeds of Excluded Net Proceeds or (ii) any other Investments otherwise permitted pursuant to ***Section 7.02*** not to exceed $100,000,000 in the aggregate;

(b) make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than (i) in connection with emergency repairs, life safety repairs or ordinary course maintenance repairs (ii) capital expenditures to complete ongoing renovations in an amount not to exceed $~~90,000,000~~155,000,000 in the aggregate during the period commencing with the Third Amendment Effective Date through the remainder of the Waiver Period;

(c) create, incur, assume or suffer to exist any Indebtedness not existing and permitted as of the First Amendment Effective Date other than (i) to the extent the proceeds of such Indebtedness are used fully or partially to refinance or replace Indebtedness existing and permitted as of the First Amendment Effective Date ~~and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.03(b)***~~; *provided*, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(i)*** be earlier than the existing maturity date of the Indebtedness being refinanced or replaced; *provided* further, that any amounts in excess of the amounts used to fully or partially refinance or replace Indebtedness are otherwise permitted to be incurred pursuant to this ***Section 7.19(c)***, (ii) Secured Non-Recourse Debt not to exceed $250,000,000 in the aggregate and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.03(b)***; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(ii)*** be earlier than one (1) year after the Maturity Date, or (iii) Indebtedness that is recourse to ~~a~~one or more Consolidated ~~Party not to exceed $250,000,000 in the aggregate~~Parties and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.03(b)***; *provided*, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(iii)*** (other than (A) increases of any Specified Debt pursuant to the terms thereof and (B) Indebtedness under a 364-day facility not to exceed $100,000,000) be earlier than one (1) year after the Maturity Date;

(d) make any Disposition other than Dispositions (i) permitted by ***Section 7.05(b)(i)***, ***(ii)***, ***(iii)*** and ***(iv)***, or (ii) to a Person that is not a Consolidated Party or a Related Party of any Consolidated Party, (A) for fair market value in an arms' length transaction, (B) in which the price for such asset shall be paid to a Consolidated Party solely in cash, and (C) pursuant to which the Borrower has made the mandatory prepayment, if any, required pursuant to ***Section 2.03(b)***;

(e) declare or make any Restricted Payments other than (i) Restricted Payments to the holders of the common Equity Interests in the Parent REIT of not more than $0.01 per share, (ii) Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain the Parent REIT's status as a REIT, (iii) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Restricted Payments with respect to any preferred Equity Interests, (iv) Restricted Payments by Subsidiaries of the Borrower to Borrower and by Borrower to the Parent REIT the proceeds of which are used by the Parent REIT to make Restricted Payments permitted by ***clauses (i)*** through ***(iii)*** preceding and (v) the purchase or redemption by the Parent REIT of its preferred Equity Interests solely with Net Cash Proceeds from Permitted Preferred Issuances;

(f) voluntarily prepay the principal amount of (i) any Permitted Convertible Notes other than pursuant to a conversion thereof into Equity Interests of the Parent REIT or (ii) any Indebtedness incurred after the Third Amendment Effective Date; or

(g) create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, not existing and permitted as of the First Amendment Effective Date other than (i) Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement, (ii) Liens permitted by ***Sections 7.01(d)***, ***(e)***, ***(f)***, ***(g)***, ***(h)***, ***(i)***, ***(j)*** and ***(n)***, (iii) Liens securing Indebtedness permitted under ***Section 7.19(c)(i)***; *provided that* (A) the amount secured or benefited thereby is not increased except as contemplated by ***Section 7.03(b)***, (B) the direct or any contingent obligor with respect thereto is not changed, (C) any renewal or extension of the obligations secured or

benefited thereby is permitted by ***Section 7.03(b)***, and (D) to the extent such existing Indebtedness being refinanced or replaced is Secured Debt, incurred to refinance or replace Secured Debt secured by the same property or assets, and (iv) Liens securing Indebtedness permitted under ***Section 7.19(c)(ii)***.

8. 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 three (3) days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants**. The Borrower fails to perform or observe any term, covenant or agreement contained in any of ***Section 6.03***, ***6.05(a)***, ***6.10***, ***6.11***, ***6.12***, ***6.15*** or ***Section 7*****,** or any Guarantor fails to perform or observe any term, covenant or agreement contained in ***Section 11*** hereof; or

(c) **Other Defaults**. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in ***subsection (a)*** or ***(b)*** above) contained in any Loan Document on its part to be performed or observed and such failure continues for (i) with respect to any failure to perform or observe ***Section 6.01*** or ***6.02***, five (5) days after such failure occurred; *provided that* if the auditor's opinion accompanying the audited financial statements for the fiscal year ended December 31, 2021 is subject to any "going concern" or like qualification or exception, then the Parent REIT shall have a period of forty-five (45) days from the delivery date of such statements for the auditor to reissue its opinion without any "going concern" or like qualification or exception and (ii) with respect to any failure to perform or observe any other covenant or agreement, thirty (30) days after the earlier of (A) Borrower's actual knowledge of such failure or (B) Borrower's receipt of notice as to such failure from the Administrative Agent or any Lender; or

(d) **Representations and Warranties**. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) **Cross-Default**. (i) Any Loan Party or any of its Subsidiaries (A) fails to make any payment when due after giving effect to any applicable grace period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf

of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any of its Subsidiaries 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 of its Subsidiaries 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; or

(f) **Insolvency Proceedings, Etc.** Any Loan Party or any of its 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 or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment**. (i) Any Loan Party or any of its 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 Subsidiaries (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA**. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under *Section 4201* of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) **Invalidity of Loan Documents**. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted

hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind in writing any provision of any Loan Document; or

(k) **Change of Control**. There occurs any Change of Control; or

(l) **REIT or QRS Status**. The Parent REIT shall, for any reason, lose or fail to maintain its status as a REIT or the Borrower shall, for any reason, lose or fail to maintain its status as any of the following: a REIT**,** a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS; or

(m) **Management and Franchise Agreements**. There occurs a monetary or material default under a management or franchise agreement with respect to an Unencumbered Borrowing Base Property (which material default shall include any default which would permit the manager or franchisor under any such management or franchise agreement to terminate such management or franchise agreement or would otherwise result in a material increase of the obligations of the Borrower or such Subsidiary of the Borrower that is a party to such management or franchise agreement) and such default is not remedied prior to the date which is the later of (i) the earlier of (A) if no other Default exists, sixty (60) days from the occurrence of the event or condition which caused, led to, or resulted in such default, or (B) the date that a Default (other than the subject Default relative to such management or franchise agreement) occurs and (ii) the last day of the cure period provided in such management or franchise agreement (as applicable); or

(n) **Collateral Documents**. Any Collateral Document shall for any reason fail to create a valid and perfected security interest in any portion of the Collateral purported to be covered thereby, with the priority required by the applicable Collateral Document, except as (i) permitted by the terms of any Loan Document or (ii) as a result of the release of such security interest in accordance with the terms of any Loan Document, it being understood and agreed that the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it or file any UCC (or equivalent) continuation statement shall not result in an Event of Default under this ***clause (n)***.

8.02 **Remedies Upon Event of Default**. If any Event of Default exists, 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 (any such action, an "***Acceleration***"):

(a) declare the commitment 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; and

(c) 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 actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate and 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 2.12***, 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 ***Section 3***) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender) and amounts payable under ***Section 3***), ratably among them in proportion to the respective amounts described in this ***clause Second*** payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, ratably among the 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 and Indebtedness of any Loan Party under Swap Contracts that are entered into by any Loan Party with any Lender or its Affiliate as a counterparty with respect to the Loans, ratably among the 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 Applicable Laws.

Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to the Obligations otherwise set forth in this ***Section 8.03***.

9. ADMINISTRATIVE AGENT

9.01 **Appointment and Authority**. Each of the Lenders hereby irrevocably appoints U.S. Bank to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this ***Section 9*** are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market

custom, and is intended to create or reflect only an administrative relationship between contracting parties.

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, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower 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, and its duties hereunder shall be administrative in nature. 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 then exists;

(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, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief 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 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 by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing 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 ***Section 4*** 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), 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 ***Section 9*** 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. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents 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 in the selection of such sub-agents.

9.06 **Resignation or Removal of Administrative Agent**.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the approval of the Borrower (such approval not to be unreasonably withheld; *provided* that if a Default shall exist at the time, no approval of the Borrower shall be required), 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. 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 (or such earlier day as shall be agreed by the Required Lenders) (the "***Resignation Effective Date***"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to ***clause (d)*** of the definition thereof or in the case of fraud, misappropriation of funds or the commission of illegal acts by the Administrative Agent or where the Administrative Agent has been grossly negligent in performing (or failing to perform) its obligations hereunder or under any other Loan Document in any material respect, the Required Lenders (excluding the vote of the Administrative Agent, in its capacity as a Lender, as more particularly set forth in the proviso to the this sentence) may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, with the approval of the Borrower (such approval not to be unreasonably withheld; *provided* that if a Default shall exist at the time, no approval of the Borrower shall be required), appoint a successor; *provided, however*, that to the extent the Administrative Agent being replaced pursuant to this ***Section 9.06*** is also a Lender, such Person shall not be permitted to vote in connection with the removal of the Administrative Agent and appointment of a successor Administrative Agent pursuant to this paragraph of ***Section 9.06***. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "***Removal Effective Date***"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date. Notwithstanding the terms of the Fee Letters, if the Administrative Agent resigns or is removed pursuant to this ***Section 9.06***, then such Person shall not be entitled to receive an administrative agency fee that would otherwise become due and payable subsequent to such resignation or removal.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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 removed) Administrative Agent (other than as provided in ***Section 3.01(g)*** and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed 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***). The fees payable by the Borrower to a successor Administrative Agent shall be agreed upon between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and ***Section 10.04*** shall continue in effect for the benefit of such retiring or removed 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 (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

9.07 **Non-Reliance on Administrative Agent and Other Lenders**. Each Lender 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 Arranger or other 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 proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan 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 2.06*** 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 2.06*** 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 to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 **Collateral and Guaranty Matters**. Each of the Lenders (including each Lender in its capacity as a potential Hedge Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion, to do or cause the following:

(a) to execute the Intercreditor Agreement on behalf of the Lenders;

(b) to release any Liens granted to the Administrative Agent by any Loan Party on any Collateral (i) upon the payment and satisfaction in full of all Obligations, (ii) upon any Disposition of such Collateral permitted hereunder, (iii) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to ***Section 8.02***, or (iv) upon the occurrence of a Collateral Release Date in accordance with the terms and conditions of ***Section 6.17***; and

(c) to release any Guarantor from its obligations under ***Section 11*** hereof if such Person ceases to be required to be a Guarantor pursuant to the terms hereof.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Collateral or to release any Guarantor from its obligations under ***Section 11*** hereof pursuant to this ***Section 9.10***. In each case as specified in this ***Section 9.10*** the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as Borrower may reasonably request to evidence the release of such Collateral or such Guarantor from its obligations hereunder, in each case in accordance with the terms of the Loan Documents and this ***Section 9.10***.

10. MISCELLANEOUS

10.01 **Amendments, Etc**. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders 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) waive any condition set forth in ***Sections 4.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)*** or ***(f)*** without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to ***Section 8.02***) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or (subject to ***clause (ii)*** of the second proviso to this ***Section 10.01***) any fees or other amounts payable hereunder or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Margin that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each Lender directly affected thereby; *provided,*

however, that only the consent of the Required Lenders shall be necessary to amend the definition of "*Default Rate*" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(e) change ***Section 8.03*** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) change (i) any provision of this ***Section 10.01*** or the definition of "*Required 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 (other than definitions specified in ***clause (ii)*** of this ***Section 10.01(f)***), without the written consent of each Lender; or (ii) the definition of "*Required Lenders*" without the written consent of each Lender;

(g) release, without the written consent of each Lender, all or substantially all of the value of the guaranty under ***Section 11*** hereof, except to the extent the release of any Guarantor is permitted pursuant to ***Section 9.10*** (in which case such release may be made by the Administrative Agent acting alone); or

(h) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder without the written consent of the Required Lenders;

and, *provided further*, that (i) 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 (ii) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent and the Borrower (i) to add one or more additional term loan facilities to this Agreement subject to the limitations in ***Section 2.11*** 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, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

If any Lender is a Non-Consenting Lender, then the Borrower may replace such Non-Consenting Lender in accordance with ***Section 10.13***.

10.02 **Notices; Effectiveness; Electronic Communication.**

(a) **Notices Generally**. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in ***subsection (b)*** below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail; *provided however*, that any notice sent by electronic mail must also be sent by one (1) of the other methods set forth in this ***subsection (a)*** (other than 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 any 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(es), facsimile number(s), electronic mail address(es) or telephone number(s) 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).

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 ***subsection (b)*** below, shall be effective as provided in such ***subsection (b)***.

(b) **Electronic Communications**. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided that* the foregoing shall not apply to notices to any Lender pursuant to ***Section 2*** if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Section 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; *provided further* that Committed Loan Notices may be sent via e-mail.

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, email or other communication is not sent during the normal business hours of the recipient, such notice, email

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 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 or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender 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 the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number 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 Laws, 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 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 or electronic 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. 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; Enforcement**. 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 or under any other Loan Document 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, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Applicable Laws.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with ***Section 8.02*** for the benefit of the Credit Parties; *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) any Lender from exercising setoff rights in accordance with ***Section 10.08*** (subject to the terms of ***Section 2.10***), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided*, *further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to ***Section 8.02*** and (ii) in addition to the matters set forth in ***clauses (b)*** and ***(c)*** of the preceding proviso and subject to ***Section 2.10***, 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 shall pay, on the Closing Date and thereafter within five (5) Business Days after written demand, (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent or any Lender, 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***, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans. For

the avoidance of doubt, this ***Section*** shall not provide any right to payment with respect to increases in taxes or costs and expenses related solely to such increases in taxes.

(b) **Indemnification by the Borrower**. The Borrower shall indemnify the the Administrative Agent (and any sub-agent thereof) and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "***Indemnitee***") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in ***Section 3.01***), (ii) any Loan or 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 or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower 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 or any other Loan Party, and regardless of whether any Indemnitee is a party thereto**, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; *provided that* such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of ***Section 3.01(c)***, this ***Section*** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by Lenders**. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under ***subsection (a)*** or ***(b)*** of this ***Section*** to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, 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 share of the Total Credit Exposure of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), *provided, further* 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 ***subsection (c)*** are subject to the provisions of ***Section 2.09(d)***.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Laws, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, 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 referred to in ***subsection (b)*** above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments**. All amounts due under this ***Section*** shall be payable not later than ten (10) Business Days after demand therefor.

(f) **Survival**. The agreements in this ***Section*** and the indemnity provisions of ***Section 10.02(e)*** 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 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 Federal Funds 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 of a security interest subject to the restrictions of ***subsection (e)*** 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 assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); *provided that* any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts**.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in ***subsection (b)(i)(B)*** of this ***Section*** in the aggregate 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 Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Commitments is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, unless each of the Administrative Agent and, so long as no Event of Default then exists, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(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 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) shall be required unless (1) an Event of Default exists at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of

a Lender or an Approved Fund; *provided that* the 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 for assignments in respect of (1) any Commitment if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) **Assignment and Assumption**. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons**. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this ***clause (B)***, or (C) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) **Certain Additional Payments**. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the 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 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 Laws without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to ***subsection (c)*** of this ***Section***, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a

Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of ***Sections 3.01***, ***3.04***, ***3.05***, and ***10.04*** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this ***subsection*** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with ***subsection (d)*** of this ***Section***.

(c) **Register**. The Administrative Agent, acting solely for this purpose as an 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 (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "***Register***"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower 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 the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its 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. For the avoidance of doubt, each Lender shall be responsible for the indemnity under ***Section 10.04(c)*** without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided that* such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to ***Section 10.01*** that affects such Participant. 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 ***clause (b)*** of this ***Section***; *provided* that such Participant (A) agrees to be subject to the provisions of ***Sections 3.06*** and ***10.13*** as if it were an assignee under ***paragraph (b)*** of this ***Section*** and (B) shall not be entitled to receive any greater payment under ***Section 3.01*** or ***3.04***, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of ***Section 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* that such Participant agrees to be subject to ***Section 2.10*** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under *Section 5f.103-1(c)* of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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

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) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this ***Section***, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to ***Section 2.11(c)*** or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a

confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this ***Section*** or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, from and after the Closing Date, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors for league table credit or other similar use, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this ***Section***, "***Information***" means all information received from the 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 written 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*** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower 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 Laws, including United States Federal and state securities laws.

10.08 **Right of Setoff**. If an Event of Default exists, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after written notice to the Administrative Agent, to the fullest extent permitted by Applicable Laws, 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 or any other Loan Party against any and all of the obligations of the Borrower or 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 or 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 2.12*** 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) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this ***Section*** are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective 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 Laws (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 Laws, (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 telecopy or other electronic imaging means 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 Borrowing, 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 the Borrower is entitled to replace a Lender pursuant to the provisions of ***Section 3.06***, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the

restrictions contained in, and consents required by, ***Section 10.06***), all of its interests, rights (other than its existing rights to payments pursuant to ***Section 3.01*** and ***3.04***) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in ***Section 10.06(b)***;

(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;

(d) such assignment does not conflict with Applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

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 (INCLUDING *SECTION 5-1401* AND *SECTION 5-1402* OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

(b) **SUBMISSION TO JURISDICTION**. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE CITY OF NEW YORK 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 COURTS. 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 APPLICABLE LAWS. 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**. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN ***PARAGRAPH (b)*** OF THIS ***SECTION***. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, 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 LAWS.

10.15 **Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ***SECTION***.

10.16 **No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arranger and the Lenders, are arm's-length commercial transactions between the Borrower , each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arranger and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii)(A) the Administrative Agent, the Arranger and each Lender 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, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, the Arranger nor any Lender has any

obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by Applicable Laws, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Arranger and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 **Electronic Execution of Assignments and Certain Other Documents**. The words "execution," "signed," "signature" and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures 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, and the Administrative Agent or any Lender may store the electronic image of this Agreement and the Loan Documents in its electronic form and then destroy the paper original as part of such Person's normal business practices, with the electronic image deemed to be an original to the extent and as provided for in any Applicable Laws, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided that* notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

10.18 **USA PATRIOT Act**. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation.

10.19 **Entire Agreement**. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

10.20 **Restatement of Original Credit Agreement**. The parties hereto agree that as of the Closing Date: (a) the Obligations hereunder represent the amendment, restatement, extension, and consolidation of the "*Obligations*" under the Original Credit Agreement; (b) this Agreement amends, restates, supersedes, and replaces the Original Credit Agreement in its entirety; and (c) any Guaranty executed pursuant to this Agreement amends, restates, supersedes, and replaces the "*Guaranty*" executed

pursuant to the Original Credit Agreement. On the Closing Date, (i) the commitment of any "*Lender*" under the Original Credit Agreement that is not continuing as a Lender hereunder shall terminate and (ii) the Administrative Agent shall reallocate the Commitments hereunder to reflect the terms hereof.

10.21 **ERISA**. Each Lender as of the Closing Date represents and warrants as of the Closing Date to the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, for the benefit of the Borrower or any other Loan Party, that such Lender is not and will not be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to *Section 4975* of the Code, (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (d) a "governmental plan" within the meaning of ERISA.

10.22 **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.

10.23 **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 10.23***, 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).

11. GUARANTY

11.01 The Guaranty.

(a) Each of the Guarantors hereby jointly and severally guarantees to the Administrative Agent and each of the holders of the Obligations, as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations (the "***Guaranteed Obligations***") in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Guaranteed Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

(b) Notwithstanding any provision to the contrary contained herein, in any other of the Loan Documents or other documents relating to the Obligations, the obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

11.02 **Obligations Unconditional**. The obligations of the Guarantors under ***Section 11.01*** are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, compromise, release, impairment or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by Applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this ***Section 11.02*** that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this ***Section 11*** until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Applicable Laws, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents, or other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or other documents relating to the Guaranteed Obligations, or any other agreement or instrument referred to therein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Administrative Agent or any of the holders of the Guaranteed Obligations as security for any of the Guaranteed Obligations shall fail to attach or be perfected; or

(e) any of the Guaranteed Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest notice of acceptance of the guaranty given hereby and of Borrowings that may constitute obligations guaranteed hereby, notices of amendments, waivers and

supplements to the Loan Documents and other documents relating to the Guaranteed Obligations, or the compromise, release or exchange of collateral or security, and all notices whatsoever, and any requirement that the Administrative Agent or any holder of the Guaranteed Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein, or against any other Person under any other guarantee of, or security for, any of the Obligations.

11.03 **Reinstatement**. Neither the Guarantors' obligations hereunder nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Borrower, by reason of the Borrower's bankruptcy or insolvency or by reason of the invalidity or unenforceability of all or any portion of the Guaranteed Obligations. The obligations of the Guarantors under this ***Section 11*** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings pursuant to any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each holder of Guaranteed Obligations on demand for all reasonable out-of-pocket costs and expenses (including all reasonable fees, expenses and disbursements of any law firm or other outside counsel incurred by the Administrative Agent) incurred by the Administrative Agent or such holder of Guaranteed Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

11.04 **Certain Waivers**. Each Guarantor acknowledges and agrees that (a) the guaranty given hereby may be enforced without the necessity of resorting to or otherwise exhausting remedies in respect of any other security or collateral interests, and without the necessity at any time of having to take recourse against the Borrower hereunder or against any collateral securing the Guaranteed Obligations or otherwise, (b) it will not assert any right to require the action first be taken against the Borrower or any other Person (including any co-guarantor) or pursuit of any other remedy or enforcement any other right and (c) nothing contained herein shall prevent or limit action being taken against the Borrower hereunder, under the other Loan Documents or the other documents and agreements relating to the Guaranteed Obligations or from foreclosing on any security or collateral interests relating hereto or thereto, or from exercising any other rights or remedies available in respect thereof, if neither the Borrower nor the Guarantors shall timely perform their obligations, and the exercise of any such rights and completion of any such foreclosure proceedings shall not constitute a discharge of the Guarantors' obligations hereunder unless as a result thereof, the Guaranteed Obligations shall have been paid in full and the commitments relating thereto shall have expired or been terminated, it being the purpose and intent that the Guarantors' obligations hereunder be absolute, irrevocable, independent and unconditional under all circumstances.

11.05 **Remedies**. The Guarantors agree that, to the fullest extent permitted by Applicable Laws, as between the Guarantors, on the one hand, and the Administrative Agent and the holders of the Guaranteed Obligations, on the other hand, the Guaranteed Obligations may be declared to be forthwith due and payable as provided in ***Section 8.02*** (and shall be deemed to have become automatically due and payable in the circumstances provided in ***Section 8.02***) for purposes of ***Section 11.01***, notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Guaranteed Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Guaranteed Obligations being deemed to have become automatically due and payable), the Guaranteed Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of ***Section 11.01***.

11.06 **Rights of Contribution**. The Guarantors hereby agree as among themselves that, in connection with payments made hereunder, each Guarantor shall have a right of contribution from each other Guarantor in accordance with Applicable Laws. Such contribution rights shall be subordinate and subject in right of payment to the Guaranteed Obligations until such time as the Guaranteed Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated, and none of the Guarantors shall exercise any such contribution rights until the Guaranteed Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated.

11.07 **Guaranty of Payment; Continuing Guaranty**. The guarantee in this ***Section 11*** is a guaranty of payment and performance, and not merely of collection, and is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

11.08 **Keepwell**. At the time the Guaranteed Obligations of any Specified Loan Party become effective with respect to any Swap Obligation, each Loan Party that is a Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under this Agreement and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Section 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 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

11.09 **Subordination**. If the Borrower or any other Loan Party is now or hereafter becomes indebted to one or more Guarantors including with respect to any Permitted Intercompany Mortgage (such indebtedness and all interest thereon and other obligations with respect thereto being referred to as "***Affiliated Debt***"), then such Affiliated Debt shall be subordinate in all respects to the full payment and performance of the Obligations, and no Guarantor shall be entitled to enforce or receive payment with respect to any Affiliated Debt until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated; *provided* that, so long as no Event of Default has occurred and is continuing, a Guarantor may receive payments with respect to any Affiliated Debt including the payment in full of same. Each Guarantor agrees that any Liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon the Borrower's or any other Loan Party's assets securing the payment of the Affiliated Debt shall be and remain subordinate and inferior to any Liens, security interests, judgment liens, charges or other encumbrances upon the Borrower's or any other Loan Party's assets securing the payment and performance of the Obligations. If an Event of Default exists, then, without the prior written consent of the Administrative Agent, no Guarantor shall exercise or enforce any creditor's rights of any nature against the Borrower or any other Loan Party to collect the Affiliated Debt (other than demand payment therefor) or enforce any such Liens, security interests, judgment liens, charges or other encumbrances. In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving the Borrower or any applicable Loan Party as a debtor, the Administrative Agent has the right and authority, either in its own name or as attorney-in-fact for any applicable Guarantor, to file such proof of debt, claim, petition or other documents and to take such other steps as are necessary to prove its rights

hereunder and receive directly from the receiver, trustee or other court custodian, payments, distributions or other dividends which would otherwise be payable upon the Affiliated Debt. Each Guarantor hereby assigns such payments, distributions and dividends to the Administrative Agent, and irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact (which appointment is coupled with an interest) with authority to make and file in the name of such Guarantor any proof of debt, amendment of proof of debt, claim, petition or other document in such proceedings and to receive payment of any sums becoming distributable on account of the Affiliated Debt, and to execute such other documents and to give acquittances therefor and to do and perform all such other acts and things for and on behalf of such Guarantor as may be reasonably necessary in the opinion of the Administrative Agent in order to have the Affiliated Debt allowed in any such proceeding and to receive payments, distributions or dividends of or on account of the Affiliated Debt.

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SIGNATURE PAGES FOLLOW.

THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "***Amendment***") is entered into as of February 18, 2021, among **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership (the "***Borrower***"), **PEBBLEBROOK HOTEL TRUST**, a Maryland real estate investment trust (the "***Parent REIT***"), each Guarantor (defined below) party hereto, each Lender (defined below) party hereto, and **CAPITAL ONE, NATIONAL ASSOCIATION**, as Administrative Agent (the "***Administrative Agent***;" the Administrative Agent and Lenders are each a "***Credit Party***" and collectively "***Credit Parties***").

R E C I T A L S

A. The Borrower, the Parent REIT, certain guarantors (each a "***Guarantor***" and collectively "***Guarantors***;" the Borrower, the Parent REIT and the Guarantors are each a "***Loan Party***" and collectively the "***Loan Parties***"), the Administrative Agent and certain lenders (each, a "***Lender***" and collectively, "***Lenders***") are parties to that certain Credit Agreement dated as of October 13, 2017, as amended by that certain First Amendment to Credit Agreement (the "***First Amendment***") dated as of June 29, 2020, and as further amended by that certain Second Amendment to Credit Agreement (the "***Second Amendment***") dated as of December 10, 2020 (as amended by the First Amendment, the Second Amendment and as may be further modified, amended, renewed, extended, or restated from time to time, the "***Credit Agreement***").

B. The parties hereto desire to amend the Credit Agreement, subject to the terms and conditions set forth herein.

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

1. Terms and References. Unless otherwise stated in this Amendment (a) terms defined in the Credit Agreement have the same meanings when used in this Amendment, and (b) references to "*Sections*" are to the Credit Agreement's sections.

2. Amendments to the Credit Agreement. On and as of the date hereof, the Credit Agreement is hereby amended (including the schedules and exhibits thereto) to delete the red font stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the blue font double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the composite conformed copy of the Credit Agreement attached hereto as ***Exhibit A***.

3. Amendments to other Loan Documents.

(a) All references in the Loan Documents to the Credit Agreement shall henceforth include references to the Credit Agreement, as modified and amended hereby, and as may, from time to time, be further amended, modified, extended, renewed, and/or increased.

(b) Any and all of the terms and provisions of the Loan Documents are hereby amended and modified wherever necessary, even though not specifically addressed herein, so as to conform to the amendments and modifications set forth herein.

4. Conditions Precedent. This Amendment shall not be effective unless and until:

(a) the Administrative Agent receives fully executed counterparts of this Amendment signed by the Loan Parties, the Administrative Agent and the Required Lenders;

(b) the Administrative Agent receives a certificate of a Responsible Officer of each Loan Party certifying (i) the incorporation, formation and organization documents, as the case may be, of such Loan Party (or that there have been no changes thereto since the date last certified to the Administrative Agent), (ii) resolutions or other action of such Loan Party authorizing this Amendment and the other documents executed by the Loan Parties in connection herewith, (iii) the identity, authority, incumbency and signatures of each Responsible Officer executing this Amendment and any other document executed in connection herewith, and (iv) such other matters as the Administrative Agent may reasonably require;

(c) the Administrative Agent receives evidence dated within thirty (30) days as of the date hereof that each Loan Party is validly existing and in good standing in its jurisdiction of incorporation, formation or organization, as the case may be;

(d) the Administrative Agent receives a favorable opinion of counsel of Honigman LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender and in form and substance reasonably acceptable to the Administrative Agent;

(e) upon the reasonable request of any Lender made at least five (5) days prior to the date hereof, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested 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 two (2) days prior to the date hereof;

(f) at least five (5) days prior to the date hereof, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation as set forth in 31 C.F.R. §1010.230 (the "***Beneficial Ownership Regulation***") shall have delivered, to each Lender that so requests, a certification regarding beneficial ownership required by the Beneficial Ownership Regulation in relation to such Loan Party (a "***Beneficial Ownership Certification***");

(g) the representations and warranties in the Credit Agreement, as amended by this Amendment, and each other Loan Document are true and correct in all material respects on and as of the date of this Amendment as though made as of the date of this Amendment except to the extent that (i) any of them speak to a different specific date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided*, that for purposes of this Amendment, the representations and warranties contained in *subsections (a)* and *(b)* of *Section 5.05* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a)* and *(b)*, respectively, of *Section 6.01* of the Credit Agreement, or (ii) the facts on which any of them were based have been changed by transactions contemplated or permitted by the Credit Agreement;

(h) the Administrative Agent receives payment of all reasonable fees and expenses of the Administrative Agent in connection with this Amendment;

(i) the Borrower shall have paid to the Administrative Agent, for the benefit of the Credit Parties, all fees required to be paid on or before the date hereof in connection with this Amendment;

(j) the Borrower and the Parent REIT shall have entered into amendments to all Specified Debt, each in form and substance reasonably satisfactory to the Administrative Agent, as necessary to conform the applicable terms of such Specified Debt to the amendments set forth herein;

(k) the Administrative Agent and the holders (or an authorized representative thereof) of all Specified Debt shall have entered into an amendment to the Intercreditor Agreement, in form and substance reasonably satisfactory to the Administrative Agent, and each Lender party hereto hereby authorizes the Administrative Agent to enter into such amendment; and

(l) after giving effect to this Amendment, no Default or Event of Default exists.

5. Ratifications. Each Loan Party, (a) ratifies and confirms all provisions of the Loan Documents as amended by this Amendment, (b) ratifies and confirms that all guaranties, assurances, and liens granted, conveyed, or assigned to or for the benefit of the Credit Parties under the Loan Documents are not released, reduced, or otherwise adversely affected by this Amendment and continue to guarantee, assure, and secure full payment and performance of the present and future obligations of the Borrower under the Credit Agreement and the other Loan Documents, and (c) agrees to perform such acts and duly authorize, execute, acknowledge, deliver, file, and record such additional documents, and certificates as the Administrative Agent may request in order to create, perfect, preserve, and protect those guaranties, assurances, and liens.

6. Representations. Each Loan Party, represents and warrants to the Credit Parties that as of the date of this Amendment: (a) this Amendment has been duly authorized, executed, and delivered by each applicable Loan Party; (b) no action of, or filing with, any governmental authority is required to authorize, or is otherwise required in connection with, the execution, delivery, and performance by any Loan Party of this Amendment except for those which have been obtained; (c) the Loan Documents, as amended by this Amendment, are valid and binding upon each Loan Party and are enforceable against each Loan Party in accordance with their respective terms, except as limited by Debtor Relief Laws; (d) the execution, delivery, and performance by each applicable Loan Party of this Amendment does not require the consent of any other Person and do not and will not constitute a violation of any laws, agreements, or understandings to which any Loan Party is a party or by which any Loan Party is bound except for those which have been obtained; (e) all representations and warranties in the Loan Documents are true and correct in all material respects except to the extent that (i) any of them speak to a different specific date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided*, that for purposes of this Amendment, the representations and warranties contained in *subsections (a)* and *(b)* of *Section 5.05* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a)* and *(b)*, respectively, of *Section 6.01* of the Credit Agreement, or (ii) the facts on which any of them were based have been changed by transactions contemplated or permitted by the Credit Agreement; (f) the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects; and (g) no Default or Event of Default exists.

7. Continued Effect. Except to the extent amended hereby, all terms, provisions and conditions of the Credit Agreement and the other Loan Documents, and all documents executed in connection therewith, shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

8. Release. The Loan Parties hereby acknowledge that, as of the date hereof, the Obligations under the Credit Agreement and under the other Loan Documents are absolute and unconditional without any right of rescission, setoff, counterclaim, defense, offset, cross-complaint, claim or demand of any kind or nature from the Administrative Agent. Each Loan Party hereby voluntarily and knowingly releases and forever discharges each of the Credit Parties and its respective agents, employees, successors, and assigns (collectively, the "*Released Parties*") from all possible claims, demands, actions, causes of action, damages, costs, expenses, and liabilities whatsoever arising from or whether known or unknown, anticipated or unanticipated, suspected or unsuspected, fixed, contingent, or conditional, at law or in equity, originating in whole or in part on or before the date hereof which any Loan Party may now or hereafter have against the Released Parties, if any, and irrespective of whether any such claims arise out of contract, tort, violation of law or regulations, or otherwise, including, without limitation, any contracting for, charging, taking, reserving, collecting, or receiving interest in excess of the highest lawful rate applicable. Notwithstanding anything to the contrary contained herein, the foregoing release does not apply to any act or omission of any Released Party first occurring after the date hereof.

9. Electronic Signatures. This Amendment and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Amendment (each a "*Communication*"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each Loan Party agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Loan Party to the same extent as a manual signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Loan Party enforceable against such in accordance with the terms thereof to the same extent as if manually executed. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("*Electronic Copy*"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "*Electronic Record*" and "*Electronic Signature*" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10. Miscellaneous. Unless stated otherwise (a) the singular number includes the plural and *vice versa* and words of any gender include each other gender, in each case, as appropriate, (b) headings

and captions may not be construed in interpreting provisions, (c) this Amendment must be construed -- and its performance enforced -- under New York law, (d) if any part of this Amendment is for any reason found to be unenforceable, all other portions of it nevertheless remain enforceable, and (e) this Amendment may be executed in any number of counterparts (originals or facsimile copies followed by originals) with the same effect as if all signatories had signed the same document, and all of those counterparts must be construed together to constitute the same document.

11. Entireties. The Credit Agreement as amended by this Amendment represents the final agreement between the parties about the subject matter of the Credit Agreement as amended by this Amendment and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

12. Parties. This Amendment binds and inures to each Loan Party and each Credit Party, and their respective successors and permitted assigns.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

EXECUTED as of the date first stated above.

BORROWER:

PEBBLEBROOK HOTEL, L.P., a Delaware limited partnership

By: **PEBBLEBROOK HOTEL TRUST**, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond Martz
Name: Raymond Martz
Title: Executive Vice President and Chief Financial Officer

PARENT REIT:

PEBBLEBROOK HOTEL TRUST, a Maryland Real Estate Investment Trust

By: /s/ Raymond Martz
Name: Raymond Martz
Title: Executive Vice President and Chief Financial Officer

GUARANTORS:

HUSKIES OWNER LLC, a Delaware limited liability company
BLUE DEVILS OWNER LLC, a Delaware limited liability company
PORTLAND HOTEL TRUST, a Maryland real estate investment trust

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Vice President and Secretary

BEARCATS HOTEL OWNER LP, a Delaware limited partnership
BEAVERS OWNER LLC, a Delaware limited liability company
BRUINS HOTEL OWNER LP, a Delaware limited partnership
CREEDENCE Hotel Owner LP, a Delaware limited partnership
CRUSADERS HOTEL Owner LP, a Delaware limited partnership
DONS HOTEL OWNER LP, a Delaware limited partnership
GOLDEN BEARS OWNER LLC, a Delaware limited liability company
GOLDEN EAGLES OWNER LLC, a Delaware limited liability company
HAZEL OWNER LLC, a Delaware limited liability company
HOYAS OWNER LLC, a Delaware limited liability company
JAYHAWK OWNER LLC, a Delaware limited liability company
MENUDO OWNER LLC, a Delaware limited liability company
MINERS HOTEL OWNER LP, a Delaware limited partnership
NKOTB OWNER LLC, a Delaware limited liability company
RAMBLERS HOTEL OWNER LP, a Delaware limited partnership
RAZORBACKS OWNER LLC, a Delaware limited liability company
RHCP HOTEL OWNER LP, a Delaware limited partnership
RUNNING REBELS OWNER LLC, a Delaware limited liability company
SOUTH 17TH STREET OWNERCO, L.P., a Delaware limited partnership
TERRAPINS OWNER LLC, a Delaware limited liability company
WILDCATS OWNER LLC, a Delaware limited liability company
WOLFPACK OWNER LLC, a Delaware limited liability company
WOLVERINES OWNER LLC, a Delaware limited liability company

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

CHAMBER MAID, LP, a Delaware limited partnership
FUN TO STAY, LP, a Delaware limited partnership
GEARY DARLING, LP, a Delaware limited partnership
GLASS HOUSES, a Maryland Real Estate Investment Trust
HARBORSIDE, LLC, a Florida limited liability company
LET IT FLHO, LP, a Delaware limited partnership
LHOBERGE, LP, a Delaware limited partnership
LHO BACKSTREETS, L.L.C., a Delaware limited liability company
LHO CHICAGO RIVER, L.L.C., a Delaware limited liability company
LHO GRAFTON HOTEL, L.P., a Delaware limited partnership
LHO HARBORSIDE HOTEL, L.L.C., a Delaware limited liability company
LHO HOLLYWOOD LM, L.P., a Delaware limited partnership
LHO LE PARC, L.P., a Delaware limited partnership
LHO MICHIGAN AVENUE FREEZEOUT, L.L.C., a Delaware limited liability company
LHO MISSION BAY HOTEL, L.P., a California limited partnership
LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership
LHO SAN DIEGO FINANCING, L.L.C., a Delaware limited liability company
LHO SAN DIEGO HOTEL ONE, L.P., a Delaware limited partnership
LHO SANTA CRUZ HOTEL ONE, L.P., a Delaware limited partnership
LHO TOM JOAD CIRCLE DC, L.L.C., a Delaware limited liability company
LHO WASHINGTON HOTEL FOUR, L.L.C., a Delaware limited liability company
LHO WASHINGTON HOTEL SIX, L.L.C., a Delaware limited liability company
LOOK FORWARD, LLC, a Delaware limited liability company
PDX PIONEER, LLC, a Delaware limited liability company
RW NEW YORK, LLC, a Delaware limited liability company
SEASIDE HOTEL, LP, a Delaware limited partnership
SERENITY NOW, LP, a Delaware limited partnership
SF TREAT, LP, a Delaware limited partnership
SOULDRIVER, L.P., a Delaware limited partnership
SUNSET CITY, LLC, a Delaware limited liability company
WESTBAN HOTEL INVESTORS, LLC, a Delaware limited liability company

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

DON'T LOOK BACK, LLC, a Delaware limited liability company

By: **LOOK FORWARD, LLC**, a Delaware limited liability company, its manager

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

LASALLE HOTEL OPERATING PARTNERSHIP, L.P., a Delaware limited partnership

By: **PING MERGER OP GP, LLC**, a Delaware limited liability company, its general partner

By: **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership, its sole member

By: **PEBBLEBROOK HOTEL TRUST**, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Executive Vice President and Chief Financial Officer

ADMINISTRATIVE AGENT:

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

By: /s/ Jessica W. Phillips
Name: Jessica W. Phillips
Title: Authorized Signatory

LENDERS:

RAYMOND JAMES BANK, N.A., as a Lender

By: /s/ Matt Stein
Name: Matt Stein
Title: Senior Vice President

TD BANK, N.A., as a Lender

By: /s/ Michael Duganich
Name: Michael Duganich
Title: Vice President

Signature Page to Third Amendment to Credit Agreement
Pebblebrook Hotel, L.P./Pebblebrook Hotel Trust

EXHIBIT A

CONFORMED CREDIT AGREEMENT

[See attached]

CREDIT AGREEMENT

Dated as of October 13, 2017

among
PEBBLEBROOK HOTEL, L.P.,
as the Borrower,

PEBBLEBROOK HOTEL TRUST,
as the Parent REIT and a Guarantor,

CERTAIN SUBSIDIARIES OF THE BORROWER,
as Guarantors,

CAPITAL ONE, NATIONAL ASSOCIATION,
as Administrative Agent,

and

The Other Lenders Party Hereto

TD BANK, NATIONAL ASSOCIATION,
as Syndication Agent

CAPITAL ONE, NATIONAL ASSOCIATION
and
TD SECURITIES (USA) LLC,
as Joint Lead Arrangers and Joint Book Runners

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CREDIT AGREEMENT

This **CREDIT AGREEMENT** ("***Agreement***") is entered into as of October 13, 2017, among **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership (the "***Borrower***"), **PEBBLEBROOK HOTEL TRUST**, a Maryland real estate investment trust (the "***Parent REIT***"), the other Persons party hereto from time to time as Guarantors (as such term is defined herein), each lender from time to time party hereto (collectively, the "***Lenders***" and individually, a "***Lender***"), and **CAPITAL ONE, NATIONAL ASSOCIATION**, as Administrative Agent.

The Administrative Agent and the Lenders desire to make available to the Borrower a $110,000,000 term loan facility on the terms and conditions contained herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. DEFINITIONS AND ACCOUNTING TERMS

1.01 **Defined Terms**. As used in this Agreement, the following terms shall have the meanings set forth below:

"***Acceleration***" has the meaning specified in ***Section 8.02***.

"***Adjusted NOI***" means, as of any date of calculation, the sum of Net Operating Incomes for all Real Properties for the most recently-ended Calculation Period (and, if specifically required, including adjustments for subsequent events or conditions on a Pro Forma Basis).

"***Adjusted Unrestricted Cash***" means, on any date, an amount, not less than zero ($0), equal to the Borrower's Unrestricted Cash *less* (a) with respect to the calculation of the Consolidated Leverage Ratio, $10,000,000, and (b) with respect to the calculation of the Unsecured Leverage Ratio, $100,000,000.

"***Administrative Agent***" means Capital One, National Association in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"***Administrative Agent's Office***" means the Administrative Agent's address and, as appropriate, account as set forth on ***Schedule 10.02***, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"***Administrative Questionnaire***" means an Administrative Questionnaire in substantially the form of ***Exhibit D-2*** or any other form approved 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.

"***Affiliated Debt***" has the meaning specified in ***Section 11.09***.

"***Aggregate Commitments***" means the Commitments of all the Lenders.

"***Agreement***" has the meaning specified in the introductory paragraph.

"***Anti-Corruption Laws***" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

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

"***Applicable Margin***" means:

(a) Subject to ***clause (b)*** below, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to ***Section 6.02(a)***:

Pricing Level	Consolidated Leverage Ratio	Eurodollar Rate Loans	Base Rate Loans
I	< 3.5x	1.70%	0.70%
II	≥3.5x and <4.0x	1.80%	0.80%
III	≥4.0x and <5.0x	1.90%	0.90%
IV	≥ 5.0x and < 5.5x	2.15%	1.15%
V	≥5.5x and <6.0x	2.30%	1.30%
VI	≥6.0x	2.60%	1.60%

Any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the last day of the fiscal quarter for which such Compliance Certificate has been timely delivered pursuant to ***Section 6.02(a)***; *provided, however*, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level VI shall apply as of the first Business Day after the last day of the fiscal quarter for which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is actually delivered. The Applicable Margin in effect from the Closing Date until adjusted as set forth above shall be set at a Pricing Level II.

Notwithstanding anything to the contrary contained in this ***clause (a)***, the determination of the Applicable Margin under this ***clause (a)*** for any period shall be subject to the provisions of ***Section 2.07(b)***.

(b) If the Parent REIT or the Borrower attains at least one public or private Investment Grade Rating from either Moody's or S&P, then the Borrower may, upon written notice to the Administrative Agent, make an irrevocable one time written election to exclusively

use the below table based on the Debt Rating of the Parent REIT or the Borrower (setting forth the date for such election to be effective), and thereafter the Applicable Margin shall be determined based on the applicable rate per annum set forth in the below table notwithstanding any failure of the Parent REIT or the Borrower to maintain an Investment Grade Rating or any failure of the Parent REIT or the Borrower to maintain a Debt Rating:

Debt Rating	Eurodollar Rate Loans	Base Rate Loans
≥ A-/A3	1.50%	0.50%
BBB+/Baa1	1.55%	0.55%
BBB/Baa2	1.65%	0.65%
BBB-/Baa3	1.90%	0.90%
<BBB-/Baa3 or Unrated	2.45%	1.45%

If at any time the Parent REIT and/or the Borrower has two (2) Debt Ratings, and such Debt Ratings are split, then: (i) 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 Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used; and (ii) if the difference between such Debt Ratings is two (2) ratings categories (e.g., Baa1 by Moody's and BBB- by S&P), the Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the rating that is one higher than the lower of the applicable Debt Ratings were used. If at any time the Parent REIT and/or the Borrower has three (3) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest of such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Ratings-Based Applicable Margin 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 (2) ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch) or more, the Ratings-Based Applicable Margin 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 Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the second highest Debt Rating of the three (3) were used. If the Borrower has elected to use the above table set forth in this ***clause (b)*** and the Parent REIT and/or the Borrower no longer has a private or public Debt Rating from either Moody's or S&P, then the Ratings-Based Applicable Margin shall be deemed to be < BBB-/Baa3 or Unrated. Each change in the Applicable Margin resulting from a change in a Debt Rating shall be effective, in the case of an upgrade, during the period commencing on the date of delivery by the Borrower to the Administrative Agent of notice thereof pursuant to ***Section 6.02(j)*** and ending on the date immediately preceding the effective date of the next such change and, in the case of a downgrade, during the period commencing on the date of the announcement thereof and ending on the date immediately preceding the effective date of the next such change.

(c) Notwithstanding the foregoing, for the period of time commencing on the first Business Day immediately following the Surge Date and ending on the earlier of (i) the last day of the fourth (4^{th}) fiscal quarter following the Surge Date and (ii) the first Business Day immediately following the last day of the fiscal quarter for which a Compliance Certificate has been timely delivered pursuant to ***Section 6.02(a)*** containing a written notice to the Administrative Agent terminating the Surge Period, the Applicable Margin (whether based on the Consolidated Leverage Ratio or the applicable Debt Rating) shall be increased by thirty-five basis points (0.35%).

(d) Notwithstanding the foregoing, (i) for the period of time commencing on the First Amendment Effective Date ~~through and including the last day of the Waiver Period~~up to, but excluding, the Third Amendment Effective Date, the Applicable Margin shall be a percentage per annum equal to (~~i~~A) two and three-fifths of one percent (2.60%) with respect to Eurodollar Rate Loans, and (~~ii~~B) one and three-fifths of one percent (1.60%) with respect to Base Rate Loans, and (ii) for the period of time commencing on the Third Amendment Effective Date through and including the last day of the Waiver Period, the Applicable Margin shall be a percentage per annum equal to (A) two and three-quarters of one percent (2.75%) with respect to Eurodollar Rate Loans, and (B) one and three-quarters of one percent (1.75%) with respect to Base Rate Loans.

"***Applicable Percentage***" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender's Commitment at such time; *provided*, *however*, that upon the initial funding of the Loans on the Closing Date, the Applicable Percentage of each Lender shall be the ratio of the outstanding principal amount of all Loans held by such Lender to the aggregate outstanding principal amount of the Loans of all Lenders. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on ***Schedule 2.01*** or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"***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 Capital One and TD Bank, National Association, in their capacity as joint lead arrangers and joint bookrunners.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an 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 D-1*** or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

"***Attributable Indebtedness***" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"***Audited Financial Statements***" means the audited consolidated balance sheet of the Consolidated Parties for the fiscal year ended December 31, 2016, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Consolidated Parties, including the notes thereto.

"***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 Facility***" means the facility evidenced by that certain Fourth Amended and Restated Credit Agreement, dated as of the date hereof, among the Borrower, the Parent REIT, certain lenders party thereto, and Bank of America, N.A., as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Bank of America Term Facility***" means the facility evidenced by that certain Credit Agreement, dated as of October 31, 2018, among the Borrower, the Parent REIT, certain lenders party thereto, and Bank of America, N.A. as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Base Rate***" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus one-half of one percent (0.50%), (b) the rate of interest in effect for such day as publicly announced from time to time by Capital One as its "prime rate," and (c) the Eurodollar Rate plus one percent (1%). The "prime rate" is a rate set by Capital One based upon various factors including Capital One'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 Capital One shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to ***Section 3.03*** hereof, then the Base Rate shall be the greater of ***clauses (a)*** and ***(b)*** above and shall be determined without reference to ***clause (c)*** above. For the avoidance of doubt, in no circumstance shall the Base Rate be less than one and one-quarter of one percent (1.25%) per annum.

"***Base Rate Loan***" means a Loan that bears interest based on the Base 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.

"***BHC Act Affiliate***" has the meaning specified in ***Section 10.22(b)***.

"***Borrower***" has the meaning specified in the introductory paragraph.

"***Borrower Materials***" has the meaning specified in ***Section 6.02***.

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

"***Business Day***" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Applicable Laws of, or are in fact closed in, New York, New York, Charlotte, North Carolina or Dallas, Texas and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

"***Calculation Period***" means, as of any date of determination commencing with the delivery of the Required Financial Information for the fiscal quarter ending June 30, 2017, the most recent four (4) fiscal quarter period for which the Borrower has provided the Required Financial Information; *provided that*, for calculations made on a Pro Forma Basis, the amounts calculated for the applicable Calculation Period shall be adjusted as set forth in ***Section 1.03(c)***, but shall otherwise relate to the applicable Calculation Period (as defined above).

"***Capitalization Rate***" means (a) 7.25% for: (i) the LaPlaya Beach Resort & Club; (ii) Real Properties in the central business districts of New York, New York, San Diego, California, San Francisco, California, Washington, D.C., and Boston, Massachusetts; and (iii) Los Angeles, California urban Real Properties (including Real Properties located in Santa Monica, California); and (b) 7.75% for all other Real Properties.

"***Capital One***" means Capital One, National Association and its successors.

"***Cash Equivalents***" means any of the following types of Investments, to the extent owned by any Consolidated Party:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i)(A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in ***clause (c)*** of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of any Consolidated Party, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in ***clauses (a)***, ***(b)*** and ***(c)*** of this definition.

"***Change in Law***" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority, including any change in the Risk Based Capital Guidelines or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (x) the

Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "*Change in Law*," regardless of the date enacted, adopted or issued.

"***Change of Control***" means an event or series of events by which:

(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 twenty-five percent (25%) or more of the equity securities of the Borrower or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Borrower or Parent REIT 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);

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower or Parent REIT 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 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 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 passage of thirty (30) days from the date upon which any Person or two (2) or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower or Parent REIT, or control over the equity securities of the Borrower or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Borrower or Parent REIT 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) representing twenty-five percent (25%) or more of the combined voting power of such securities.

"***Closing Date***" means the first date all the conditions precedent in ***Section 4.01*** are satisfied or waived in accordance with ***Section 10.01***.

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

"***Collateral***" has the meaning specified in ***Section 6.17***.

"***Collateral Documents***" means, collectively, the Pledge Agreement and all other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations, including all other security agreements, pledge agreements, deeds of trust, pledges, powers of attorney, consents, assignments, notices, financing statements and all other written matter whether heretofore, now, or hereafter executed by the Borrower or any of its Subsidiaries and delivered to the Administrative Agent to create, perfect or evidence Liens to secure the Obligations.

"***Collateral Period***" means any period after the First Amendment Effective Date commencing on the occurrence of a Collateral Trigger Date and ending on the Collateral Release Date.

"***Collateral Release***" has the meaning specified in ***Section 6.17***.

"***Collateral Release Certificate***" has the meaning specified in ***Section 6.17***.

"***Collateral Release Date***" means any date after the expiration of the Waiver Period on which (a) no Default or Event of Default is continuing, (b) the Borrower delivers a Collateral Release Certificate as required by ***Section 6.17***, and (c) the Consolidated Leverage Ratio is either (i) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (ii) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***.

"***Collateral Trigger Date***" means any date during the Waiver Period, on which (a) the Liquidity of the Consolidated Parties does not exceed $~~300,000,000~~400,000,000 after the Third Amendment Effective Date (the "***First Limited Collateral Trigger Event***"), (b) the Liquidity of the Consolidated Parties does not exceed $300,000,000 after the First Amendment Effective Date (the "***Second Limited Collateral Trigger Event***"), (c) the Liquidity of the Consolidated Parties does not exceed $250,000,000 after the First Amendment Effective Date, or (~~e~~d) the Total Revolving Credit Outstandings (under and as defined in the Bank of America Facility) exceed $400,000,000 at any time on or after the fourth (4th) Business Day following the First Amendment Effective Date.

"***Commitment***" means, as to each Lender, its obligation to make Loans to the Borrower pursuant to ***Section 2.01*** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on ***Schedule 2.01*** or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"***Committed Loan Notice***" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to ***Section 2.02(a)***, which 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.

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

"***Compliance Certificate***" means a certificate substantially in the form of ***Exhibit C***.

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

"***Consolidated Adjusted EBITDA***" means, for any period, EBITDA less an annual replacement reserve equal to four percent (4.0%) of gross property revenues (excluding revenues with respect to third party space or retail leases).

"***Consolidated Fixed Charge Coverage Ratio***" means, as of any date of determination, the ratio of (a) Consolidated Adjusted EBITDA for the Calculation Period ending on such date *to* (b) Consolidated Fixed Charges for such period.

"***Consolidated Fixed Charges***" means, for any period, the sum of (a) Consolidated Interest Charges for such period, *plus* (b) current scheduled principal payments on Consolidated Funded Indebtedness for such period (including, for purposes hereof, current scheduled reductions in commitments, but excluding any payment of principal under the Loan Documents and any "balloon" payment or final payment at maturity that is significantly larger than the scheduled payments that preceded it), *plus* (c) dividends and distributions paid in cash on preferred stock by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, if any, for such period, in each case, determined in accordance with GAAP; *provided that*, to the extent the calculations under ***clauses (a)***, ***(b)*** and ***(c)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Consolidated Party).

"***Consolidated Funded Indebtedness***" means, as of any date of determination, without duplication, the sum of (a) the outstanding principal amount of all obligations of the Consolidated Parties on a consolidated basis, whether current or long-term, for borrowed money (including all obligations hereunder and under the other Loan Documents) and all obligations of the Consolidated Parties on a consolidated basis evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness of the Consolidated Parties on a consolidated basis, (c) all obligations of the Consolidated Parties on a consolidated basis arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations of the Consolidated Parties on a consolidated basis in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (e) Attributable Indebtedness of the Consolidated Parties on a consolidated basis in respect of capital leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees of the Consolidated Parties on a consolidated basis with respect to outstanding Indebtedness of the types specified in ***clauses (a)*** through ***(e)*** above of Persons other than the Parent REIT or any Subsidiary, (g) without duplication, all Indebtedness of the Consolidated Parties on a consolidated basis of the types referred to in ***clauses (a)*** through ***(f)*** above of any partnership or joint venture in which the Parent REIT or a Subsidiary is a general partner or joint venturer, and (h) without duplication, the aggregate amount of Unconsolidated Affiliate Funded Indebtedness for all Unconsolidated Affiliates. Notwithstanding the foregoing, Consolidated Funded Indebtedness shall exclude Excluded Capital Leases.

"***Consolidated Interest Charges***" means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates with respect to such period under capital leases (other than Excluded Capital Leases) that is treated as interest in accordance with GAAP; *provided that*, to the

extent the calculations under ***clauses (a)*** and ***(b)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Consolidated Party).

"***Consolidated Leverage Ratio***" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness less Adjusted Unrestricted Cash as of such date *to* (b) EBITDA for the Calculation Period most recently ended.

"***Consolidated Net Income***" means, for any period, the sum of (a) the net income of the Consolidated Parties on a consolidated basis (excluding extraordinary gains, extraordinary losses and gains and losses from the sale of assets) for such period, calculated in accordance with GAAP, *plus* (b) without duplication, an amount equal to the aggregate of net income (excluding extraordinary gains and extraordinary losses) for such period, calculated in accordance with GAAP, of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"***Consolidated Parties***" means a collective reference to the Parent REIT and its consolidated Subsidiaries and "***Consolidated Party***" means any one of the Consolidated Parties.

"***Consolidated Recourse Secured Indebtedness***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt that is recourse to any Consolidated Party or any Unconsolidated Affiliate (except to the extent such recourse is limited to customary non-recourse carve-outs); *provided that*, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Consolidated Party).

"***Consolidated Secured Debt***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt; *provided that*, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Consolidated Party).

"***Consolidated Tangible Net Worth***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, Shareholders' Equity on that date, *minus* the amount of Intangible Assets, *plus* the amount of accumulated depreciation; *provided that* there shall be excluded from the calculation of "Consolidated Tangible Net Worth" any effects resulting from the application of FASB ASC No. 715: Compensation – Retirement Benefits; *provided*, further, that, to the extent the calculation of foregoing amounts includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

"***Consolidated Total Asset Value***" means, without duplication, as of any date of determination, for the Consolidated Parties on a consolidated basis, the sum of: (a) the Operating Property Value of all Real Properties (other than Development/Redevelopment Properties); (b) the amount of all Unrestricted Cash; (c) the book value of all Development/Redevelopment Properties, mortgage or real estate-related loan assets and undeveloped or speculative land; (d) the contract purchase price for all assets under

contract for purchase (to the extent included in Indebtedness); and (e) the Borrower's applicable Unconsolidated Affiliate Interests of the preceding items for its Unconsolidated Affiliates.

"***Consolidated Unsecured Interest Coverage Ratio***" means, as of any date of determination, the ratio of (a) Net Operating Income from the Unencumbered Borrowing Base Properties for the Calculation Period ending on such date *to* (b) Unsecured Interest Charges for such period; *provided that*, unless otherwise approved by the Required Lenders, there shall be excluded from the calculation of Consolidated Unsecured Interest Coverage Ratio: (i) any excess above forty percent (40%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Major MSA and (ii) any excess above thirty-three percent (33%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Other MSA.

"***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 Entity***" has the meaning specified in ***Section 10.22(b)***.

"***Credit Parties***" means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to ***Section 9.05***, and the other Persons to whom the Obligations are owing from time to time.

"***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.

"***Debt Rating***" means the current published or private long term unsecured senior, non-credit enhanced debt rating of the Parent REIT or the Borrower by S&P, Moody's or Fitch.

"***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 (a) the Base Rate *plus* (b) the Applicable Margin, if any, applicable to Base Rate Loans *plus* (c) two percent (2.0%) per annum; *provided, however*, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus two percent (2.0%) per annum.

"***Default Right***" has the meaning specified in ***Section 10.22(b)***.

"***Defaulting Lender***" means, subject to ***Section 2.12(b)***, any Lender that (a) has failed to (i) fund all or any portion of its Loans within three (3) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any

other amount required to be paid by it hereunder within three (3) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this ***clause (c)*** upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; *provided that* a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of ***clauses (a)*** through ***(d)*** above, 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 2.12(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.

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

"***Development/Redevelopment Property***" means Real Property with respect to which development activities are being undertaken by the applicable owner thereof. A Real Property shall cease to be a Development/Redevelopment Property on the last day of the sixth (6th) full fiscal quarter after opening or reopening (or such earlier date as elected by the Borrower by written notice to the Administrative Agent).

"***Disposition***" or "***Dispose***" means the sale, transfer, license, lease (excluding the lease of any Unencumbered Borrowing Base Property and personal property assets related thereto to any TRS pursuant to a form of Lease approved by the Administrative Agent, in its reasonable discretion) or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale leaseback transaction), 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. For the avoidance of doubt, leases of personal or Real Property (other than sale and leaseback transactions) entered into in the ordinary course of business shall not be deemed to be Dispositions.

"***Dividing Person***" has the meaning assigned to it in the definition of "*Division.*"

"***Division***" means the division of the assets, liabilities and/or obligations of a Person (the "***Dividing Person***") among two or more Persons (whether pursuant to a "*plan of division*" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"***Dollar***" and "***$***" mean lawful money of the United States.

"***EBITDA***" means, for any period, the sum of (a) an amount equal to Consolidated Net Income for such period *plus* (b) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by the Consolidated Parties and Unconsolidated Affiliates for such period, (iii) depreciation and amortization expense of the Consolidated Parties and Unconsolidated Affiliates, (iv) other non-recurring expenses of the Consolidated Parties and Unconsolidated Affiliates reducing such Consolidated Net Income which do not represent a cash item in such period or any future period, (v) without duplication of any of the foregoing, amounts deducted from net income as a result of fees or expenses incurred in connection with acquisitions permitted under the Loan Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, (vi) all non-cash items with respect to straight-lining of rents materially decreasing Consolidated Net Income for such period, and (vii) all other non-cash items decreasing Consolidated Net Income (including non-cash expenses or losses with respect to Excluded Capital Leases), *minus* (c) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits of the Consolidated Parties and Unconsolidated Affiliates for such period, (ii) all non-cash items with respect to straight-lining of rents materially increasing Consolidated Net Income for such period, and (iii) all other non-cash items increasing Consolidated Net Income for such period (including non-cash revenues or gains with respect to Excluded Capital Leases); *provided that*, to the extent the calculations under ***clauses (a)***, ***(b)*** and ***(c)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

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

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

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

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

"***Eligible Ground Lease***" means a ground or similar building lease with respect to an Unencumbered Borrowing Base Property executed by the Borrower or a Subsidiary of the Borrower, as

lessee, (a) that has a remaining lease term (including extension or renewal rights) of at least thirty-five (35) years, calculated as of the date such property becomes an Unencumbered Borrowing Base Property, (b) that is in full force and effect, (c) that may be transferred and/or assigned without the consent of the lessor (or as to which (i) such lease may be transferred and/or assigned with the consent of the lessor and (ii) such consent shall not be unreasonably withheld or delayed or is subject to certain customary and reasonable requirements), and (d) pursuant to which (i) no default or terminating event exists thereunder, and (ii) no event has occurred which but for the passage of time, or notice, or both would constitute a default or terminating event thereunder.

"***Environmental Laws***" means any and all applicable Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or Governmental Authority 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, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Laws, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Equity Interests***" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; *provided* that neither Permitted Convertible Notes (prior to conversion thereof) nor Permitted Convertible Notes Swap Contracts shall constitute Equity Interests of the Parent REIT.

"***Equity Issuance***" means the issuance or sale by any Person of any of its Equity Interests or any capital contribution to such Person by any holder of its Equity Interests.

"***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 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) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to *Section 4063* of ERISA during a plan year in which such entity 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 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 a Pension Plan or the treatment of a Pension Plan amendment as a termination under *Section 4041* or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any 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; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of *Sections 430*, 431 and 432 of the Code or *Sections 303*, *304* and *305* of ERISA; or (h) 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 or any ERISA Affiliate.

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

"***Eurodollar Rate***" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) ("***LIBOR***") or a comparable or successor rate, which rate is approved by the Administrative Agent (in consultation with the Borrower), 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) at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

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

provided that (i) 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, (ii) 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) for the avoidance of doubt, in no circumstance shall the Eurodollar Rate be less than one-quarter of one percent (0.25%) per annum for each Eurodollar Rate Loan that has not been identified by the Borrower in writing as being subject to a Swap Contract.

"***Eurodollar Rate Loan***" means a Loan that bears interest at a rate based on ***clause (a)*** of the definition of Eurodollar Rate.

"***Event of Default***" has the meaning specified in ***Section 8.01***.

"***Excess Un-Reinvested Proceeds***" has the meaning specified in the definition of Excluded Net Proceeds.

"***Excluded Capital Lease***" means any long-term ground lease or building lease that is treated as a capital lease in accordance with GAAP.

"***Excluded Net Proceeds***" means (a) Net Cash Proceeds from the issuance of any common Equity Interests of the Parent REIT after the First Amendment Effective Date in an aggregate amount of up to $~~300,000,000~~500,000,000 to be used to acquire one or more Unencumbered Borrowing Base Properties, (b) Net Cash Proceeds of Dispositions after the First Amendment Effective Date in the aggregate amount of up to $~~200,000,000~~500,000,000 that the Borrower has designated in writing as being held for reinvestment in one or more new Unencumbered Borrowing Base Properties; *provided* that, if any such Net Cash Proceeds in excess of $200,000,000 are not reinvested in one or more new Unencumbered Borrowing Base Properties on or before March 31, 2022 (the "***Excess Un-Reinvested Proceeds***"), then such Excess Un-Reinvested Proceeds shall no longer be qualified as Excluded Net Proceeds and shall be used to make a mandatory prepayment required hereunder in accordance with ***Section 2.03(b)***, and (c) Net Cash Proceeds from Permitted Preferred Issuances which are contemporaneously (or not later than thirty (30) days after the issuance thereof) being used to redeem existing preferred Equity Interests of the Parent REIT.

"***Excluded Swap Obligations***" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to ***Section 11.08*** and any other "keepwell, support or other agreement" for the benefit of such Guarantor and any and all Guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, then such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

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

"***FAS 141R Changes***" means those changes made to a buyer's accounting practices by the Financial Accounting Standards Board's Statement of Financial Accounting Standard No. 141R, *Business Combinations*, which is effective for annual reporting periods that begin in calendar year 2009.

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

"***FATCA***" means *Sections 1471* through *1474* of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to *Section 1471(b)(1)* of the Code.

"***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 by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that* (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one one-hundredth of one percent (1/100 of 1%)) charged to Capital One on such day on such transactions as determined by the Administrative Agent.

"***Fee Letters***" means (a) the letter agreement, dated October 10, 2017, among the Parent REIT, the Borrower and Capital One, (b) the letter agreement, dated October 10, 2017, among the Parent REIT, the Borrower and TD Bank, National Association, and (c) any other fee letter among the Borrower, the Parent REIT and Capital One.

"***FFO Distribution Allowance***" means, for any fiscal year of the Consolidated Parties, an amount equal to ninety-five percent (95%) of Funds From Operations for such fiscal year.

"***First Amendment Effective Date***" means June 29, 2020.

"***First Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.

"***Fitch***" means Fitch, Inc. and any successor thereto.

"***Foreign Lender***" means any Lender that is organized under the Applicable Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"***FRB***" means the Board of Governors of the Federal Reserve System of the United States.

"***Fully Satisfied***" means, with respect to the Obligations as of any date, that, as of such date, (a) all principal of and interest accrued to such date which constitute Obligations shall have been irrevocably paid in full in cash, (b) all fees, expenses and other amounts then due and payable which constitute Obligations shall have been irrevocably paid in cash and (c) the Aggregate Commitments shall have expired or been terminated in full (in each case, other than inchoate indemnification liabilities arising under the Loan Documents).

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

"***Funds From Operations***" means, for any period, Consolidated Net Income, plus depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures as hereafter provided; *provided that*, to the extent such calculations include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests. Without limiting the foregoing, notwithstanding contrary treatment under GAAP, for purposes hereof, (a) "Funds From Operations" shall include, and be adjusted to take into account, (i) the Parent REIT's interests in unconsolidated partnerships and joint ventures, on the same basis as consolidated partnerships and subsidiaries, as provided in the "white paper" issued in April 2002 by the National Association of Real Estate Investment Trusts, as may be amended from time to time, and (ii) amounts deducted from net income as a result of pre-funded fees or expenses incurred in connection with acquisitions permitted under the Loan Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, and (b) net income (or loss) of the Consolidated Parties on a consolidated basis shall not include gains (or, if applicable, losses) resulting from or in connection with (i) restructuring of indebtedness, (ii) sales of property, (iii) sales or redemptions of preferred stock, (iv) non-cash asset impairment charges or (v) other non-cash items including items with respect to Excluded Capital Leases.

"***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.

"***Glass Houses***" means Glass Houses, a Maryland real estate investment trust.

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

"***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 obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (iv) to guaranty to any Person rental income levels (or shortfalls) or re-tenanting costs (including tenant improvements, moving expenses, lease commissions and any other costs associated with procuring new tenants); *provided that* such obligations shall be determined to be equal to the maximum potential amount of the payments due from the Person guaranteeing the applicable rental income levels over the term of the applicable lease or (v) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part); or (b) any lien on any assets of such Person securing any Indebtedness or other obligation of any primary

obligor, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith; *provided that*, to the extent any Guarantee is limited by its terms, then the amount of such Guarantee shall be deemed to be the stated or determinable amount of such Guarantee. The term "***Guarantee***" as a verb has a corresponding meaning.

"***Guarantors***" means, collectively, the Parent REIT, all Subsidiaries of the Borrower as of the Closing Date and as identified on the signature pages hereto as a "Guarantor" as of the Closing Date (excluding all Non-Guarantor Subsidiaries as of the Closing Date), each Person that is required to be a Guarantor pursuant to ***Section 6.12*** (including any Subsidiary that owns an Unencumbered Borrowing Base Property), unless such subsidiary is a Non-Guarantor Subsidiary or has otherwise been released from its obligations pursuant to ***Section 6.13***, and, with respect to the payment and performance by each Specified Loan Party of its obligations under ***Section 11*** with respect to all Swap Obligations, the Borrower, in each case together with their successors and permitted assigns.

"***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 Laws.

"***Hedge Bank***" means any Lender or Affiliate of a Lender, in its capacity as a party to a Swap Contract that is not otherwise prohibited under ***Section 6*** or ***7***.

"***Immaterial Subsidiary***" means any Subsidiary whose assets constitute less than one percent (1%) of Consolidated Total Asset Value; *provided that* if at any time the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" exceeds ten percent (10%) of all Consolidated Total Asset Value, then the Borrower shall designate certain "*Immaterial Subsidiaries*" as Guarantors such that the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" which are not Guarantors does not exceed ten percent (10%) of all Consolidated Total Asset Value.

"***Impacted Loans***" has the meaning specified in ***Section 3.03(a)***.

"***Increase Effective Date***" has the meaning given to such term in ***Section 2.11(d)***.

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

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

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

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

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business and, in each case, not overdue by more than ninety (90) days after such trade account payable was created, except to the extent that any such trade payables are being disputed in good faith);

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

(f) capital leases (other than Excluded Capital 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 or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include, without duplication, the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease (other than an Excluded Capital Lease) or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

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

"***Indemnitees***" has the meaning specified in ***Section 10.04(b)***.

"***Information***" has the meaning specified in ***Section 10.07***.

"***Initial Compliance Date***" means (a) if the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of Waiver Period, ~~June 30, 2021~~(i) March 31, 2022 with respect to the financial covenants set forth in ***Sections 7.11(d)***, ***7.11(e)*** and ***7.11(j)(iii)*** and (ii) June 30, 2022 with respect to the financial covenants set forth in ***Section 7.11*** (other than the covenants set forth in ***clauses (d)***, ***(e)*** and ***(j)(iii)*** thereof) or (b) if the Waiver Period ends on the date occurring under ***clause (b)*** of the definition of Waiver Period, the last day of the applicable fiscal quarter set forth in the Compliance Certificate delivered pursuant to such ***clause (b)***.

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

"***Intercreditor Agreement***" means that certain Intercreditor Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, the Parent REIT, certain grantors and

guarantors party thereto, the Administrative Agent, U.S. Bank National Association, Bank of America, N.A., Truist Bank, and each additional pari passu collateral agent from time to time party thereto.

"***Interest Payment Date***" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided, however*, that if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

"***Interest Period***" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1), two (2), three (3) or six (6) months 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 Maturity Date.

"***Intermediate REIT***" means (a) Glass Houses and (b) any Subsidiary of the Borrower that is formed as a real estate investment trust under its jurisdiction of formation, which Subsidiary does not own any assets (other than any Equity Interests in any Subsidiary that owns any Real Property assets); *provided that* such Subsidiary (i) shall not incur or guarantee any other Indebtedness, and (ii) may receive Restricted Payments paid in cash from its Subsidiaries so long as such Restricted Payments are immediately distributed upon receipt to the Borrower.

"***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.

"***Investment Grade Rating***" means a Debt Rating for the Parent REIT or the Borrower of BBB- or better from S&P, Baa3 or better from Moody's or BBB- or better from Fitch.

"***IP Rights***" has the meaning specified in ***Section 5.18***.

"***Joinder Agreement***" means a Joinder Agreement substantially in the form of ***Exhibit E***, executed and delivered by a new Guarantor in accordance with the provisions of ***Section 6.12***.

"***Lease***" means a lease, sublease, license, concession agreement or other agreement providing for the use or occupancy of any portion of any Real Property (and any personal property related thereto that is covered by such lease, sublease, license, concession agreement or other agreement) owned or ground leased by any Loan Party, including all amendments, supplements, restatements, assignments and other modifications thereto.

"***Lender***" has the meaning specified in the introductory paragraph.

"***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, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

"***LIBOR***" has the meaning specified in the definition of Eurodollar 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).

~~"***Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.~~

"***Liquidity***" means, as of any date of determination, the sum of (a) cash and Cash Equivalents not subject to any Liens, Negative Pledges or other restrictions *plus* (b) undrawn availability under this Agreement or under any other credit facilities of the Consolidated Parties (to the extent available to be drawn at the date of determination in accordance with this Agreement or the other applicable credit facility).

"***Liquidity Compliance Certificate***" means a certificate substantially in the form of ***Exhibit H*** or in such other form as may be agreed by the Borrower and the Administrative Agent.

"***Loan***" means an extension of credit by a Lender to the Borrower under ***Section 2***.

"***Loan Documents***" means this Agreement, each Note, the Intercreditor Agreement, each Collateral Document and the Fee Letters.

"***Loan Parties***" means, collectively, the Borrower and each Guarantor.

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

"***Major MSA***" means the metropolitan statistical area of any of the following: (a) New York City, New York; (b) Chicago, Illinois; (c) Washington, DC; (d) Los Angeles, California (excluding Santa Monica, California); (e) Boston, Massachusetts; (f) San Diego, California; and (g) San Francisco, California.

"***Material Acquisition***" means the acquisition by any Consolidated Party, in a single transaction or in a series of related transactions, of one or more Real Properties or Persons owning Real Properties in which the total investment with respect to such acquisition is equal to or greater than ten percent (10%) of Consolidated Total Asset Value at such time.

"***Material Adverse Effect***" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Parent REIT, the Borrower and their Subsidiaries taken as a whole; (b) a material impairment of the ability of the Borrower and the other Loan Parties taken as a whole to perform their respective obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"***Material Lease***" means as to any Unencumbered Borrowing Base Property (a) any Lease of such Unencumbered Borrowing Base Property (and any personal property assets related thereto) between the applicable Loan Party that owns such Unencumbered Borrowing Base Property and any TRS, (b) any Lease which, individually or when aggregated with all other Leases at such Unencumbered Borrowing Base Property with the same tenant or any of its Affiliates, accounts for ten percent (10%) or more of such Unencumbered Borrowing Base Property's revenue, or (c) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Property.

"***Maturity Date***" means October 13, 2024.

"***Moody's***" means Moody's Investors Service, Inc. and any successor thereto.

"***Multiemployer Plan***" means any employee benefit plan of the type described in *Section 4001(a)(3)* of ERISA that is subject to Title IV of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

"***Multiple Employer Plan***" means any employee benefit plan which has two (2) or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two (2) of whom are not under common control, as such a plan is described in *Section 4064* of ERISA.

"***Negative Pledge***" means a provision of any agreement (other than this Agreement or any other Loan Document) that prohibits the creation of any Lien on any assets of a Person; *provided, however*, that neither (a) an agreement that establishes a maximum ratio of unsecured debt to unencumbered assets, or of secured debt to total assets, or that otherwise conditions a Person's ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets nor (b) any requirement for the grant in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations, shall constitute a "*Negative Pledge*" for purposes of this Agreement.

"***Net Cash Proceeds***" means:

(a) with respect to any Disposition by any Consolidated Party, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the

sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction, including any accrued interest, repayment fees or charges due in connection with such repayment (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Consolidated Party in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two (2) years of the date of the relevant transaction as a result of any gain recognized in connection therewith; *provided that*, if the amount of any estimated taxes pursuant to ***subclause (C)*** exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds;

(b) with respect to the sale or issuance of any Equity Interest by any Consolidated Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Consolidated Party in connection therewith; and

(c) with respect to the incurrence or issuance of any Indebtedness by any Consolidated Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the sum of (A) the principal amount of any Indebtedness that is refinanced, replaced and/or repaid with the proceeds of such Indebtedness, including any accrued interest, repayment fees or charges due in connection with such refinancing, replacement and/or repayment (other than Indebtedness under the Loan Documents) and (B) the reasonable and customary out-of-pocket expenses incurred by such Consolidated Party in connection therewith.

"***Net Operating Income***" means, with respect to any Real Property and for the most recently ended Calculation Period, an amount equal to (a) the aggregate gross revenues from the operations of such Real Property during the applicable Calculation Period, *minus* (b) the sum of (i) all expenses and other proper charges incurred in connection with the operation of such Real Property during such period pro-rated as appropriate (including real estate taxes, but excluding any management fees, debt service charges, income taxes, depreciation, amortization and other non-cash expenses), and (ii) actual management fees paid during such period, and (iii) an annual replacement reserve equal to four percent (4.0%) of the aggregate revenues from the operations of such Real Property (excluding revenues with respect to third party space or retail leases).

"***New Property***" means each Real Property acquired by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) from the date of acquisition for a period of six (6) full fiscal quarters after the acquisition thereof; *provided, however*, that, upon the Seasoned Date for any New Property (or any earlier date selected by Borrower), such New Property shall be converted to a Seasoned Property and shall cease to be a New Property.

"***Net Proceeds***" means, with respect to any Equity Issuance by any Consolidated Party, the amount of cash received by such Consolidated Party in connection with any such transaction after deducting therefrom the aggregate, without duplication, of the following amounts to the extent properly attributable to such transaction and such amounts are usual, customary, and reasonable: (a) brokerage commissions; (b) attorneys' fees; (c) finder's fees; (d) financial advisory fees; (e) accounting fees; (f) underwriting fees; (g) investment banking fees; and (h) other commissions, costs, fees, expenses and

disbursements related to such Equity Issuance, in each case to the extent paid or payable by such Consolidated Party.

"***Non-Consenting Lender***" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of ***Section 10.01*** and (b) has been approved by the Required Lenders.

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

"***Non-Guarantor Subsidiary***" means any Subsidiary (whether direct or indirect) of the Borrower, other than any Subsidiary which owns an Unencumbered Borrowing Base Property, which (a) is a TRS; (b) is an Intermediate REIT; (c) is (i) formed for or converted to the specific purpose of holding title to Real Property assets which are collateral for Indebtedness owing or to be owed by such Subsidiary, *provided that* such Indebtedness must be incurred or assumed within ninety (90) days (or such longer period as the Administrative Agent may agree in writing) of such formation or conversion or such Subsidiary shall cease to qualify as a Non-Guarantor Subsidiary, and (ii) expressly prohibited in writing from guaranteeing Indebtedness of any other person or entity pursuant to (A) a provision in any document, instrument or agreement evidencing such Indebtedness of such Subsidiary or (B) a provision of such Subsidiary's Organization Documents, in each case, which provision was included in such Organization Document or such other document, instrument or agreement at the request of the applicable third party creditor and as an express condition to the extension or assumption of such Indebtedness; *provided that* a Subsidiary meeting the requirements set forth in this ***clause (c)*** shall only remain a "Non-Guarantor Subsidiary" for so long as (1) each of the foregoing requirements set forth in this ***clause (c)*** are satisfied, (2) such Subsidiary does not guarantee any other Indebtedness and (3) the Indebtedness with respect to which the restrictions noted in ***clause (c)*** (ii) are imposed remains outstanding; *provided further that* in no event shall any party to a Permitted Intercompany Mortgage encumbering an Unencumbered Borrowing Base Property be a Non-Guarantor Subsidiary; (d)(i) becomes a Subsidiary following the Closing Date, (ii) is not a Wholly Owned Subsidiary of the Borrower, and (iii) with respect to which the Borrower and its Affiliates, as applicable, do not have sufficient voting power to cause such Subsidiary to become a Guarantor hereunder; or (e) is an Immaterial Subsidiary.

"***Note***" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of ***Exhibit B***.

"***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 any Swap Contract entered into by any Loan Party with any Lender or its Affiliate as a counterparty with respect to the Loans, 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 the "Obligations" with respect to a Guarantor shall exclude any Excluded Swap Obligations of such Guarantor.

"***OFAC***" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"***Operating Property Value***" means, at any date of determination, (a) for each Seasoned Property, (i) the Adjusted NOI for such Real Property divided by (ii) the applicable Capitalization Rate, and (b) for each New Property, the GAAP book value for such New Property (until the Seasoned Date or such earlier date as elected by the Borrower by written notice to the Administrative Agent).

"***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 MSA***" means any metropolitan statistical area other than a Major MSA. For the avoidance of doubt, Santa Monica, California shall constitute an Other MSA.

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to ***Section 3.06***).

"***Outstanding Amount***" means, with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

"***Parent REIT***" has the meaning specified in the introductory paragraph.

"***Pari Passu Obligations***" has the meaning specified in the Intercreditor Agreement.

"***Participant***" has the meaning specified in ***Section 10.06(d)***.

"***PATRIOT Act***" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time, and any successor statute.

"***PBGC***" means the Pension Benefit Guaranty Corporation.

"***Pebblebrook Hotel Lessee***" means Pebblebrook Hotel Lessee, Inc., a Delaware corporation, and its permitted successors.

"***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 or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a Multiple Employer Plan, has made contributions at any time during the immediately preceding five (5) plan years.

"***Permitted Convertible Notes***" means senior convertible debt securities of the Parent REIT (a) that are unsecured, (b) that do not have the benefit of any Guarantee of any Subsidiary, (c) that are otherwise permitted under ***Section 7.03*** and, if applicable, ***Section 7.19***, (d) the Net Cash Proceeds of which are applied during the Waiver Period, if applicable, in accordance with this Agreement and the Intercreditor Agreement, (e) that are not subject to any sinking fund or any prepayment, redemption or repurchase requirements, whether scheduled, triggered by specified events or at the option of the holders thereof (it being understood that none of (i) a customary "change in control" or "fundamental change" put, (ii) a right to convert such securities into common shares of the Parent REIT, cash or a combination thereof as the Parent REIT may elect or (iii) an acceleration upon an event of default will be deemed to constitute such a sinking fund or prepayment, redemption or repurchase requirement), and (f) that have the benefit of covenants and events of default customary for comparable convertible securities (as determined by the Parent REIT in good faith).

"***Permitted Convertible Notes Swap Contract***" means a Swap Contract entered into by the Parent REIT in connection with, and prior to or concurrently with, the issuance of any Permitted Convertible Notes pursuant to which the Parent REIT acquires a call or a capped call option requiring the counterparty thereto to deliver to the Parent REIT common shares of the Parent REIT, the cash value of such shares or a combination of such shares and cash from time to time upon exercise of such option; *provided* that the terms, conditions and covenants of each such Swap Contract shall be such as are typical and customary for Swap Contracts of such type (as determined by the Parent REIT in good faith).

"***Permitted Intercompany Mortgage***" means a loan by a Loan Party to another Loan Party secured by a Lien in Real Property so long as such loan is subordinated to the Obligations pursuant to ***Section 11.09*** or otherwise on terms acceptable to the Administrative Agent; *provided that* in no event shall there be more than five (5) Permitted Intercompany Mortgages at any time.

"***Permitted Liens***" has the meaning specified in ***Section 7.01***.

"***Permitted Preferred Issuances***" means the issuance after the First Amendment Effective Date by the Parent REIT of preferred Equity Interests that (a) are not subject to mandatory redemption or are otherwise not treated as Indebtedness pursuant to GAAP and (b) to the extent used to purchase or redeem existing preferred Equity Interests, have a yield to maturity yield (including any voluntary or involuntary liquidation preference and any accrued and unpaid dividends) not greater than any preferred Equity Interest purchased or redeemed with the proceeds thereof.

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

"***Plan***" means any "*employee benefit plan*" (as such term is defined in *Section 3(3)* of ERISA) other than a Multiemployer Plan established by the Borrower 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***.

"***Pledge Agreement***" means any pledge or security agreement entered into, after the First Amendment Effective Date between the Borrower, certain Subsidiaries of the Borrower party thereto, and the Administrative Agent, for the benefit of the Administrative Agent and the other Credit Parties (as required by this Agreement or any other Loan Document), substantially in the form of ***Exhibit I***.

"***Pledged Subsidiary***" has the meaning specified in the Pledge Agreement.

"***PNC Facility***" means the facility evidenced by that certain Amended and Restated Credit Agreement, dated as of the date hereof, among the Borrower, the Parent REIT, certain lenders party thereto, and PNC Bank, National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Pro Forma Basis***" means, for purposes of calculating (utilizing the principles set forth in ***Section 1.03(c)***) compliance with each of the financial covenants set forth in ***Section 7.11*** in respect of a proposed transaction, that such transaction shall be deemed to have occurred as of the first day of the four (4) fiscal-quarter period ending as of the most recent fiscal quarter end preceding the date of such transaction with respect to which the Administrative Agent has received the Required Financial Information. As used herein, "***transaction***" shall mean (a) any Borrowing, (b) any incurrence or assumption of Indebtedness as referred to in ***Section 7.03(f)***, (c) any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to ***Section 7.05(a)*** or ***(b)*** or any other Disposition as referred to in ***Section 7.05***, or (d) any acquisition of any Person (whether by merger or otherwise) or other property. In connection with any calculation relating to the financial covenants set forth in ***Section 7.11*** upon giving effect to a transaction on a Pro Forma Basis:

(i) for purposes of any such calculation in respect of any incurrence or assumption of Indebtedness as referred to in ***Section 7.03(f)***, any Indebtedness which is retired in connection with such incurrence or assumption shall be excluded and deemed to have been retired as of the first day of the applicable period;

(ii) for purposes of any such calculation in respect of any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to ***Section 7.05*** or any other Disposition as referred to in ***Section 7.05***, (A) income statement items (whether positive or negative) attributable to the Person or property disposed of shall be excluded, (B) any Indebtedness which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the first day of the applicable period, and (C) pro forma adjustments shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the reasonable judgment of the Administrative Agent); and

(iii) for purposes of any such calculation in respect of any acquisition of any Person (whether by merger or otherwise) or other property, (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall be deemed to be included as of the first day of the applicable period, and (B) pro forma adjustments (with the calculated amounts annualized to the extent the period from the date of such acquisition through the most-recently ended fiscal quarter is not at least twelve (12) months or four (4) fiscal quarters, in the case of any applicable period that is based on twelve months or four (4) fiscal quarters) shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the

Consolidated Parties and (3) factually supportable (in the reasonable judgment of the Administrative Agent).

"***Public Lender***" has the meaning specified in ***Section 6.02***.

"***QFC***" has the meaning specified in ***Section 10.22(b)***.

"***QRS***" means a Person qualifying for treatment either as a "qualified REIT subsidiary" under *Section 856(i)* of the Code, or as an entity disregarded as an entity separate from its owner under Treasury Regulations under *Section 7701* of the Code.

"***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.

"***Real Properties***" means, at any time, a collective reference to each of the facilities and real properties owned or leased by the Borrower or any other Subsidiary or in which any such Person has an interest at such time; and "***Real Property***" means any one of such Real Properties.

"***Recipient***" means 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.

"***Register***" has the meaning specified in ***Section 10.06(c)***.

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

"***Related Parties***" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, 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.

"***Required Financial Information***" means, with respect to each fiscal period or quarter of the Borrower, (a) the financial statements required to be delivered pursuant to ***Section 6.01(a)*** or ***(b)*** for such fiscal period or quarter of the Parent REIT, and (b) the Compliance Certificate required by ***Section 6.02(a)*** to be delivered with the financial statements described in ***clause (a)*** above.

"***Required Lenders***" means, at any time, Lenders having Total Credit Exposures representing at least fifty-one percent (51%) of the Total Credit Exposures of all Lenders; *provided*, that at any time if there are only two (2) Lenders, "*Required Lenders*" shall mean both such Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"***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, vice president of finance, treasurer, or controller of a 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 and, solely for purposes of notices given pursuant to ***Section 2***, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Parent REIT or any Subsidiary or any Unconsolidated Affiliate, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Parent REIT's shareholders, partners or members (or the equivalent Person thereof); *provided that*, to the extent the calculation of the amount of any dividend or other distribution for purposes of this definition of "Restricted Payment" includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests; *provided*, further, that payments for, in respect of or in connection with Permitted Convertible Notes Swap Contracts shall not constitute Restricted Payments.

"***Risk Based Capital Guidelines***" means (a) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the date of this Agreement.

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

"***Sale and Leaseback Transaction***" means any arrangement pursuant to which any Consolidated Party, directly or indirectly, becomes liable as lessee, guarantor or other surety with respect to any lease, whether an operating lease or a capital lease, of any property (a) which such Consolidated Party has sold or transferred (or is to sell or transfer) to a Person which is not a Consolidated Party or (b) which such Consolidated Party intends to use for substantially the same purpose as any other property which has been sold or transferred (or is to be sold or transferred) by such Consolidated Party to another Person which is not a Consolidated Party in connection with such lease.

"***Sanctioned Country***" means, at any time, any country or territory which is itself the subject or target of any comprehensive Sanctions.

"***Sanctioned Person***" means, at any time, (a) any Person or group listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person or group operating, organized or resident in a Sanctioned Country, (c) any agency, political subdivision or instrumentality of the government of a Sanctioned Country or (d) any Person fifty percent (50%) or more owned, directly or indirectly, by any of the above.

"***Sanction(s)***" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the

U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"***Seasoned Date***" means the first day on which an acquired Real Property has been owned for six (6) full fiscal quarters following the date of acquisition of such Real Property.

"***Seasoned Property***" means (a) each Real Property (other than a New Property) owned by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) and (b) upon the occurrence of the Seasoned Date of any New Property, such Real Property.

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

"***Second Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.

"***Secured Debt***" means, for any given calculation date, without duplication, the total aggregate principal amount of any Indebtedness of the Consolidated Parties on a consolidated basis that is secured in any manner by any lien (other than Permitted Liens of the type described in ***Section 7.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)***, ***(g)***, ***(h)*** and ***(j)***); *provided that* (a) Indebtedness in respect of obligations under any capitalized lease shall not be deemed to be "Secured Debt" and (b) Secured Debt shall exclude Excluded Capital Leases and any Indebtedness in respect of the Pari Passu Obligations.

"***Secured Non-Recourse Debt***" means Secured Debt that is not recourse to the Parent REIT or any of its Subsidiaries (except to the extent such recourse is limited to customary non-recourse carve-outs).

"***Senior Notes***" means the Borrower's 4.70% Senior Notes Series A Due December 1, 2023 and 4.93% Senior Notes Series B Due December 1, 2025 evidenced by that certain Note Purchase and Guarantee Agreement dated November 12, 2015 (as the same may be amended, restated, modified or supplemented from time to time).

"***Shareholders' Equity***" means, as of any date of determination, the sum of (a) consolidated shareholders' equity of the Consolidated Parties as of that date determined in accordance with GAAP *plus* (b) without duplication, an amount equal to the aggregate shareholders' equity of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"***Solvent***" and "***Solvency***" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"***Specified Debt***" means the Senior Notes, the Bank of America Term Facility, the Bank of America Facility, the US Bank Facility, the US Bank Lessee Line of Credit, and any other agreement creating or evidencing Indebtedness for borrowed money (excluding any Secured Non-Recourse Debt) entered into on or after the Closing Date by any Consolidated Party, or in respect of which any Consolidated Party is an obligor or otherwise provides a Guarantee or other credit support (other than customary non-recourse carve outs), which is either (a) incurred pursuant to ***Section 7.19(c)(iii)*** or (b) in a principal amount outstanding or available for borrowing equal to or greater than $25,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency).

"***Specified Loan Party***" means any Loan Party that is not an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to ***Section 11.08***).

"***Subsidiary***" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "***Subsidiary***" or to "***Subsidiaries***" shall refer to a Subsidiary or Subsidiaries of the Parent REIT.

"***Subsidiary TRS***" means any TRS other than Pebblebrook Hotel Lessee.

"***Surge Date***" has the meaning specified in ***Section 7.11(a)***.

"***Surge Period***" has the meaning specified in ***Section 7.11(a)***.

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

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

"***Swap Termination Value***" means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in ***clause (a)***, the amount(s) determined as the mark-to-market value(s) for such Swap

Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

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

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

"***Third Amendment Effective Date***" means February 18, 2021.

"***Threshold Amount***" means $25,000,000.

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

"***Total Outstandings***" means the aggregate Outstanding Amount of all Loans.

"***TRS***" means each of (a) Pebblebrook Hotel Lessee and (b) each other taxable REIT subsidiary that is a Wholly Owned Subsidiary of Pebblebrook Hotel Lessee.

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

"***UCC***" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"***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 Kington 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.

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

"***Unconsolidated Affiliate Funded Indebtedness***" means, as of any date of determination for any Unconsolidated Affiliate, the product of (a) the sum of (i) the outstanding principal amount of all obligations of such Unconsolidated Affiliate, whether current or long-term, for borrowed money and all obligations of such Unconsolidated Affiliate evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all purchase money Indebtedness of such Unconsolidated Affiliate, (iii) all obligations of such Unconsolidated Affiliate arising under letters of credit (including standby and

commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (iv) all obligations of such Unconsolidated Affiliate in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (v) Attributable Indebtedness of such Unconsolidated Affiliate in respect of capital leases and Synthetic Lease Obligations, (vi) without duplication, all Guarantees of such Unconsolidated Affiliate with respect to outstanding Indebtedness of the types specified in ***clauses (i)*** through ***(v)*** above of Persons other than such Unconsolidated Affiliate, and (vii) all Indebtedness of such Unconsolidated Affiliate of the types referred to in ***clauses (i)*** through ***(vi)*** above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Unconsolidated Affiliate is a general partner or joint venturer, multiplied by (b) the respective Unconsolidated Affiliate Interest of each Consolidated Party in such Unconsolidated Affiliate.

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

"***Unencumbered Asset Value***" means, as of any date of determination, the Operating Property Value of all Unencumbered Borrowing Base Properties (other than Development/Redevelopment Properties).

"***Unencumbered Borrowing Base Entity***" means, as of any date of determination, any Person that owns (or leases as ground lessee pursuant to an Eligible Ground Lease) an Unencumbered Borrowing Base Property.

"***Unencumbered Borrowing Base Properties***" means, as of any date, a collective reference to each Real Property listed in the most recent Compliance Certificate delivered by the Borrower hereunder that meets the following criteria:

(i) such Real Property is, or is expected to be, a "luxury", "upper upscale", or "upscale" full or select service hotel located in the United States;

(ii) such Real Property is wholly-owned, directly or indirectly, by the Borrower or a Subsidiary of the Borrower in fee simple or ground leased pursuant to an Eligible Ground Lease (and such Real Property, whether owned in fee simple by the Borrower or a Subsidiary of the Borrower or ground leased pursuant to an Eligible Ground Lease, is leased to the applicable TRS);

(iii) if such Real Property is owned or ground leased pursuant to an Eligible Ground Lease by a Subsidiary of the Borrower, then (A) such Subsidiary is a Guarantor (unless such Subsidiary has been released as, or is not required to be, a Guarantor pursuant to the terms of ***Section 6.13***), (B) the Borrower directly or indirectly owns at least ninety percent (90%) of the issued and outstanding Equity Interests of such Subsidiary, and (C) such Subsidiary is controlled exclusively by the Borrower and/or one or more Wholly Owned Subsidiaries of the Borrower (including control over operating activities of such Subsidiary and the ability of such Subsidiary to dispose of, grant Liens in, or otherwise encumber assets, incur, repay and prepay Indebtedness, provide Guarantees and make Restricted Payments, in each case without any requirement for the consent of any other Person);

(iv) such Real Property is free of any Liens (other than Permitted Liens of the type described in ***Section 7.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)***, ***(g)***, ***(h)*** and ***(j)***) or Negative Pledges;

(v) such Real Property is free of all material title defects;

(vi) if such Real Property is subject to an Eligible Ground Lease, then there is no default by the lessee under the Eligible Ground Lease and such Eligible Ground Lease is in full force and effect;

(vii) such Real Property is free of all material structural defects;

(viii) such Real Property complies in all material respects with all applicable Environmental Laws and is not subject to any material Environmental Liabilities;

(ix) neither all nor any material portion of such Real Property is subject to any proceeding for the condemnation, seizure or appropriation thereof, nor the subject of negotiations for sale in lieu thereof;

(x) such Real Property has not otherwise been removed as an "Unencumbered Borrowing Base Property" pursuant to the provisions of this Agreement; and

(xi) the Borrower has executed and delivered to the Administrative Agent all documents and taken all actions reasonably required by the Administrative Agent to confirm the rights created or intended to be created under the Loan Documents and the Administrative Agent has received all other evidence and information that it may reasonably require;

provided that, if any Real Property does not meet all of the foregoing criteria, then, upon the request of the Borrower, such Real Property may be included as an "Unencumbered Borrowing Base Property" with the written consent of the Required Lenders.

"***United States***" and "***U.S.***" mean the United States of America.

"***Unrestricted Cash***" means as of any date of determination, all cash of the Borrower on such date that (a) does not appear (or would not be required to appear) as "restricted" on a balance sheet of the Borrower, (b) is not subject to a Lien in favor of any Person other than Liens securing the Pari Passu Obligations on an equal and ratable basis and statutory Liens in favor of any depositary bank where such cash is maintained, (c) does not consist of or constitute "deposits" or sums legally held by the Borrower in trust for another Person, (d) is not subject to any contractual restriction or obligation regarding the payment thereof for a particular purpose (including insurance proceeds that are required to be used in connection with the repair, restoration or replacement of any property of the Borrower), and (e) is otherwise generally available for use by the Borrower.

"***Unsecured Indebtedness***" means all Indebtedness which is not Secured Debt.

"***Unsecured Interest Charges***" means, as of any date of determination, Consolidated Interest Charges on the Unsecured Indebtedness for the most recently ended Calculation Period.

"***Unsecured Leverage Increase Period***" has the meaning specified in ***Section 7.11(g)***.

"***US Bank Facility***" means the facility evidenced by that certain Amended and Restated Credit Agreement, dated as of October 13, 2017, among the Borrower, the Parent REIT, certain lenders party thereto, and U.S. Bank National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***US Bank Lessee Line of Credit***" means the facility evidenced by that certain ~~Third~~Fourth Amended and Restated Revolving Credit Note, dated as of the ~~First~~Third Amendment Effective Date, among Pebblebrook Hotel Lessee, as maker, and U.S. Bank National Association, as payee (as the same may be amended, restated, modified or supplemented from time to time).

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

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

"***Waiver Period***" means the period commencing on the First Amendment Effective Date and ending on the earlier to occur of (a) the date the Borrower is required to deliver a duly completed Compliance Certificate for the fiscal quarter ending June 30, ~~2021~~2022 pursuant to ***Section 6.02(a)*** (or, if earlier, the date on which the Borrower delivers such Compliance Certificate pursuant to ***Section 6.02(a)*** evidencing, to the Administrative Agent's reasonable satisfaction, the Borrower's compliance with the financial covenants contained in ***Section 7.11*** as of June 30, ~~2021~~2022) and (b) the date the Borrower delivers a Compliance Certificate in accordance with ***Section 6.02(a)*** with respect to any fiscal quarter ending after the First Amendment Effective Date but prior to June 30, ~~2021~~2022 evidencing, to the Administrative Agent's reasonable satisfaction, the Borrower's compliance with the financial covenants contained in ***Section 7.11*** as of the last day of such fiscal quarter as if such covenants had applied for such quarter, together with a written notice to the Administrative Agent irrevocably electing to terminate the Waiver Period concurrently with such delivery.

"***Wholly Owned Subsidiary***" means, with respect to any direct or indirect Subsidiary of any Person, that one hundred percent (100%) of the Equity Interests with ordinary voting power issued by such Subsidiary (other than directors' qualifying shares and investments by foreign nationals mandated by Applicable Laws) is beneficially owned, directly or indirectly, by such Person.

"***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, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

(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).

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 and its Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(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); *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 and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any change to GAAP occurring after the Closing Date as a result of the adoption of any proposals set forth in the Proposed Accounting Standards Update, Leases (Topic 840), issued by the Financial Accounting Standards Board on August 17, 2010, or any other proposals issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) was not required to be so treated under GAAP as in effect on the Closing Date.

(c) **Financial Covenant Calculation Conventions**. Notwithstanding the above, the parties hereto acknowledge and agree that, for purposes of all calculations made under the financial covenants set forth in ***Section 7.11*** (including without limitation for purposes of the definitions of "Pro Forma Basis" set forth in ***Section 1.01***), (i) after consummation of any Disposition or removal of an Unencumbered Borrowing Base Property pursuant to ***Section 1.06*** (A) income statement items (whether income or expense) and capital expenditures attributable to the property disposed of or removed shall, to the extent not otherwise excluded in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in ***Section 1.01***, be excluded as of the first day of the applicable period and (B) Indebtedness which is retired shall be excluded and deemed to have been retired as of the first day of the applicable period and (ii) after consummation of any acquisition (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall, to the extent not otherwise included in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in ***Section 1.01***, be included to the extent relating to any period applicable in such calculations, (B) to the extent not retired in connection with such acquisition, Indebtedness of the Person or property acquired shall be deemed to have been incurred as of the first day of the applicable period, (iii) in connection with any incurrence of Indebtedness, any Indebtedness which is retired in connection with such incurrence shall be excluded and deemed to have been retired as of the first day of the applicable period and (iv) pro forma adjustments may be included to the extent that such adjustments would give effect to items that are (1) directly attributable to the relevant transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the opinion of the Administrative Agent).

(d) **Consolidation of Variable Interest Entities**. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

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

1.05 **Times of Day; Rates**. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility, 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 "***Eurodollar Rate***" or with respect to any rate that is an alternative or replacement for or successor to any such rate or the effect of any of the foregoing.

1.06 **Addition/Removal of Unencumbered Borrowing Base Properties.**

(a) The Unencumbered Borrowing Base Properties and the Eligible Ground Leases as of the Closing Date are listed on ***Schedule 5.23***.

(b) The Borrower may from time to time add an additional Real Property as an Unencumbered Borrowing Base Property in a Compliance Certificate delivered to the Administrative Agent in accordance with the terms of ***Section 6.03(e)***; *provided that* no Real Property shall be included as an Unencumbered Borrowing Base Property in any Compliance Certificate delivered to the Administrative Agent or in any calculation of any of the components of the financial covenants set forth in ***Section 7.11*** that refer to "Unencumbered Borrowing Base Properties" unless such Real Property satisfies the eligibility criteria set forth in the definition of "Unencumbered Borrowing Base Property."

(c) Notwithstanding anything contained herein to the contrary, to the extent any property previously-qualifying as an Unencumbered Borrowing Base Property ceases to meet the criteria for qualification as such, such property shall be immediately removed from all financial covenant related calculations contained herein. Any such property shall immediately cease to be an "Unencumbered Borrowing Base Property" hereunder and the Borrower shall provide a Compliance Certificate to the Administrative Agent in accordance with the terms of ***Section 6.03(e)*** removing such Real Property from the list of Unencumbered Borrowing Base Properties.

(d) The Loan Parties may voluntarily remove any Unencumbered Borrowing Base Property from qualification as such (but only in connection with a proposed financing, sale or other Disposition otherwise permitted hereunder) by deleting such Unencumbered Borrowing Base Property in a Compliance Certificate delivered to the Administrative Agent in accordance with the terms of ***Section 6.03(e)***, if, and to the extent: (i) the Loan Parties shall, immediately following such removal, be in compliance (on a Pro Forma Basis) with all of the covenants contained in ***Section 7*** of this Agreement and (ii) no Default exists or would result therefrom. So long as no Default exists or would result therefrom, the Administrative Agent shall release any Subsidiary that owns any Unencumbered Borrowing Base Property that is being removed pursuant to this ***clause (d)*** from its obligations (accrued or unaccrued) under ***Section 11*** and the Administrative Agent shall promptly, and in any event within five (5) Business Days, execute a Release of Guarantor in the form of ***Exhibit G*** attached hereto if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal.

2. THE COMMITMENTS AND BORROWINGS

2.01 **The Loans**. Subject to the terms and conditions set forth herein, each Lender severally agrees to make a single loan to the Borrower on the Closing Date in an amount not to exceed such Lender's Commitment. The Borrowing on the Closing Date shall consist of Loans made simultaneously by the Lenders in accordance with their respective Commitment. Amounts borrowed under this ***Section 2.01*** and repaid or prepaid may not be reborrowed. Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein. The Commitments shall be automatically and permanently reduced to zero after the borrowing of Loans pursuant to this ***Section 2.01*** on the Closing Date.

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

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (x) telephone or (y) 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 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans; *provided, however*, that if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one (1), two (2), three (3) or six (6) months in duration as provided in the definition of "*Interest Period*," the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four (4) Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three (3) Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing 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, Eurodollar Rate Loans having an Interest Period of one (1) month. Any such automatic conversion to Eurodollar Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar 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.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and 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 Eurodollar Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in ***Section 4.01***, 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 Capital One 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 Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Capital One's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than eight (8) Interest Periods in effect.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or a 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.

2.03 **Prepayments.**

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided that* (i) such notice must be in a form reasonably acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 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) of Loans to be

prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). 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. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to ***Section 3.05***. Subject to ***Section 2.12***, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages.

(b) During the Waiver Period, and subject to the terms of the Intercreditor Agreement, if any Consolidated Party makes any Disposition (other than Dispositions permitted by ***Section 7.05(b)(i)***, ***(ii)***, ***(iii)*** and ***(iv)***), issues any Equity Interests, or incurs any Indebtedness, the Borrower shall, within three (3) Business Days of (i) receipt by such Consolidated Party of the proceeds thereof or (ii) the date any Excess Un-Reinvested Proceeds no longer qualify as Excluded Net Proceeds, make a mandatory repayment of the Pari Passu Obligations in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds received in connection with such Disposition, such issuance of Equity Interests, or such Indebtedness, other than Excluded Net Proceeds.

(c) Each mandatory repayment of the Pari Passu Obligations required under ***clause (b)*** above shall be applied to such Pari Passu Obligations (including the Obligations) as set forth in the Intercreditor Agreement. The portion of such mandatory repayments to be applied to this facility in accordance with the Intercreditor Agreement shall be applied to payment of the Outstanding Amount of Loans ratably among the Lenders in accordance with their Applicable Percentages.

2.04 **Repayment of Loans.** The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of all Loans outstanding on such date.

2.05 **Interest.**

(a) Subject to the provisions of ***subsection (b)*** below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period *plus* the Applicable Margin 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 Margin.

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

(ii) If any amount (other than principal of any Loan) payable by the 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, 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.

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

(c) 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.

2.06 **Fees**. The Borrower shall pay to the Administrative Agent the fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.07 **Computation of Interest and Fees; Retroactive Adjustments of Applicable Margin.**

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided that* any Loan that is repaid on the same day on which it is made shall, subject to ***Section 2.09(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.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders promptly on 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 of the United States, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent or any Lender, as the case may be, under ***Section 2.05(b)*** or under ***Section 8***. The Borrower's obligations under this paragraph shall survive until the date that is one (1) year after the date of the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.08 **Evidence of Debt.** The Loans 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 Loans 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 and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.09 **Payments Generally; Administrative Agent's Clawback.**

(a) **General**. All payments to be made by the Borrower shall be made free and clear of and 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 immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (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, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) **Clawback**.

(i) **Funding by Lenders; Presumption by Administrative Agent**. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with ***Section 2.02*** (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by ***Section 2.02***) and may, in reliance upon such assumption, make available to the 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 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, 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 Base Rate Loans. 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. 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 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 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 the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

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

(c) **Failure to Satisfy Conditions Precedent**. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this ***Section 2***, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in ***Section 4*** 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, with interest earned thereon at the Federal Funds Rate until returned.

(d) **Obligations of Lenders Several**. The obligations of the Lenders hereunder to make 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.

2.10 **Sharing of Payments by Lenders**. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such

Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided that*:

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

(ii) the provisions of this ***Section*** 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) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this ***Section*** shall apply).

2.11 **Increase in Total Credit Exposure.**

(a) **Request for Increase**. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may, from time to time, request an increase in the Total Credit Exposure of all Lenders by an amount (for all such requests) not exceeding $140,000,000; *provided that* (i) any such request for an increase shall be in a minimum amount of $5,000,000 and, if greater than $5,000,000, in whole increments of $5,000,000 in excess thereof, unless the Administrative Agent and the Borrower agree otherwise, (ii) the Borrower's right to request an increase in the Total Credit Exposure pursuant to this ***Section 2.11*** shall be exercisable no more than three (3) times and (iii) after giving effect to such increase, the Total Credit Exposure of all Lenders shall not exceed $250,000,000 less the amount of any prepayments of the Outstanding Amount. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders).

(b) **Lender Elections to Increase**. Each Lender may decline or elect to participate in such requested increase in the Total Credit Exposure of all Lenders in its sole discretion, and each Lender shall notify the Administrative Agent within such time period whether or not it

agrees to increase its Total Credit Exposure and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Total Credit Exposure.

(c) **Notification by Administrative Agent; Additional Lenders**. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent (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.

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

(e) **Conditions to Effectiveness of Increase**. As a condition precedent to such increase, (i) the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (y) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in ***Section 5*** and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this ***Section 2.11***, the representations and warranties contained in ***subsections (a)*** and ***(b)*** of ***Section 5.05*** shall be deemed to refer to the most recent statements furnished pursuant to ***clauses (a)*** and ***(b)***, respectively, of ***Section 6.01***, and (B) no Default exists or would result therefrom, and (ii)(x) upon the reasonable request of any Lender made at least ten (10) days prior to the Increase Effective Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested 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 three (3) days prior to the Increase Effective Date and (y) at least three (3) days prior to the Increase Effective Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party. To the extent that the increase of the Commitments shall take the form of a new term loan tranche, this Agreement shall be amended, in form and substance satisfactory to the Administrative Agent, to include such terms as are customary for a term loan commitment. The Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to ***Section 3.05***) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Total Credit Exposure of any Lender under this ***Section***, and each Loan Party shall execute and deliver such documents or instruments as the Administrative Agent may require to evidence such increase in the Total Credit Exposure of any Lender and to

ratify each such Loan Party's continuing obligations hereunder and under the other Loan Documents.

(f) **Conflicting Provisions**. This ***Section*** shall supersede any provisions in ***Section 2.10*** or ***10.01*** to the contrary.

2.12 **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 Laws:

(i) **Waivers and Amendments**. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "***Required Lenders***" and ***Section 10.01***.

(ii) **Defaulting Lender Waterfall**. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to ***Section 8*** or otherwise) or received by the Administrative Agent from a 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 such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no 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 deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the 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 such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no 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 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 made at a time when the conditions set forth in ***Section 4.01*** 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 until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure**. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify

the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; *provided that* no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided*, *further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

3. TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 **Taxes.**

(a) **Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes**.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to ***subsection (e)*** below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code 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 ***subsection (e)*** below, (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, 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 applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any Applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Applicable Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to ***subsection (e)*** below, (B) such Loan Party or the Administrative Agent, to the extent required by such Applicable Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the

withholding or deduction is made on account of Indemnified 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 applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) **Payment of Other Taxes by the Borrower**. Without limiting the provisions of ***subsection (a)*** above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) **Tax Indemnifications**.

(i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this ***Section 3.01***) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. The Borrower shall, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to ***Section 3.01(c)(ii)*** below.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (y) the Administrative Agent and the Borrower, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of ***Section 10.06(d)*** relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Borrower, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by the Administrative Agent or the Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this ***clause (ii)***.

(d) **Evidence of Payments**. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this ***Section 3.01***, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Applicable Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) **Status of Lenders; Tax Documentation**.

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

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

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

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of

IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" Article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" Article of such tax treaty;

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

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

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in *Section 1471(b)* or *1472(b)* of the 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 (D)***, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this ***Section 3.01*** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the 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 any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this ***Section 3.01***, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this ***Section 3.01*** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this ***subsection***, in no event will the applicable Recipient be required to pay any amount to the Borrower pursuant to this ***subsection*** the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This ***subsection*** shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) **Survival**. Each party's obligations under this ***Section 3.01*** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 **Illegality**. If any Lender determines that any Applicable Laws have made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder or make, maintain, fund or charge interest with respect to any Borrowing, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to issue, make,

maintain, fund or charge interest with respect to any such Borrowing or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) 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 Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 **Inability to Determine Rates**.

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to this ***clause (i)***, "***Impacted Loans***"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, 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, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in ***clause (i)*** of this ***Section 3.03(a)***, the Administrative Agent, in

consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under ***clause (i)*** of the first sentence of this ***Section 3.03(a)***, (ii) the Administrative Agent or 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 (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

3.04 **Increased Costs; Reserves on Eurodollar 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, any Lender (except any reserve requirement contemplated by ***Section 3.04(e)***);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in ***clauses (b)*** through ***(d)*** of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender 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 requirements or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by 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), 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.

(c) **Certificates for Reimbursement**. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in ***subsection (a)*** or ***(b)*** of this ***Section 3.04*** and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this ***Section 3.04*** shall not constitute a waiver of such Lender's right to demand such compensation, *provided that* the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this ***Section 3.04*** for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of 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 nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Reserves on Eurodollar Rate Loans**. The Borrower shall pay to each Lender, 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 Eurodollar Rate 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), which 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 from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

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 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; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to ***Section 10.13***;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds

were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

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 Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06 **Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office**. Each Lender may make any Loan to the Borrower through any Lending Office; *provided that* the exercise of this option shall not affect the obligation of the Borrower to repay the Loan in accordance with the terms of this Agreement. If any Lender requests compensation under ***Section 3.04***, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to ***Section 3.01***, or if any Lender gives a notice pursuant to ***Section 3.02***, then, at the request of Borrower, 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 Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to ***Section 3.01*** and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with ***Section 3.06(a)***, the Borrower may replace such Lender in accordance with ***Section 10.13***.

3.07 **Survival**. All of the Borrower's obligations under this ***Section 3*** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

4. CONDITIONS PRECEDENT TO BORROWINGS

4.01 **Conditions of Initial Borrowing**. The obligation of each Lender to advance the Borrowings on the Closing Date of its Loans hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Borrower to be true and correct as of the Closing Date and such other documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of the Loan Parties is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;

(v) a favorable opinion of Honigman Miller Schwartz and Cohn LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may request;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in ***Sections 4.01(d)***, ***(e)*** and ***(f)*** have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect; and (C) a calculation of the Consolidated Leverage Ratio as of the last day of the fiscal quarter of the Borrower ended on June 30, 2017;

(viii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of the Borrower ended on June 30, 2017, signed by a Responsible Officer of the Borrower;

(ix) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(x) a certificate executed by a Responsible Officer of the Borrower as of the Closing Date, in form and substance satisfactory to the Administrative Agent, regarding the Solvency of (A) the Borrower, (B) each of the other Loan Parties, and (C) the Consolidated Parties on a consolidated basis; and

(xi) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders reasonably may require.

(b) Any fees required to be paid hereunder or under the Fee Letters on or before the Closing Date shall have been paid (provided such fees may be paid from the proceeds of such initial Loan).

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute 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).

(d) The representations and warranties of the Borrower and each other Loan Party contained in ***Section 5*** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Loan, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this ***Section 4.01***, 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***.

(e) No Default shall exist, or would result from, such proposed Borrowing or from the application of the proceeds thereof.

(f) The Borrower shall be in compliance (on a Pro Forma Basis taking into account the applicable Loan) with the financial covenants set forth in ***Section 7.11***.

(g) There shall not have occurred any event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(h) The absence of any condition, circumstance, action, suit, investigation or proceeding pending or, to the knowledge of the Borrower and/or Guarantors, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(i) The Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof.

(j) The Parent REIT and the Borrower shall have entered into (i) the PNC Facility, the Bank of America Facility, the US Bank Facility and the US Bank Lessee Line of Credit and

(ii) a conforming amendment to the Senior Notes, each in form and substance reasonably satisfactory to the Administrative Agent.

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, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

5. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 **Existence, Qualification and Power**. Each Consolidated Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Applicable Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Applicable 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 (b)(i)*** or ***(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 such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, except in each case, to the extent such violation, breach, Lien or payment could not reasonably be expected to have a Material Adverse Effect, or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Applicable Laws.

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.

5.04 **Binding Effect**. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.05 **Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Consolidated Parties, on a consolidated basis, 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 indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of the date thereof, including liabilities for taxes, commitments and Indebtedness, that in each case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Consolidated Parties. Except as otherwise set forth on ***Schedule 5.05***, such financial statements set forth all indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of December 31, 2016, including liabilities for taxes, commitments and Indebtedness, that in each case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Consolidated Parties.

(b) The unaudited consolidated balance sheets of the Consolidated Parties dated June 30, 2017, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Consolidated Parties as of the date thereof and their results of operations for the period covered thereby, subject, in the case of ***clauses (i)*** and ***(ii)***, to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 **Litigation**. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Responsible Officer of any Consolidated Party after due and diligent investigation, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Consolidated Party or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in ***Schedule 5.06***, if determined adversely, could (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect, and there has been no material adverse change in the status of, or the financial effect on, any Consolidated Party with respect to the matters described on ***Schedule 5.06***.

5.07 **No Default**. No Consolidated Party is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default exists or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 **Ownership of Property; Liens; Investments.**

(a) Each Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, each of the Unencumbered Borrowing Base Properties and/or all other real property necessary or used in the ordinary conduct of its business, except for such defects in title

as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party is subject to no Liens, other than Liens set forth on ***Schedule 5.08(b)*** and Liens permitted by ***Section 7.01***.

(c) ***Schedule 5.08(c)*** sets forth a complete and accurate list of all Investments held by any Consolidated Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

5.09 **Environmental Compliance.**

(a) The Consolidated Parties conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Laws on their respective businesses, operations and Real Properties, and as a result thereof the Consolidated Parties have reasonably concluded that, except as specifically disclosed in ***Schedule 5.09***, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in ***Schedule 5.09*** and except as would not reasonably be expected to have a Material Adverse Effect, (i) none of the real properties currently or to the knowledge of any Responsible Officer of any Consolidated Party, formerly owned or operated by any Consolidated Party, is listed or, to the knowledge of any Responsible Officer of any Consolidated Party, proposed for listing on the United States Environmental Protection Agency's (EPA) National Priorities List or on the EPA Comprehensive Environmental Response, Compensation, and Liability Information Sharing database or any analogous state or local list, nor to the knowledge of any Responsible Officer of any Consolidated Party is any adjacent property on such list, (ii) no Consolidated Party has operated and, to the knowledge of any Responsible Officer of any Consolidated Party, there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been transported, treated, stored or disposed on any Real Property currently owned or operated by any Consolidated Party or, to the knowledge of any Responsible Officer of any Consolidated Party, on any real property formerly owned or operated by any Consolidated Party, (iii) or to the knowledge of any Responsible Officer of any Consolidated Party, there is no friable asbestos or asbestos-containing material on any Real Property currently owned or operated by any Consolidated Party, and (iv) Hazardous Materials have not been transported, released, discharged or disposed of on any real property currently or formerly owned or operated by any Consolidated Party.

(c) Except as otherwise set forth on ***Schedule 5.09***, no Consolidated Party is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Laws; and to the knowledge of the Responsible Officers of the Consolidated Parties all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any real property currently or formerly owned or operated by any Consolidated Party have been disposed of in a manner not reasonably expected to result in a Material Adverse Effect.

(d) Except as otherwise set forth on ***Schedule 5.09***, each of the Unencumbered Borrowing Base Properties and, to the knowledge of the Responsible Officers of the Loan Parties, all operations at such Unencumbered Borrowing Base Properties are in compliance with all Environmental Laws in all material respects, there is no material violation of any Environmental Laws with respect to such Unencumbered Borrowing Base Properties or, to the knowledge of any Responsible Officer of any Loan Party, the businesses operated thereon, and there are no conditions relating to such Unencumbered Borrowing Base Properties or the businesses that could reasonably be expected to result in a Material Adverse Effect.

(e) Except as otherwise set forth on ***Schedule 5.09***, none of the Unencumbered Borrowing Base Properties contains, or to the knowledge of any Responsible Officer of any Loan Party has previously contained, any Hazardous Materials at, on or under such Unencumbered Borrowing Base Properties in amounts or concentrations that constitute or constituted a violation of Environmental Laws that could have a Material Adverse Effect.

(f) Except as otherwise set forth on ***Schedule 5.09***, no Loan Party has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding Hazardous Materials or compliance with Environmental Laws with regard to any of its Unencumbered Borrowing Base Properties or the businesses located thereon, nor does any Responsible Officer of any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(g) No Consolidated Party is subject to any judicial proceeding or governmental or administrative action and, to the knowledge of the Responsible Officers of the Consolidated Parties, no such proceeding or action is threatened in writing, under any Environmental Laws that could reasonably be expected to give rise to a Material Adverse Effect, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Laws with respect to the Consolidated Parties, the Unencumbered Borrowing Base Properties or, to the knowledge of any Responsible Officer of any Consolidated Party, the businesses located thereon that could be reasonably expected to give rise to a Material Adverse Effect.

5.10 **Insurance**. The properties of the Consolidated Parties are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the applicable Consolidated Party operates. The insurance coverage of the Consolidated Parties with respect to the Unencumbered Borrowing Base Properties as of the Closing Date is outlined as to carrier, policy number, expiration date, type and amount on ***Schedule 5.10***.

5.11 **Taxes**. The Consolidated Parties have filed all Federal and state income and other material tax returns and reports required to be filed, and have paid all Federal and state income and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Consolidated Party that would, if made, have a Material Adverse Effect. No Consolidated Party nor any Subsidiary thereof is party to any tax sharing agreement; *provided, however*, that any tax protection agreement entered into with a contributor of property to a Consolidated Party (but only to the extent the indemnity or other

obligation to such contributor under such tax protection agreement is limited to any capital gains tax that would be due upon a sale or other Disposition of such contributed property and either (i) is limited to an amount that does not exceed one percent (1%) of the total assets of such Consolidated Party or (ii) exceeds one percent (1%) but less than five percent (5%) of the total assets of such Consolidated Party but which indemnity is only triggered by a sale or other Disposition of such contributed property) shall not be considered a tax sharing agreement.

5.12 **ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws, except to the extent that the failure to so comply would result in, or could reasonably be expected to result in, a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under *Section 401(a)* of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under *Section 401(a)* of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under *Section 501(a)* of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Consolidated Party, nothing has occurred that would prevent or cause the loss of the tax-qualified status of any such Pension Plan.

(b) There are no pending or, to the best knowledge of each Consolidated 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, and neither the Consolidated Parties nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) there has been no failure to satisfy the minimum funding standard applicable to a Pension Plan under *Section 412* of the Code and *Section 302* of ERISA for any plan year, and no waiver of the minimum funding standards applicable to a Pension Plan under *Section 412* of the Code and *Section 302* of ERISA for any plan year has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in *Section 430(d)(2)* of the Code) is sixty percent (60%) or higher and neither the Consolidated Parties nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such Pension Plan to drop below sixty percent (60%) as of the most recent valuation date; (iv) neither the Consolidated Parties nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Consolidated Parties nor any ERISA Affiliate has engaged in a transaction that could be subject to *Section 4069* or *Section 4212(c)* of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Consolidated Parties nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than those listed on ***Schedule 5.12(d)*** hereto.

(e) Neither the Borrower nor any of its Subsidiaries is (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to *Section 4975* of the Code, (iii) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (iv) a "governmental plan" within the meaning of ERISA.

5.13 **Subsidiaries; Equity Interests**. The corporate capital and ownership structure of the Consolidated Parties is as described in ***Schedule 5.13(a)*** (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof). Set forth on ***Schedule 5.13(b)*** is a complete and accurate list (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof) with respect to each Consolidated Party of (i) jurisdiction of organization, (ii) number of ownership interests (if expressed in units or shares) of each class of Equity Interests outstanding, (iii) number and percentage of outstanding ownership interests (if expressed in units or shares) of each class owned (directly or indirectly) by the Parent REIT, the Borrower and their Subsidiaries, (iv) all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto and (v) an identification of which such Consolidated Parties are Guarantors hereunder and which Unencumbered Borrowing Base Properties are owned by each such Loan Party. The outstanding Equity Interests of the Consolidated Parties are, to the extent applicable depending on the organizational nature of such Person, validly issued, fully paid and non-assessable and are owned by the Parent REIT, the Borrower or a Subsidiary thereof (as applicable), directly or indirectly, in the manner set forth on ***Schedule 5.13(b)***, free and clear of all Liens (other than Permitted Liens or, in the case of the Equity Interests of the Loan Parties, statutory Liens or Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement). Other than as set forth in ***Schedule 5.13(b)*** (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof), no Consolidated Party (other than the Parent REIT) has outstanding any securities convertible into or exchangeable for its Equity Interests nor does any such Consolidated Party have outstanding any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to its Equity Interests. The copy of the Organization Documents of each Loan Party provided pursuant to ***Section 4.01(a)(iv)*** is a true and correct copy of each such document as of the Closing Date, each of which is valid and in full force and effect.

5.14 **Margin Regulations; Investment Company Act.**

(a) The Consolidated Parties are not engaged and will not engage, principally or as one of their 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) None of the Consolidated Parties nor any Person Controlling such Consolidated Parties is required to be registered as an "*investment company*" under the Investment Company Act of 1940.

5.15 **Disclosure**. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any other Consolidated Party is subject, and all other matters known to any Responsible Officer of any Consolidated Party (other than matters of a general economic nature), that, individually or in the aggregate, could reasonably be expected

to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Consolidated Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided that*, with respect to projected financial information, the Consolidated Parties represent only that such information was prepared in good faith based upon assumptions believed by the Consolidated Parties to be reasonable at the time (it being recognized by the Lenders that projections as to future events are not to be viewed as facts and that actual results may differ).

5.16 **Compliance with Laws**. Each Consolidated Party thereof is in compliance in all material respects with the requirements of all Applicable 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 Applicable Laws or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 **Taxpayer Identification Number**. The Borrower's true and correct U.S. taxpayer identification number is set forth on ***Schedule 10.02***.

5.18 **Intellectual Property; Licenses, Etc**. The Borrower and the other Consolidated Parties 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. To the knowledge of any Responsible Officer of any Consolidated 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 or any other Consolidated Party infringes upon any rights held by any other Person, except for such infringements that would not have a Material Adverse Effect. Except as specifically disclosed in ***Schedule 5.18***, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of any Responsible Officer of any Consolidated Party, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.19 **Solvency**. (a) As of the Closing Date and immediately prior to the initial Borrowing, the Borrower is Solvent, each other Loan Party is Solvent, and the Consolidated Parties, on a consolidated basis, are Solvent, (b) as of the date and immediately prior to each Subsidiary becoming a Guarantor pursuant to ***Section 6.12***, such Subsidiary is Solvent, and (c) following the initial Borrowing, the Borrower is Solvent, each other Loan Party is Solvent, and the Consolidated Parties, on a consolidated basis, are Solvent if the contribution rights that each such party will have against such other parties and the subrogation rights that each such party may have, if any, against the Borrower are taken into account.

5.20 **Casualty, Etc**. None of the Unencumbered Borrowing Base Properties have been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.21 **Labor Matters**. As of the Closing Date, there are no collective bargaining agreements or Multiemployer Plans covering the employees of any Consolidated Party or any of their Subsidiaries. No Consolidated Party or any of their Subsidiaries has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last year, which could (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

5.22 **REIT Status**. The Parent REIT is qualified as a REIT and the Borrower is qualified as a REIT, a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS, and each of their Subsidiaries that is a corporation is either a TRS or a QRS. As of the Closing Date, the Subsidiaries of the Parent REIT and the Borrower that are taxable REIT subsidiaries, as such term is used in the Code, are identified on ***Schedule 5.22***.

5.23 **Unencumbered Borrowing Base Properties**. Each Unencumbered Borrowing Base Property listed in each Compliance Certificate delivered by the Borrower to the Administrative Agent in accordance with the terms of this Agreement fully qualifies as an Unencumbered Borrowing Base Property as of the date of such Compliance Certificate.

5.24 **Anti-Corruption Laws; Sanctions; Anti-Terrorism Laws**.

(a) Each Consolidated Party and, to their knowledge, any Related Party, is in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. No Consolidated Party nor, to their knowledge, any Related Party is a Sanctioned Person. No Loan, use of the proceeds of any Loan or other transactions contemplated hereby will violate Anti-Corruption Laws or applicable Sanctions.

(b) Neither the making of the Loans hereunder nor the use of the proceeds thereof will violate the PATRIOT Act, the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or successor statute thereto. The Consolidated Parties and, to their knowledge, all Related Parties are in compliance in all material respects with the PATRIOT Act.

5.25 **Affected Financial Institutions**. Neither the Parent REIT, nor any of its Subsidiaries, is an Affected Financial Institution.

5.26 **Covered Entities**. No Loan Party is a Covered Entity.

6. **AFFIRMATIVE COVENANTS**. So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall not be Fully Satisfied, the Borrower shall, and shall cause

each Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable) to:

6.01 **Financial Statements**. Deliver to the Administrative Agent, for distribution to the Lenders:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Parent REIT (commencing with the fiscal year ended December 31, 2017), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in 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 (i) certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties in accordance with GAAP, and (ii) audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and 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; and

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Parent REIT (commencing with the fiscal quarter ended September 30, 2017), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and the related consolidated of changes in shareholders' equity, and cash flows for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties 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(c)***, 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)*** or ***(b)*** above at the times specified therein.

6.02 **Certificates; Other Information**. Deliver to the Administrative Agent (for distribution of the same to each Lender):

(a) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), and (ii) a profit and loss summary showing the operating condition for each of the

Unencumbered Borrowing Base Properties (in form and with such detail as is reasonably satisfactory to the Administrative Agent);

(b) if a Default exists, promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Consolidated Party by independent accountants in connection with the accounts or books of any Consolidated Party, or any audit of any of them, subject to applicable professional guidelines;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the shareholders of the Parent REIT, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or the Parent REIT 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;

(d) promptly after the furnishing thereof, copies of any report furnished to any holder of debt securities of any Loan Party (or any Subsidiary thereof if such debt securities are recourse (other than customary non-recourse carve outs) to such Loan Party) pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to ***Section 6.01*** or any other clause of this ***Section 6.02***;

(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 or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(f) not later than five (5) Business Days after receipt thereof by any Loan Party, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement regarding or related to any breach or default by any party thereto or any other event that could materially impair the value of the interests or the rights of any Loan Party or otherwise have a Material Adverse Effect and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may request;

(g) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party with respect to an Unencumbered Borrowing Base Property with any Environmental Laws that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any Unencumbered Borrowing Base Property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Laws;

(h) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, an update to ***Schedules 5.06***, ***5.09***, ***5.12(d)*** or ***5.13(a)*** or ***(b)*** to the extent the information provided by any such schedules has changed since the most recent update thereto; *provided that* the Borrower shall, promptly upon the Administrative Agent's written request

therefor, provide any information or materials requested by the Administrative Agent to confirm or evidence the matters reflected in such updated schedules;

(i) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, copies of Smith Travel Research (STR Global) summary STAR Reports for each Unencumbered Borrowing Base Property for the fiscal quarter to which such financial statements relate;

(j) promptly, of any change in any public or private Debt Rating;

(k) annually, on or before December 31, written evidence of the current Debt Ratings by any of Moody's, S&P and/or Fitch, if such rating agency has provided to the Parent REIT or the Borrower a private debt rating, which evidence shall be reasonably acceptable to the Administrative Agent;

(l) promptly following any request therefor, provide 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;

(m) not later than seven (7) Business Days after the last Business Day of each month during the Waiver Period, a Liquidity Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Parent REIT (which delivery may, unless the Administrative Agent requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), together with documentation reasonably satisfactory to the Administrative Agent to verify the calculations set forth in such certificate; and

(n) promptly, such additional information regarding the business, financial or corporate affairs of the Loan Parties or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to ***Section 6.01(a)*** or ***(b)*** or ***Section 6.02(c)*** (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 posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on ***Schedule 10.02***; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided that*: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent upon its request (either in its discretion or at the direction of the Required Lenders) to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and 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 of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower

with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "***Borrower Materials***") by posting Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "***Platform***") and (b) certain of the Lenders (each, a "***Public Lender***") may have personnel who do not wish to receive material non-public information with respect to the Borrower 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 hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower 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 with respect to the Borrower 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 Side Information;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

6.03 **Notices**. Promptly notify the Administrative Agent (who shall promptly notify each Lender):

(a) of the occurrence of any Default;

(b) of (i)(A) any breach or non-performance of, or any default under, a material Contractual Obligation of any Loan Party; (B) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party, including pursuant to any Environmental Laws; or (C) any other matter, which, in the case of any of ***clause (A)***, ***(B)*** or ***(C)***, individually or in the aggregate, has resulted in or could reasonably be expected to result in a Material Adverse Effect; and (ii) any material written dispute or any material litigation, investigation, proceeding or suspension between the Borrower or any Loan Party and any Governmental Authority;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party, including any determination by the Borrower referred to in ***Section 2.07(b)***;

(e) of any voluntary addition or removal of an Unencumbered Borrowing Base Property or other event or circumstance that results in a Real Property previously qualifying as an Unencumbered Borrowing Base Property ceasing to qualify as such; *provided that* such notification shall be accompanied by an updated Compliance Certificate with calculations showing the effect of such addition or removal on the financial covenants contained herein; and

(f) of any adverse changes to any insurance policy obtained by any Loan Party with respect to or in connection with any Unencumbered Borrowing Base Property in accordance with ***Section 6.15***, including, without limitation, any reduction in the amount or scope of coverage or any increase in any deductible or other self-retention amount thereunder.

Each notice pursuant to this ***Section 6.03*** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein (including, in the case of any notice pursuant to ***Section 6.03(a)***, a description of any and all provisions of this Agreement and any other Loan Document that the Responsible Officers of the Borrower believe have been breached) and stating what action the Borrower has taken and proposes to take with respect thereto.

6.04 **Payment of Obligations**. Pay and discharge as the same shall become due and payable, all of its material obligations and liabilities, including (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Consolidated Parties; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, unless the same are being contested in good faith by appropriate proceedings diligently conducted (the commencement and continuation of which proceedings shall suspend the collection of any such contested amount from such Consolidated Party, and suspend the enforcement thereof against, the applicable property), and adequate reserves in accordance with GAAP are being maintained by such Consolidated Party and, as to any Loan Party, such claims are bonded (to the extent requested by the Administrative Agent).

6.05 **Preservation of Existence, Etc**. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization except in a transaction permitted by ***Section 7.04*** or ***7.05***; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 **Maintenance of Properties**. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty (as to which insurance satisfying the criteria hereunder was maintained at the time of such casualty) excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07 **Maintenance of Insurance**. Maintain with financially sound and reputable insurance companies not Affiliates of any Consolidated Party, insurance with respect to the properties and business of the Consolidated Parties against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and, in the case of insurance maintained by the Loan Parties, providing for not less than thirty (30) days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance.

6.08 **Compliance with Laws and Contractual Obligations**. Comply in all material respects with the requirements of all Applicable Laws (including without limitation, Anti-Corruption Laws and applicable Sanctions), all Contractual Obligations 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 Applicable Laws, Contractual Obligation 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 each Consolidated Party.

6.10 **Inspection Rights**. Permit representatives of the Administrative Agent to visit and inspect any property of any Loan Party, 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 may, if it so chooses, be present at or may participate in any such discussions), at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to such Loan Party with the costs and expenses of the Administrative Agent being for its own account if no Event of Default then exists; *provided, however*, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 **Use of Proceeds**. Use the proceeds of the Loans for working capital, capital expenditures and other general corporate purposes (including, without limitation, property acquisitions and Restricted Payments not prohibited under ***Section 7.06***) not in contravention of any Applicable Laws or of any Loan Document.

6.12 **Additional Guarantors**. Unless such Subsidiary is not required to become a Guarantor pursuant to ***Section 6.13***, notify the Administrative Agent at the time that any Person becomes a Subsidiary of the Borrower, another Loan Party or any Intermediate REIT (other than, in each case, a Non-Guarantor Subsidiary), and promptly thereafter (and in any event on the earlier to occur of (a) the date on which such Person Guarantees any other Specified Debt or (b) concurrently with the delivery of each Compliance Certificate pursuant to ***Section 6.02(a)***, or such later date as the Administrative Agent may agree in writing), cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a counterpart of this Agreement, a Joinder Agreement, a Guarantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), a Grantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), or such other document as the Administrative Agent shall deem appropriate for such purpose, and (ii) deliver to the Administrative Agent documents of the types referred to in ***Section 4.01(a)(iii)***, ***4.01(a)(iv)***, ***4.01(a)(vi)*** and ***4.01(a)(vii)***, together with a favorable opinion of counsel of such Person, all such documentation and opinion to be in form, content and scope reasonably satisfactory to the Administrative Agent.

6.13 **Release of Guarantors**. At any time after the later of (a) the expiration of the Waiver Period or (b) the Collateral Release Date, if applicable, if the Parent REIT achieves at least two (2) Investment Grade Ratings, then, at the written request of the Borrower, the Guarantors (other than the Parent REIT) shall be released and discharged from all obligations (accrued or unaccrued) hereunder (other than those that expressly survive termination hereof), *provided that* any Subsidiary of the Borrower, another Loan Party or any Intermediate REIT (other than, in each case, a Non-Guarantor

Subsidiary) that (a) owns or ground leases any Real Property that qualifies as an Unencumbered Borrowing Base Property and (b) is liable for any recourse Indebtedness (whether secured or unsecured, and including any guarantee obligations in respect of indentures or otherwise) shall nonetheless be required to be a Guarantor hereunder in order for each Real Property owned or ground leased by such Subsidiary to be treated as an Unencumbered Borrowing Base Property.

6.14 **Further Assurances**. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution or acknowledgment thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

6.15 **Additional Insurance Requirements for Unencumbered Borrowing Base Properties.**

(a) Obtain and maintain, with respect to each Unencumbered Borrowing Base Property (or cause the applicable TRS that is party to any Lease regarding each such Unencumbered Borrowing Base Property to obtain and maintain), at its (or their) sole expense the following:

(i) property insurance with respect to all insurable property located at or on or constituting a part of such Unencumbered Borrowing Base Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism (to the extent commercially available) and such other insurable hazards as the Administrative Agent may require, in an amount not less than one hundred percent (100%) of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent the applicable Loan Parties and the Administrative Agent from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non reporting) form during and with respect to any construction on or with respect to such Unencumbered Borrowing Base Property;

(ii) if and to the extent any portion of any of the improvements are, under the Flood Disaster Protection Act of 1973 ("***FDPA***"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by the Administrative Agent, but in no event less than the amount sufficient to meet the requirements of Applicable Laws and the FDPA, as such requirements may from time to time be in effect;

(iii) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of the applicable Loan Party as named insured and the Administrative Agent as additional insured;

(iv) statutory workers' compensation insurance with respect to any work on or about such Unencumbered Borrowing Base Property (including employer's liability

insurance, if required by the Administrative Agent), covering all employees of the applicable Loan Party and/or its applicable Subsidiaries and any contractor;

(v) if there is a general contractor, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in ***clause (iv)*** above, for the benefit of the general contractor as named insured and the applicable Loan Party and the Administrative Agent as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the premises (including employer's liability insurance, if required by the Administrative Agent), covering all employees of the general contractor and any contractor; and

(vi) such other insurance (and related endorsements) as may from time to time be required by the Administrative Agent (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance (if then customarily carried by owners of premises similarly situated), wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements.

(b) All insurance policies obtained by any Loan Party with respect to or in connection with any Unencumbered Borrowing Base Property shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to the Administrative Agent, and shall require not less than thirty (30) days' prior written notice to the Administrative Agent of any cancellation of coverage.

(c) All insurance companies providing coverage pursuant to ***clause (a)*** of this ***Section 6.15*** or any other general coverage required pursuant to any Loan Documents must be licensed to do business in the state in which the applicable Unencumbered Borrowing Base Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better.

(d) All insurance policies maintained, or caused to be maintained, by any Loan Party or its applicable Subsidiaries with respect to any Unencumbered Borrowing Base Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by such Loan Party or its applicable Subsidiaries or the Administrative Agent and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(e) If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this ***Section 6.15*** or any other provision of any Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any debtor relief law, or if in Administrative Agent's opinion the financial responsibility of such insurer is or becomes inadequate, such Loan Party shall, in each instance promptly upon its discovery thereof or upon the request of the Administrative Agent therefor, and at the Loan Party's expense, promptly obtain and deliver (or cause to be obtained and delivered) to the

Administrative Agent a like policy (or, if and to the extent permitted by the Administrative Agent, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this ***Section 6.15*** or any other provision of any Loan Document, as the case may be.

(f) A copy of the original policy and such evidence of insurance as may be acceptable to the Administrative Agent shall be delivered to the Administrative Agent with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to the Administrative Agent, with all premiums fully paid current, at least ten (10) Business Days before the termination of the policy it renews or replaces. The applicable Loan Party shall pay (or cause to be paid) all premiums on policies required hereunder as they become due and payable and promptly deliver to the Administrative Agent evidence satisfactory to the Administrative Agent of the timely payment thereof.

(g) If any loss occurs at any time when the applicable Loan Party has failed to perform the covenants and agreements set forth in this ***Section 6.15*** with respect to any insurance payable because of loss sustained to any part of the premises whether or not such insurance is required by the Administrative Agent, then the Administrative Agent shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for the applicable Loan Party, to the same extent as if it had been made payable to the Administrative Agent.

(h) Each Loan Party shall at all times comply (and shall cause each applicable TRS to comply) in all material respects with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting any Unencumbered Borrowing Base Property.

6.16 **PATRIOT Act Compliance**. The Borrower shall, and shall cause each Subsidiary to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with the PATRIOT Act.

6.17 **Collateral**.

(a) During any Collateral Period, on or prior to the times specified below (or such later date as the Administrative Agent shall reasonably determine), the Borrower will cause, subject to ***clause (f)*** below, all of the issued and outstanding Equity Interests of each Guarantor (other than the Parent REIT) (collectively, the "***Collateral***"), to be, subject to the terms of the Intercreditor Agreement, subject to a perfected Lien in favor of the Administrative Agent to secure the Obligations in accordance with the terms and conditions of the Collateral Documents:

(i) within thirty (30) days of the Collateral Trigger Date; and

(ii) contemporaneously with the occurrence of any date any Subsidiary shall be required to become a Guarantor pursuant to ***Section 6.12*** hereof.

(b) During a Collateral Period, and without limiting the foregoing, the Borrower will, and will cause each Loan Party that owns any Collateral to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements), which may be required by applicable Law and which the

Administrative Agent may, from time to time during a Collateral Period, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the reasonable expense of the Borrower; *provided*, *however*, that no Pledged Subsidiary shall be permitted to certificate its Equity Interests or make an election under *Article 8* of the UCC unless such certificates are promptly delivered to the Administrative Agent, together with an endorsement in blank. Without limiting the foregoing, the Borrower shall cause each Loan Party that owns any Collateral to execute and deliver to the Administrative Agent a Grantor Joinder Agreement (as defined in the Intercreditor Agreement).

(c) During a Collateral Period, without limiting the release provisions set forth in ***clause (d)*** below, the Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release, the Equity Interests in any Pledged Subsidiary from the Pledge Agreement with respect to any Unencumbered Borrowing Base Property that is being removed pursuant to ***Section 1.06(d)*** if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal, so long as no Default or Event of Default exists or would result therefrom. The Administrative Agent agrees to furnish to the Borrower, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, after the Borrower's request and at the Borrower's reasonable expense, any release, termination, or other agreement or document evidencing the foregoing release as may be reasonably requested by the Borrower.

(d) The Borrower may deliver to the Administrative Agent, on or prior to the date that is five (5) Business Days (or such shorter period of time as agreed to by the Administrative Agent) before the date on which the Collateral Release is to be effected, written notice that it is requesting the Collateral Release, which notice shall identify the Collateral to be released and the proposed effective date for the Collateral Release, together with a certificate signed by a Responsible Officer of the Borrower (such certificate, a "***Collateral Release Certificate***"), certifying that:

(i) the Consolidated Leverage Ratio is either (A) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (B) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***; and

(ii) at the time of the delivery of notice requesting such release, on the proposed effective date of the Collateral Release and immediately before and immediately after giving effect to the Collateral Release, (A) no Default or Event of Default has occurred and is continuing or would result therefrom and (B) the representations and warranties contained in ***Section 5*** and the other Loan Documents are true and correct in all material respects on and as of the effective date of the Collateral Release, 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 as of such earlier date, and except that for purposes of this ***Section 6.17***, 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***.

(e) On or after any Collateral Release Date, the Administrative Agent shall, subject to the satisfaction of the requirements of ***clause (d)*** above, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release all of the Liens granted to the Administrative Agent pursuant to the requirements of this ***Section 6.17*** and the Collateral Documents (the "***Collateral Release***"). Upon the release of any Collateral pursuant to this ***Section 6.17***, the Administrative Agent shall (to the extent applicable) promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, deliver to the Borrower, upon the Borrower's request and at the Borrower's reasonable expense, such documentation as may be reasonably satisfactory to the Administrative Agent and otherwise necessary or advisable to evidence the release of such Collateral from the Loan Documents.

(f) Notwithstanding the foregoing, (i) if a Collateral Trigger Date occurs in connection with a First Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals fifty percent (50%) of the amount of the aggregate amount of ~~Unsecured Indebtedness~~the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the First Limited Collateral Trigger Event and (ii) if a Collateral Trigger Date occurs in connection with a Second Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals the amount of the aggregate amount of the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the Second Limited Collateral Trigger Event.

7. **NEGATIVE COVENANTS**. So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall not be Fully Satisfied, the Loan Parties shall not, nor shall they permit any other Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable), directly or indirectly, to:

7.01 **Liens**. Create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, other than the following (collectively, the "***Permitted Liens***"):

(a) Liens that secure the Obligations;

(b) Liens that secure Indebtedness of the Consolidated Parties on a pari passu basis with the Lien described in ***Section 7.01(a)***;

(c) Liens existing on the date hereof and listed on ***Schedule 5.08(b)*** and any renewals or extensions thereof, *provided that* (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by ***Section 7.03(b)***, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by ***Section 7.03(b)***;

(d) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) 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 are maintained on the books of the applicable Person;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(g) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting any Real Property owned by any Loan Party 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 and which, with respect to Unencumbered Borrowing Base Properties, have been reviewed and approved by the Administrative Agent (such approval to be in the reasonable judgment of the Administrative Agent);

(i) Liens securing judgments for the payment of money not constituting an Event of Default under ***Section 8.01(h)***;

(j) (i) the interests of any ground lessor under an Eligible Ground Lease and the interests of any TRS under a lease of any Unencumbered Borrowing Base Property and (ii) Liens in connection with Permitted Intercompany Mortgages;

(k) Liens on any assets (other than any Unencumbered Borrowing Base Property and related assets) securing Indebtedness permitted by ***Section 7.03(f)***, including Liens on such Real Property existing at the time such Real Property is acquired by the applicable Loan Party or any Non-Guarantor Subsidiary;

(l) Liens on the Equity Interests of any Non-Guarantor Subsidiary; *provided*, no such Liens shall be permitted with respect to the Equity Interests of Pebblebrook Hotel Lessee, any entity which is the lessee with respect to an Unencumbered Borrowing Base Property or the direct or indirect parent thereof;

(m) other Liens on assets (other than Unencumbered Borrowing Base Properties) securing claims or other obligations of the Loan Parties and their Subsidiaries (other than Indebtedness) in amounts not exceeding $5,000,000 in the aggregate;

(n) any interest of title of a lessor under, and Liens arising from or evidenced by protective UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, operating leases permitted hereunder; and

(o) Liens, if any, arising under the Bank of America Facility, in favor of the letter of credit issuer and/or the swing line lender thereunder to cash collateralize or otherwise secure the obligations of a defaulting lender to fund risk participations thereunder.

Notwithstanding anything contained in this ***Section 7.01***, each of the Parent REIT and the Borrower shall not, and shall not permit any other Consolidated Party to, secure any Indebtedness outstanding under or pursuant to any Specified Debt unless and until the Obligations (including any Guarantee in connection therewith) shall concurrently be secured equally and ratably with such Indebtedness pursuant to documentation reasonably acceptable to the Administrative Agent in substance and in form including an intercreditor agreement and opinions of counsel to the Parent REIT, the Borrower and/or any other Consolidated Party, as the case may be, from counsel and in a form that is reasonably acceptable to the Administrative Agent.

7.02 **Investments**. Make any Investments, except:

(a) Investments by the Consolidated Parties (other than by the Parent REIT) in (i) Unencumbered Borrowing Base Properties, and (ii) other real properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels, and which real properties shall, upon the making of such Investments, be wholly owned by such Consolidated Party;

(b) Investments held by the Borrower or such Loan Party or other Subsidiary in the form of cash or Cash Equivalents;

(c) Investments existing as of the Closing Date and set forth in ***Schedule 5.08(c)***;

(d) Advances to officers, directors and employees of the Borrower, the Loan Parties and other Subsidiaries in aggregate amounts not to exceed (i) $500,000 at any time outstanding for employee relocation purposes, and (ii) $100,000 at any time outstanding for travel, entertainment, and analogous ordinary business purposes;

(e) Investments of (i) the Borrower in any Guarantor (including (A) Investments by the Borrower in any private REIT, so long as Borrower owns one hundred percent (100%) of the "common" Equity Interests in such private REIT and (B) Investments by the Borrower in a Guarantor in the form of an intercompany loan), (ii) any Guarantor in the Borrower or in another Guarantor (including Investments by a Guarantor in the Borrower or in another Guarantor in the form of an intercompany loan), and (iii) the Borrower, any Guarantor or any Non-Guarantor Subsidiary in Non-Guarantor Subsidiaries (including Investments by the Borrower, any Guarantor or any Non-Guarantor Subsidiary in a Non-Guarantor Subsidiary in the form of an intercompany loan) that own, directly or indirectly, and operate Real Properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels; *provided*, notwithstanding the foregoing or any other provision herein or in any other Loan Document to the contrary, the Parent REIT shall not own any Equity Interests in any Person other than the Borrower;

(f) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and

Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(g) Guarantees permitted by ***Section 7.03***;

(h) Other Investments of the Borrower and its Subsidiaries in:

(i) Real properties consisting of undeveloped or speculative land (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than five percent (5%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary;

(ii) Incoming-producing real properties (other than hotels or similar hospitality properties) (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than ten percent (10%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary;

(iii) Development/Redevelopment Properties (valued at cost for purposes of this ***clause (h)***; *provided that* all costs and expenses associated with all existing development activities with respect to such Development/Redevelopment Properties (budget to completion) shall be included in determining the aggregate Investment of the Borrower or such Subsidiary with respect to such activities) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value and which Development/Redevelopment Properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary and;

(iv) Unconsolidated Affiliates (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than twenty percent (20%) of Consolidated Total Asset Value;

(v) mortgage or real estate-related loan assets (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value; and

(vi) Equity Interests (including preferred Equity Interests) in any Person (other than any Affiliate of the Borrower) (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value;

provided, however, that the collective aggregate value of the Investments owned pursuant to ***items (i)*** through ***(vi)*** of this ***clause (h)*** above shall not at any time exceed thirty-five percent (35%) of Consolidated Total Asset Value;

(vii) Investments in fixed or capital assets to the extent not prohibited under ***Section 7.12***; and

(i) Investments in any Person as a result of any merger or consolidation completed in compliance with ***Section 7.04***.

7.03 **Indebtedness**. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on ***Schedule 7.03*** and any refinancings, refundings, renewals or extensions thereof; *provided that* the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(c) Guarantees of (i) the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor, (ii) the Parent REIT or the Borrower, in respect of Indebtedness otherwise permitted hereunder of any Non-Guarantor Subsidiary if, in the case of any Guarantee pursuant to this ***clause (ii)***, (x) no Default shall exist immediately before or immediately after the making of such Guarantee, and (y) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the making of such Guarantee, and (iii) Non-Guarantor Subsidiaries made in the ordinary course of business;

(d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract, *provided that* (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) unsecured Indebtedness in the form of trade payables incurred in the ordinary course of business;

(f) Indebtedness of any Loan Party or Non-Guarantor Subsidiary incurred or assumed after the date hereof that is either unsecured or is secured by Liens on any assets of such Loan Party (other than any Unencumbered Borrowing Base Property) or of such Non-Guarantor Subsidiary; *provided*, such Indebtedness shall be permitted under this ***Section 7.03(f)*** only if: (i) no Default shall exist immediately before or immediately after the incurrence or assumption of such Indebtedness, and (ii) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the incurrence or assumption of such Indebtedness; and

(g) Indebtedness consisting of intercompany loans permitted under ***Section 7.02(e)***.

7.04 **Fundamental Changes**. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division), except for Dispositions permitted under ***Section 7.05*** (other than under ***Section 7.05(e)***) or except that, so long as no Default exists or would result therefrom:

(a) any Guarantor may merge with the Borrower or any other Guarantor, *provided that* when any Guarantor is merging with the Borrower, the Borrower shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party; and

(c) (i) any Non-Guarantor Subsidiary may merge with any other Person or Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any other Person; *provided* such merger or Disposition shall be permitted under this ***Section 7.04(c)(i)*** only if there exists no violation of the financial covenants hereunder on a Pro Forma Basis after such merger or Disposition, and (ii) any Non-Guarantor Subsidiary may merge with a Loan Party; *provided that* the Loan Party shall be the continuing or surviving Person.

7.05 **Dispositions**. Make any Disposition of any assets or property, except:

(a) Dispositions in the ordinary course of business (other than those Dispositions permitted under ***clause (b)*** of this ***Section 7.05***), so long as (i) no Default shall exist immediately before or immediately after such Disposition, and (ii) the Consolidated Parties will be in compliance, on a Pro Forma Basis following such Disposition, with (x) the covenants set forth in ***Sections 7.01***, ***7.02***, ***7.03***, and ***7.11*** of this Agreement, (y) all restrictions on Outstanding Amounts contained herein, and (z) the requirements of ***Section 1.06*** (in the case of any Disposition with respect to an Unencumbered Borrowing Base Property), in each case as demonstrated by a Compliance Certificate with supporting calculations delivered to the Administrative Agent on or prior to the date of such Disposition showing the effect of such Disposition;

(b) Any of the following:

(i) Dispositions of obsolete, surplus or worn out property or other property not necessary for operations, whether now owned or hereafter acquired, in the ordinary course of business and for no less than fair market value;

(ii) Dispositions of equipment or real property to the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property, in each case in the ordinary course of business and for no less than fair market value;

(iii) Dispositions of inventory and Investments of the type described in ***Section 7.02(b)*** and ***(c)*** in the ordinary course of business;

(iv) leases of Real Property (other than any Unencumbered Borrowing Base Property) and personal property assets related thereto to any TRS; and

(v) in order to resolve disputes that occur in the ordinary course of business, the Borrower and any Subsidiary of Borrower may discount or otherwise compromise, for less than the face value thereof, notes or accounts receivable;

(c) Dispositions of property by any Loan Party to the Borrower or to another Loan Party;

(d) Dispositions permitted by ***Section 7.04***; and

(e) Any other Disposition approved in writing by the Administrative Agent and the Required Lenders.

Notwithstanding the foregoing provisions of this ***Section 7.05***, no Loan Party shall sell or make any other Disposition of assets or property that will have the effect of causing such Loan Party (or any other Loan Party) to become liable under any tax protection or tax sharing agreement if the amount of such liability would exceed an amount equal to one percent (1%) of the total assets of such Loan Party without the prior written consent of the Administrative Agent.

7.06 **Restricted Payments.**

(a) Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(i) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, each Subsidiary may make Restricted Payments to the Borrower, the Guarantors and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(ii) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(iii) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Borrower and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests; and

(iv) so long as no Acceleration shall have occurred, each TRS may make Restricted Payments to its TRS parent entity to the extent necessary to pay any tax liabilities then due (after taking into account any losses, offsets and credits, as applicable); *provided that* any such Restricted Payments by a TRS shall only be made after it has paid all of its operating expenses currently due or anticipated within the current month and next following month;

(b) Notwithstanding the foregoing, the Loan Parties shall be permitted to make Restricted Payments of the type and to the extent permitted pursuant to ***Section 7.11(h)*** of this Agreement.

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 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, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate,

provided that the foregoing restriction shall not apply to transactions between or among the Borrower and any Guarantor or between and among any Guarantors, or between and among any Loan Party and the TRS or any manager engaged to manage one or more Unencumbered Borrowing Base Properties (if applicable).

7.09 **Burdensome Agreements**. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a)(i) limits the ability of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor, (ii) limits the ability of any Subsidiary to Guarantee the Indebtedness of the Borrower other than (A) any requirement for the grant of a Guarantee in favor of the holders of any Unsecured Indebtedness that is equal and ratable to the Guarantee set forth in ***Section 11*** or (B) in connection with a property-specific financing involving a Non-Guarantor Subsidiary as the borrower or (iii) constitutes a Negative Pledge; *provided, however*, that ***clauses (ii)*** and ***(iii)*** shall not prohibit any Negative Pledge incurred or provided in favor of any holder of Indebtedness in respect of (A) capital leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets permitted hereunder, or (B) a property-specific financing involving only a Non-Guarantor Subsidiary as the borrower, in each case solely to the extent any such Negative Pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person other than any requirement for the grant of a Lien in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations.

7.10 **Use of Proceeds**. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 **Financial Covenants**.

(a) **Consolidated Leverage Ratio**. Permit the Consolidated Leverage Ratio to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of the Initial Compliance Date ~~and the last day of the first fiscal quarter ending after the Initial Compliance Date~~, exceed 8.50 to 1.00; (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed 8.00 to 1.00; (iii) as of the last day of the ~~fourth~~third fiscal quarter ending after the Initial Compliance Date, exceed 7.50 to 1.00; and (iv) as of the last day of any fiscal quarter thereafter, exceed 6.75 to 1.00; *provided that*, notwithstanding the foregoing, once during the term of this Agreement, the Borrower may deliver a written notice to the Administrative Agent in a Compliance Certificate timely delivered pursuant to ***Section 6.02(a)*** that the Consolidated Leverage Ratio as of the last day of the fiscal quarter (the "***Surge Date***") for which such Compliance Certificate was delivered and the next three (3) consecutive fiscal quarters (such period, the "***Surge Period***") may exceed 6.75 to 1.00 but not exceed 7.00 to 1.00 so long as (A) no Default has occurred and is continuing, (B) the Applicable Margin shall be increased as set forth in ***clause (c)*** of the definition thereof and (C) the Borrower has not delivered a written notice to the Administrative Agent terminating the Surge Period.

(b) **Consolidated Recourse Secured Indebtedness Limitation**. Permit Consolidated Recourse Secured Indebtedness to, at any time on or after the Initial Compliance Date, exceed an amount equal to five percent (5%) of Consolidated Total Asset Value; *provided*

that, notwithstanding the foregoing, once during the term of this Agreement, so long as no Default has occurred and is continuing, for up to four (4) consecutive quarters, Consolidated Recourse Secured Indebtedness may exceed five percent (5%) but not exceed ten percent (10%) of Consolidated Total Asset Value.

(c) **Consolidated Secured Debt Limitation**. Permit Consolidated Secured Debt to, at any time on or after the Initial Compliance Date, exceed an amount equal to forty-five percent (45%) of Consolidated Total Asset Value.

(d) **Consolidated Fixed Charge Coverage Ratio**. Permit the Consolidated Fixed Charge Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date, 1.05 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.25 to 1.00, and (iii) as of the last day of any fiscal quarter thereafter, 1.50 to 1.00.

(e) **Consolidated Unsecured Interest Coverage Ratio**. Permit the Consolidated Unsecured Interest Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date ~~and~~, 1.25 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.50 to 1.00, (iii) as of the last day of the second fiscal quarter ending after the Initial Compliance Date, 1.75 to 1.00, and (~~ii~~iv) as of the last day of any fiscal quarter thereafter, 2.00 to 1.00.

(f) **Consolidated Tangible Net Worth**. Permit Consolidated Tangible Net Worth, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than the sum of (i) $1,400,772,000 (which amount is seventy-five percent (75%) of Consolidated Tangible Net Worth as of June 30, 2017) *plus* (ii) seventy-five percent (75%) of the Net Proceeds of all Equity Issuances by the Consolidated Parties after June 30, 2017.

(g) **Unsecured Leverage Ratio**. Permit the Unsecured Indebtedness (less Adjusted Unrestricted Cash as of such date) to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of the Initial Compliance Date ~~and the last day of the first fiscal quarter ending after the Initial Compliance Date~~, exceed sixty-seven and one-half of one percent (67.5%); (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed sixty five percent (65%); and (iii) as of the last day of any fiscal quarter thereafter, exceed sixty percent (60%) of Unencumbered Asset Value; *provided that*, notwithstanding the foregoing, so long as no Default has occurred and is continuing, as of the last day of the fiscal quarter in which any Material Acquisition occurs and the last day of the two (2) consecutive quarters thereafter, such ratio may exceed sixty percent (60%) but not exceed sixty five percent (65%) (such period being an "***Unsecured Leverage Increase Period***"); *provided further that* (A) the Borrower may not elect more than three (3) Unsecured Leverage Increase Periods during the term of this Agreement and (B) any such Unsecured Leverage Increase Periods shall be non-consecutive.

(h) **Restricted Payments**. Permit, for any fiscal year of the Consolidated Parties, the amount of Restricted Payments (excluding Restricted Payments payable solely in the common stock or other common Equity Interests of the Parent REIT or the Borrower) made by the Consolidated Parties to the holders of their Equity Interests (excluding any such holders of Equity Interests which are Loan Parties) during such period to exceed the FFO Distribution Allowance for such period; *provided that*, to the extent no Event of Default then exists or will result from

such Restricted Payments (or if an Event of Default then exists or will result from such Restricted Payments, then so long as no Acceleration shall have occurred), each Loan Party and each other Subsidiary (including Pebblebrook Hotel Lessee) shall be permitted to make Restricted Payments to the Borrower and the Borrower shall be permitted to make Restricted Payments to Parent REIT, in each case to permit the Parent REIT to make Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain Parent REIT's status as a REIT and as necessary to pay any special or extraordinary tax liabilities then due (after taking into account any losses, offsets and credits, as applicable) on capital gains attributable to Parent REIT. In addition, so long as no Acceleration shall have occurred, each TRS may make Restricted Payments to its parent entity to the extent necessary to pay any Tax then due in respect of the income of such TRS. Notwithstanding the foregoing, during the Waiver Period and at any time thereafter until the Consolidated Leverage Ratio is less than 6.75 to 1.00 as of the last day of any fiscal quarter, as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***, the Parent REIT shall not purchase, redeem, retire, or defease any of its Equity Interests except as expressly permitted in ***Section 7.19(e)***.

(i) **Minimum Liquidity**. At any time during the Waiver Period, permit Liquidity to be less than ~~$150,000,000~~200,000,000.

(j) **Waiver Period Financial Covenants; Adjustments**.

(i) During the ~~Waiver Period~~period of time commencing on the First Amendment Effective Date up to, but excluding, the Initial Compliance Date, the Parent REIT and the Borrower shall continue to deliver to the Administrative Agent duly completed Compliance Certificates, for informational purposes only, as and when required under ***Section 6.02(a)*** certifying as to the Borrower's calculations of the financial tests set forth in this ***Section 7.11***.

(ii) Immediately following the expiration of the Waiver Period, the financial covenants set forth in this ***Section 7.11*** (including the related defined terms) (other than the covenants set forth in ***clauses (d), (e), (f)*** and ***(i)*** thereof) shall be modified, solely for purposes of calculation of the financial covenants set forth in this ***Section 7.11*** and not for purposes of determining the Applicable Margin, as follows:

(A) in the event the Borrower elects to terminate the Waiver Period on the date occurring under ***clause (b)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the fiscal quarter ending June 30, ~~2021~~2022, the trailing quarter, annualized; (x) for

the fiscal quarter ending September 30, ~~2021~~2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending December 31, ~~2021~~2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

(iii) From and after the Initial Compliance Date, the financial covenants set forth in ***Sections 7.11(d)*** and ***7.11(e)*** shall be modified as follows:

(A) in the event the Borrower elects to terminate the Waiver Period on the date occurring under ***clause (b)*** of the definition of "Waiver Period", the testing period for the covenants set forth in ***Sections 7.11(d)*** and ***7.11(e)*** shall be measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the fiscal quarter ending March 31, 2022, the trailing quarter, annualized; (x) for the fiscal quarter ending June 30, 2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending September 30, 2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

The financial covenants in this ***Section 7.11*** shall be tested (on a Pro Forma Basis) and certified to by the Borrower in connection with each Borrowing.

7.12 **Capital Expenditures**. Make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than normal replacements and maintenance which are properly charged to current operations and other reasonable and customary capital expenditures made in the ordinary course of the business of the Parent REIT and its Subsidiaries.

7.13 **Accounting Changes**. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year, except with the written consent of the Administrative Agent.

7.14 **Ownership of Subsidiaries; Certain Real Property Assets**. Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than the Parent REIT, the Borrower, any other Loan Party or a private REIT) to own any Equity Interests of any Unencumbered Borrowing Base Entity, except to qualify directors where required by Applicable Laws, (b) permit any Loan Party that owns an Unencumbered Borrowing Base Property to issue or have outstanding any shares of preferred Equity Interests, (c) permit, create, incur, assume or suffer to exist any Lien on any Equity Interests owned by the Borrower or any Loan Party of (i) any Loan Party or (ii) any TRS that leases an Unencumbered Borrowing Base Property or is the direct or indirect parent of any such TRS, (d) permit any Intermediate REIT to directly own or acquire any Real Property assets; *provided that* this ***clause (d)*** of ***Section 7.14*** shall not prohibit any Intermediate REIT from owning or acquiring any Equity Interests in any Subsidiary that owns any Real Property assets, (e) permit the Borrower to own less than ninety-nine

percent (99%) of the outstanding common Equity Interests in Pebblebrook Hotel Lessee, or (f) permit the Parent REIT to own Equity Interests in any Person other than the Borrower.

7.15 **Leases**. Permit any Loan Party to enter into, terminate, cancel, amend, restate, supplement or otherwise modify any Material Lease relating to any Unencumbered Borrowing Base Property; *provided that* (i) such Unencumbered Borrowing Base Property may be subject to an Eligible Ground Lease entered into in accordance with and subject to the requirements of this Agreement, (ii) the applicable Unencumbered Borrowing Base Entity may lease such Unencumbered Borrowing Base Property owned (or ground leased) by it to a TRS pursuant to a form of Lease acceptable to the Administrative Agent, in its reasonable discretion, and (iii) the applicable Unencumbered Borrowing Base Entity or the applicable TRS (if any) may enter into, terminate, cancel, amend, restate, supplement or otherwise modify any Material Lease relating to such Unencumbered Borrowing Base Property (including any Lease between such Unencumbered Borrowing Base Entity and such TRS respecting any Unencumbered Borrowing Base Property) to the extent that the entry into, termination, cancellation, amendment, restatement, supplement or modification is not reasonably likely to, in the aggregate with any other then-existing conditions or circumstances, have a Material Adverse Effect.

7.16 **Sale Leasebacks**. Permit any Loan Party to enter into any Sale and Leaseback Transaction with respect to any Unencumbered Borrowing Base Property.

7.17 **Sanctions**. The Borrower will not request any Loan, and the Borrower shall not use, and the Borrower shall not make available to its Subsidiaries and its or their respective directors, officers, employees and agents, the proceeds of any Loan (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (b) in any manner that would result in the violation of any applicable Sanctions.

7.18 **ERISA**. Be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to *Section 4975* of the Code, (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (d) a "governmental plan" within the meaning of ERISA.

7.19 **Enhanced Negative Covenants**. Notwithstanding anything to the contrary contained in this Agreement, during the Waiver Period the Loan Parties shall not, nor shall they permit any other Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable), directly or indirectly, to:

(a) make any Investments other than (i) Investments in one or more new Unencumbered Borrowing Base Properties (or in Equity Interests in Subsidiaries that own or will own new Unencumbered Borrowing Base Properties) solely with the proceeds of Excluded Net Proceeds or (ii) any other Investments otherwise permitted pursuant to ***Section 7.02*** not to exceed $100,000,000 in the aggregate;

(b) make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than (i) in connection with emergency repairs, life safety repairs or ordinary course maintenance repairs (ii) capital expenditures to complete ongoing renovations in an amount not to exceed $~~90,000,000~~155,000,000 in the aggregate during the period commencing with the Third Amendment Effective Date through the remainder of the Waiver Period;

(c) create, incur, assume or suffer to exist any Indebtedness not existing and permitted as of the First Amendment Effective Date other than (i) to the extent the proceeds of such Indebtedness are used to fully or partially refinance or replace Indebtedness existing and permitted as of the First Amendment Effective Date ~~and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.03(b)***~~; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(i)*** be earlier than the existing maturity date of the Indebtedness being refinanced or replaced; *provided* further, that any amounts in excess of the amounts used to fully or partially refinance or replace Indebtedness are otherwise permitted to be incurred pursuant to this ***Section 7.19(c)***, (ii) Secured Non-Recourse Debt not to exceed $250,000,000 in the aggregate and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.03(b)***; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(ii)*** be earlier than one (1) year after the Maturity Date, or (iii) Indebtedness that is recourse to ~~a~~one or more Consolidated ~~Party not to exceed $250,000,000 in the aggregate~~Parties and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.03(b)***; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(iii)*** (other than (A) increases of any Specified Debt pursuant to the terms thereof and (B) Indebtedness under a 364-day facility not to exceed $100,000,000) be earlier than one (1) year after the Maturity Date;

(d) make any Disposition other than Dispositions (i) permitted by ***Section 7.05(b)(i)***, ***(ii)***, ***(iii)*** and ***(iv)***, or (ii) to a Person that is not a Consolidated Party or a Related Party of any Consolidated Party, (A) for fair market value in an arms' length transaction, (B) in which the price for such asset shall be paid to a Consolidated Party solely in cash, and (C) pursuant to which the Borrower has made the mandatory prepayment, if any, required pursuant to ***Section 2.03(b)***;

(e) declare or make any Restricted Payments other than (i) Restricted Payments to the holders of the common Equity Interests in the Parent REIT of not more than $0.01 per share, (ii) Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain the Parent REIT's status as a REIT, (iii) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Restricted Payments with respect to any preferred Equity Interests, (iv) Restricted Payments by Subsidiaries of the Borrower to Borrower and by Borrower to the Parent REIT the proceeds of which are used by the Parent REIT to make Restricted Payments permitted by ***clauses (i)*** through ***(iii)*** preceding and (v) the purchase or redemption by the Parent REIT of its preferred Equity Interests solely with Net Cash Proceeds from Permitted Preferred Issuances;

(f) voluntarily prepay the principal amount of (i) any Permitted Convertible Notes other than pursuant to a conversion thereof into Equity Interests of the Parent REIT or (ii) any Indebtedness incurred after the Third Amendment Effective Date; or

(g) ~~(f)~~ create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, not existing and permitted as of the First Amendment Effective Date other than (i) Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement, (ii) Liens permitted by ***Sections 7.01(d)***, ***(e)***, ***(f)***, ***(g)***, ***(h)***, ***(i)***, ***(j)*** and ***(n)***, (iii) Liens securing Indebtedness permitted under ***Section 7.19(c)(i)***; *provided that* (A) the amount secured or benefited thereby is not increased except as contemplated by ***Section 7.03(b)***, (B) the direct or any contingent obligor with respect thereto is not changed, (C) any renewal or extension of the obligations secured or

benefited thereby is permitted by ***Section 7.03(b)***, and (D) to the extent such existing Indebtedness being refinanced or replaced is Secured Debt, incurred to refinance or replace Secured Debt secured by the same property or assets, and (iv) Liens securing Indebtedness permitted under ***Section 7.19(c)(ii)***.

8. 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 three (3) days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants**. The Borrower fails to perform or observe any term, covenant or agreement contained in any of ***Section 6.03***, ***6.05(a)***, ***6.10***, ***6.11***, ***6.12***, ***6.15*** or ***Section 7*****,** or any Guarantor fails to perform or observe any term, covenant or agreement contained in ***Section 11*** hereof; or

(c) **Other Defaults**. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in ***subsection (a)*** or ***(b)*** above) contained in any Loan Document on its part to be performed or observed and such failure continues for (i) with respect to any failure to perform or observe ***Section 6.01*** or ***6.02***, five (5) days after such failure occurred; *provided that* if the auditor's opinion accompanying the audited financial statements for the fiscal year ended December 31, 2021 is subject to any "going concern" or like qualification or exception, then the Parent REIT shall have a period of forty-five (45) days from the delivery date of such statements for the auditor to reissue its opinion without any "going concern" or like qualification or exception and (ii) with respect to any failure to perform or observe any other covenant or agreement, thirty (30) days after the earlier of (A) Borrower's actual knowledge of such failure or (B) Borrower's receipt of notice as to such failure from the Administrative Agent or any Lender; or

(d) **Representations and Warranties**. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) **Cross-Default**. (i) Any Loan Party or any of its Subsidiaries (A) fails to make any payment when due after giving effect to any applicable grace period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf

of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any of its Subsidiaries 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 of its Subsidiaries 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; or

(f) **Insolvency Proceedings, Etc.** Any Loan Party or any of its 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 or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment**. (i) Any Loan Party or any of its 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 Subsidiaries (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA**. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under *Section 4201* of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) **Invalidity of Loan Documents**. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted

hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind in writing any provision of any Loan Document; or

(k) **Change of Control**. There occurs any Change of Control; or

(l) **REIT or QRS Status**. The Parent REIT shall, for any reason, lose or fail to maintain its status as a REIT or the Borrower shall, for any reason, lose or fail to maintain its status as any of the following: a REIT**,** a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS; or

(m) **Management and Franchise Agreements**. There occurs a monetary or material default under a management or franchise agreement with respect to an Unencumbered Borrowing Base Property (which material default shall include any default which would permit the manager or franchisor under any such management or franchise agreement to terminate such management or franchise agreement or would otherwise result in a material increase of the obligations of the Borrower or such Subsidiary of the Borrower that is a party to such management or franchise agreement) and such default is not remedied prior to the date which is the later of (i) the earlier of (A) if no other Default exists, sixty (60) days from the occurrence of the event or condition which caused, led to, or resulted in such default, or (B) the date that a Default (other than the subject Default relative to such management or franchise agreement) occurs and (ii) the last day of the cure period provided in such management or franchise agreement (as applicable); or

(n) **Collateral Documents**. Any Collateral Document shall for any reason fail to create a valid and perfected security interest in any portion of the Collateral purported to be covered thereby, with the priority required by the applicable Collateral Document, except as (i) permitted by the terms of any Loan Document or (ii) as a result of the release of such security interest in accordance with the terms of any Loan Document, it being understood and agreed that the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it or file any UCC (or equivalent) continuation statement shall not result in an Event of Default under this ***clause (n)***.

8.02 **Remedies Upon Event of Default**. If any Event of Default exists, 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 (any such action, an "***Acceleration***"):

(a) declare the commitment 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; and

(c) 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 actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate and 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 2.12***, 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 ***Section 3***) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender) and amounts payable under ***Section 3***), ratably among them in proportion to the respective amounts described in this ***clause Second*** payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, ratably among the 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 and Indebtedness of any Loan Party under Swap Contracts that are entered into by any Loan Party with any Lender or its Affiliate as a counterparty with respect to the Loans, ratably among the 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 Applicable Laws.

Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to the Obligations otherwise set forth in this ***Section 8.03***.

9. ADMINISTRATIVE AGENT

9.01 **Appointment and Authority**. Each of the Lenders hereby irrevocably appoints Capital One to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this ***Section 9*** are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market

custom, and is intended to create or reflect only an administrative relationship between contracting parties.

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, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower 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, and its duties hereunder shall be administrative in nature. 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 then exists;

(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, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief 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 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 by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing 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 ***Section 4*** 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), 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 ***Section 9*** 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. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents 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 in the selection of such sub-agents.

9.06 **Resignation or Removal of Administrative Agent**.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the approval of the Borrower (such approval not to be unreasonably withheld; *provided* that if a Default shall exist at the time, no approval of the Borrower shall be required), 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. 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 (or such earlier day as shall be agreed by the Required Lenders) (the "***Resignation Effective Date***"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to ***clause (d)*** of the definition thereof or in the case of fraud, misappropriation of funds or the commission of illegal acts by the Administrative Agent or where the Administrative Agent has been grossly negligent in performing (or failing to perform) its obligations hereunder or under any other Loan Document in any material respect, the Required Lenders (excluding the vote of the Administrative Agent, in its capacity as a Lender, as more particularly set forth in the proviso to the this sentence) may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, with the approval of the Borrower (such approval not to be unreasonably withheld; *provided* that if a Default shall exist at the time, no approval of the Borrower shall be required), appoint a successor; *provided, however*, that to the extent the Administrative Agent being replaced pursuant to this ***Section 9.06*** is also a Lender, such Person shall not be permitted to vote in connection with the removal of the Administrative Agent and appointment of a successor Administrative Agent pursuant to this paragraph of ***Section 9.06***. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "***Removal Effective Date***"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date. Notwithstanding the terms of the Fee Letters, if the Administrative Agent resigns or is removed pursuant to this ***Section 9.06***, then such Person shall not be entitled to receive an administrative agency fee that would otherwise become due and payable subsequent to such resignation or removal.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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 removed) Administrative Agent (other than as provided in ***Section 3.01(g)*** and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed 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***). The fees payable by the Borrower to a successor Administrative Agent shall be agreed upon between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and ***Section 10.04*** shall continue in effect for the benefit of such retiring or removed 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 (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

9.07 **Non-Reliance on Administrative Agent and Other Lenders**. Each Lender 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 or other 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 proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan 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 2.06*** 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 2.06*** 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 to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 **Collateral and Guaranty Matters**. Each of the Lenders (including each Lender in its capacity as a potential Hedge Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion, to do or cause the following:

(a) to execute the Intercreditor Agreement on behalf of the Lenders;

(b) to release any Liens granted to the Administrative Agent by any Loan Party on any Collateral (i) upon the payment and satisfaction in full of all Obligations, (ii) upon any Disposition of such Collateral permitted hereunder, (iii) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to ***Section 8.02***, or (iv) upon the occurrence of a Collateral Release Date in accordance with the terms and conditions of ***Section 6.17***; and

(c) to release any Guarantor from its obligations under ***Section 11*** hereof if such Person ceases to be required to be a Guarantor pursuant to the terms hereof.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Collateral or to release any Guarantor from its obligations under ***Section 11*** hereof pursuant to this ***Section 9.10***. In each case as specified in this ***Section 9.10***, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as Borrower may reasonably request to evidence the release of such Collateral or such Guarantor from its obligations hereunder, in each case in accordance with the terms of the Loan Documents and this ***Section 9.10***.

10. MISCELLANEOUS

10.01 **Amendments, Etc**. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders 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) waive any condition set forth in ***Sections 4.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)*** or ***(f)*** without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to ***Section 8.02***) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or (subject to ***clause (ii)*** of the second proviso to this ***Section 10.01***) any fees or other amounts payable hereunder or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Margin that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each Lender directly affected thereby; *provided,*

however, that only the consent of the Required Lenders shall be necessary to amend the definition of "*Default Rate*" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(e) change ***Section 8.03*** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) change (i) any provision of this ***Section 10.01*** or the definition of "*Required 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 (other than definitions specified in ***clause (ii)*** of this ***Section 10.01(f)***), without the written consent of each Lender; or (ii) the definition of "*Required Lenders*" without the written consent of each Lender;

(g) release, without the written consent of each Lender, all or substantially all of the value of the guaranty under ***Section 11*** hereof, except to the extent the release of any Guarantor is permitted pursuant to ***Section 9.10*** (in which case such release may be made by the Administrative Agent acting alone); or

(h) impose any greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder without the written consent of the Required Lenders;

and, *provided further*, that (i) 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 (ii) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent and the Borrower (i) to add one or more additional term loan facilities to this Agreement subject to the limitations in ***Section 2.11*** 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, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

If any Lender is a Non-Consenting Lender, then the Borrower may replace such Non-Consenting Lender in accordance with ***Section 10.13***.

10.02 **Notices; Effectiveness; Electronic Communication.**

(a) **Notices Generally**. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in ***subsection (b)*** below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail; *provided however*, that any notice sent by electronic mail must also be sent by one (1) of the other methods set forth in this ***subsection (a)*** (other than 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 any 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(es), facsimile number(s), electronic mail address(es) or telephone number(s) 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).

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 ***subsection (b)*** below, shall be effective as provided in such ***subsection (b)***.

(b) **Electronic Communications**. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided that* the foregoing shall not apply to notices to any Lender pursuant to ***Section 2*** if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Section 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; *provided further* that Committed Loan Notices may be sent via e-mail.

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, email or other communication is not sent during the normal business hours of the recipient, such notice, email

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 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 or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender 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 the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number 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 Laws, 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 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 or electronic 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. 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; Enforcement**. 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 or under any other Loan Document 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, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Applicable Laws.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with ***Section 8.02*** for the benefit of the Credit Parties; *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) any Lender from exercising setoff rights in accordance with ***Section 10.08*** (subject to the terms of ***Section 2.10***), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided*, *further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to ***Section 8.02*** and (ii) in addition to the matters set forth in ***clauses (b)*** and ***(c)*** of the preceding proviso and subject to ***Section 2.10***, 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 shall pay, on the Closing Date and thereafter within five (5) Business Days after written demand, (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent or any Lender, 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***, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans. For

the avoidance of doubt, this ***Section*** shall not provide any right to payment with respect to increases in taxes or costs and expenses related solely to such increases in taxes.

(b) **Indemnification by the Borrower**. The Borrower shall indemnify the the Administrative Agent (and any sub-agent thereof) and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "***Indemnitee***") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in ***Section 3.01***), (ii) any Loan or 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 or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower 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 or any other Loan Party, and regardless of whether any Indemnitee is a party thereto**, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; *provided that* such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of ***Section 3.01(c)***, this ***Section*** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by Lenders**. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under ***subsection (a)*** or ***(b)*** of this ***Section*** to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, 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 share of the Total Credit Exposure of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), *provided, further* 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 ***subsection (c)*** are subject to the provisions of ***Section 2.09(d)***.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Laws, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, 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 referred to in ***subsection (b)*** above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments**. All amounts due under this ***Section*** shall be payable not later than ten (10) Business Days after demand therefor.

(f) **Survival**. The agreements in this ***Section*** and the indemnity provisions of ***Section 10.02(e)*** 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 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 Federal Funds 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 of a security interest subject to the restrictions of ***subsection (e)*** 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 assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); *provided that* any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts**.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in ***subsection (b)(i)(B)*** of this ***Section*** in the aggregate 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 Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Commitments is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, unless each of the Administrative Agent and, so long as no Event of Default then exists, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(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 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) shall be required unless (1) an Event of Default exists at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of

a Lender or an Approved Fund; *provided that* the 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 for assignments in respect of (1) any Commitment if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) **Assignment and Assumption**. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons**. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this ***clause (B)***, or (C) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) **Certain Additional Payments**. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the 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 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 Laws without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to ***subsection (c)*** of this ***Section***, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a

Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of ***Sections 3.01***, ***3.04***, ***3.05***, and ***10.04*** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided*, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this ***subsection*** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with ***subsection (d)*** of this ***Section***.

(c) **Register**. The Administrative Agent, acting solely for this purpose as an 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 (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "***Register***"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower 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 the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its 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. For the avoidance of doubt, each Lender shall be responsible for the indemnity under ***Section 10.04(c)*** without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided that* such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to ***Section 10.01*** that affects such Participant. 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 ***clause (b)*** of this ***Section***; *provided* that such Participant (A) agrees to be subject to the provisions of ***Sections 3.06*** and ***10.13*** as if it were an assignee under ***paragraph (b)*** of this ***Section*** and (B) shall not be entitled to receive any greater payment under ***Section 3.01*** or ***3.04***, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of ***Section 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* that such Participant agrees to be subject to ***Section 2.10*** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "***Participant Register***"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under *Section 5f.103-1(c)* of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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

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) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this ***Section***, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to ***Section 2.11(c)*** or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a

confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this ***Section*** or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, from and after the Closing Date, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors for league table credit or other similar use, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this ***Section***, "***Information***" means all information received from the 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 written 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*** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower 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 Laws, including United States Federal and state securities laws.

10.08 **Right of Setoff**. If an Event of Default exists, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after written notice to the Administrative Agent, to the fullest extent permitted by Applicable Laws, 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 or any other Loan Party against any and all of the obligations of the Borrower or 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 or 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 2.12*** 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) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this ***Section*** are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective 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 Laws (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 Laws, (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 telecopy or other electronic imaging means 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 Borrowing, 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 the Borrower is entitled to replace a Lender pursuant to the provisions of ***Section 3.06***, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the

restrictions contained in, and consents required by, ***Section 10.06***), all of its interests, rights (other than its existing rights to payments pursuant to ***Section 3.01*** and ***3.04***) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in ***Section 10.06(b)***;

(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;

(d) such assignment does not conflict with Applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

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 (INCLUDING *SECTION 5-1401* AND *SECTION 5-1402* OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

(b) **SUBMISSION TO JURISDICTION**. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE CITY OF NEW YORK 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 COURTS. 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 APPLICABLE LAWS. 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**. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN ***PARAGRAPH (b)*** OF THIS ***SECTION***. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, 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 LAWS.

10.15 **Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ***SECTION***.

10.16 **No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders, are arm's-length commercial transactions between the Borrower , each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii)(A) the Administrative Agent, the Arrangers and each Lender 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, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, the Arrangers nor any Lender has any

obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by Applicable Laws, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 **Electronic Execution of Assignments and Certain Other Documents**. The words "execution," "signed," "signature" and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures 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, and the Administrative Agent or any Lender may store the electronic image of this Agreement and the Loan Documents in its electronic form and then destroy the paper original as part of such Person's normal business practices, with the electronic image deemed to be an original to the extent and as provided for in any Applicable Laws, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided that* notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

10.18 **USA PATRIOT Act**. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation.

10.19 **Entire Agreement**. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

10.20 **ERISA**. Each Lender as of the Closing Date represents and warrants as of the Closing Date to the Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, for the benefit of the Borrower or any other Loan Party, that such Lender is not and will not be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to

Section 4975 of the Code, (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (d) a "governmental plan" within the meaning of ERISA.

10.21 **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.

10.22 **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 10.22***, 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).

11. GUARANTY

11.01 The Guaranty.

(a) Each of the Guarantors hereby jointly and severally guarantees to the Administrative Agent and each of the holders of the Obligations, as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations (the "***Guaranteed Obligations***") in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Guaranteed Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

(b) Notwithstanding any provision to the contrary contained herein, in any other of the Loan Documents or other documents relating to the Obligations, the obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

11.02 **Obligations Unconditional**. The obligations of the Guarantors under ***Section 11.01*** are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any

substitution, compromise, release, impairment or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by Applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this ***Section 11.02*** that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this ***Section 11*** until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Applicable Laws, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents, or other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or other documents relating to the Guaranteed Obligations, or any other agreement or instrument referred to therein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Administrative Agent or any of the holders of the Guaranteed Obligations as security for any of the Guaranteed Obligations shall fail to attach or be perfected; or

(e) any of the Guaranteed Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest notice of acceptance of the guaranty given hereby and of Borrowings that may constitute obligations guaranteed hereby, notices of amendments, waivers and supplements to the Loan Documents and other documents relating to the Guaranteed Obligations, or the compromise, release or exchange of collateral or security, and all notices whatsoever, and any requirement that the Administrative Agent or any holder of the Guaranteed Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein, or against any other Person under any other guarantee of, or security for, any of the Obligations.

11.03 **Reinstatement**. Neither the Guarantors' obligations hereunder nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an

impairment, modification, change, release or limitation of the liability of the Borrower, by reason of the Borrower's bankruptcy or insolvency or by reason of the invalidity or unenforceability of all or any portion of the Guaranteed Obligations. The obligations of the Guarantors under this ***Section 11*** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings pursuant to any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each holder of Guaranteed Obligations on demand for all reasonable out-of-pocket costs and expenses (including all reasonable fees, expenses and disbursements of any law firm or other outside counsel incurred by the Administrative Agent) incurred by the Administrative Agent or such holder of Guaranteed Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

11.04 **Certain Waivers**. Each Guarantor acknowledges and agrees that (a) the guaranty given hereby may be enforced without the necessity of resorting to or otherwise exhausting remedies in respect of any other security or collateral interests, and without the necessity at any time of having to take recourse against the Borrower hereunder or against any collateral securing the Guaranteed Obligations or otherwise, (b) it will not assert any right to require the action first be taken against the Borrower or any other Person (including any co-guarantor) or pursuit of any other remedy or enforcement any other right and (c) nothing contained herein shall prevent or limit action being taken against the Borrower hereunder, under the other Loan Documents or the other documents and agreements relating to the Guaranteed Obligations or from foreclosing on any security or collateral interests relating hereto or thereto, or from exercising any other rights or remedies available in respect thereof, if neither the Borrower nor the Guarantors shall timely perform their obligations, and the exercise of any such rights and completion of any such foreclosure proceedings shall not constitute a discharge of the Guarantors' obligations hereunder unless as a result thereof, the Guaranteed Obligations shall have been paid in full and the commitments relating thereto shall have expired or been terminated, it being the purpose and intent that the Guarantors' obligations hereunder be absolute, irrevocable, independent and unconditional under all circumstances.

11.05 **Remedies**. The Guarantors agree that, to the fullest extent permitted by Applicable Laws, as between the Guarantors, on the one hand, and the Administrative Agent and the holders of the Guaranteed Obligations, on the other hand, the Guaranteed Obligations may be declared to be forthwith due and payable as provided in ***Section 8.02*** (and shall be deemed to have become automatically due and payable in the circumstances provided in ***Section 8.02***) for purposes of ***Section 11.01***, notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Guaranteed Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Guaranteed Obligations being deemed to have become automatically due and payable), the Guaranteed Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of ***Section 11.01***.

11.06 **Rights of Contribution**. The Guarantors hereby agree as among themselves that, in connection with payments made hereunder, each Guarantor shall have a right of contribution from each other Guarantor in accordance with Applicable Laws. Such contribution rights shall be subordinate and subject in right of payment to the Guaranteed Obligations until such time as the Guaranteed Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated, and none of the Guarantors shall exercise any such contribution rights until the Guaranteed Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated.

11.07 **Guaranty of Payment; Continuing Guaranty**. The guarantee in this ***Section 11*** is a guaranty of payment and performance, and not merely of collection, and is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

11.08 **Keepwell**. At the time the Guaranteed Obligations of any Specified Loan Party become effective with respect to any Swap Obligation, each Loan Party that is a Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under this Agreement and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Section 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 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

11.09 **Subordination**. If the Borrower or any other Loan Party is now or hereafter becomes indebted to one or more Guarantors including with respect to any Permitted Intercompany Mortgage (such indebtedness and all interest thereon and other obligations with respect thereto being referred to as "***Affiliated Debt***"), then such Affiliated Debt shall be subordinate in all respects to the full payment and performance of the Obligations, and no Guarantor shall be entitled to enforce or receive payment with respect to any Affiliated Debt until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated; *provided* that, so long as no Event of Default has occurred and is continuing, a Guarantor may receive payments with respect to any Affiliated Debt including the payment in full of same. Each Guarantor agrees that any Liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon the Borrower's or any other Loan Party's assets securing the payment of the Affiliated Debt shall be and remain subordinate and inferior to any Liens, security interests, judgment liens, charges or other encumbrances upon the Borrower's or any other Loan Party's assets securing the payment and performance of the Obligations. If an Event of Default exists, then, without the prior written consent of the Administrative Agent, no Guarantor shall exercise or enforce any creditor's rights of any nature against the Borrower or any other Loan Party to collect the Affiliated Debt (other than demand payment therefor) or enforce any such Liens, security interests, judgment liens, charges or other encumbrances. In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving the Borrower or any applicable Loan Party as a debtor, the Administrative Agent has the right and authority, either in its own name or as attorney-in-fact for any applicable Guarantor, to file such proof of debt, claim, petition or other documents and to take such other steps as are necessary to prove its rights hereunder and receive directly from the receiver, trustee or other court custodian, payments, distributions or other dividends which would otherwise be payable upon the Affiliated Debt. Each Guarantor hereby assigns such payments, distributions and dividends to the Administrative Agent, and irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact (which appointment is coupled with an interest) with authority to make and file in the name of such Guarantor any proof of debt, amendment of proof of debt, claim, petition or other document in such proceedings and to receive payment of any sums becoming distributable on account of the Affiliated Debt, and to execute such other documents and to give acquittances therefor and to do and perform all such other acts and things for and on behalf of such Guarantor as may be reasonably necessary in the opinion of the Administrative Agent in order to have the

Affiliated Debt allowed in any such proceeding and to receive payments, distributions or dividends of or on account of the Affiliated Debt.

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Signature Pages Follow.

Exhibit 10.4

Execution Version

Fourth Amendment to Note Purchase Agreement

This Fourth Amendment dated as of February 18, 2021 (this *"Fourth Amendment"*) to the Note Purchase Agreement (as defined below) is among Pebblebrook Hotel, L.P., a Delaware limited partnership (the *"Company"*), Pebblebrook, Hotel Trust, a Maryland real estate investment trust (the "*Parent REIT*") and each of the institutions set forth on the signature pages to this Fourth Amendment (collectively, the *"Noteholders"*).

Recitals

A. The Company and each of the Noteholders have heretofore entered into the Note Purchase Agreement dated as of November 12, 2015, as amended by that certain First Amendment dated as of October 13, 2017, that certain Second Amendment dated as of June 29, 2020 and that certain Third Amendment dated as of December 10, 2020 (as amended, the *"Note Purchase Agreement"*). The Company has heretofore issued (i) $60,000,000 aggregate principal amount of its 4.70% Senior Notes, Series A, due December 1, 2023 (the *"Series A Notes"*) and (ii) $40,000,000 aggregate principal amount of its 4.93% Senior Notes, Series B, due December 1, 2025 (the *"Series B Notes"* and, together with the Series A Notes, the *"Notes"*) pursuant to the Note Purchase Agreement.

B. The Company, the Parent REIT and the Noteholders now desire to amend the Note Purchase Agreement in the respects, but only in the respects, hereinafter set forth.

C. Capitalized terms used herein shall have the respective meanings ascribed thereto in the Note Purchase Agreement, as amended by this Fourth Amendment, unless herein defined or the context shall otherwise require.

D. All requirements of law have been fully complied with and all other acts and things necessary to make this Fourth Amendment a valid, legal and binding instrument according to its terms for the purposes herein expressed have been done or performed.

Statement of Agreement

Now, Therefore, the Company, the Parent REIT and the Noteholders, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby agree as follows:

Article I

Amendments to Note Purchase Agreement

Effective upon the Fourth Amendment Effective Date (as hereinafter defined), the Note Purchase Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double−underlined text (indicated textually in the same manner as the following example: double−underlined text) as set

forth in the composite conformed copy of the Note Purchase Agreement attached hereto as **Exhibit A.**

Article II

Conditions to Effectiveness

Section 2.1. This Fourth Amendment shall not become effective until, and shall become effective (the *"Fourth Amendment Effective Date"*) when, each and every one of the following conditions shall have been satisfied:

(a) executed counterparts of this Fourth Amendment, duly executed by the Company, the Parent REIT and the Noteholders, shall have been delivered to the Noteholders;

(b) executed counterparts of the Amendment to the Intercreditor Agreement, duly executed by Truist Bank, as Senior Notes Collateral Agent (the *"Senior Notes Collateral Agent"*) and the other parties thereto, shall have been delivered to the Noteholders;

(c) the Noteholders shall have received a duly executed and delivered copy of the amendments to each Material Credit Facility dated as of the date hereof, in form and substance reasonably satisfactory to the Noteholders;

(d) the Noteholders shall have received evidence that a copy of this Amendment (including Exhibit A) has been provided to counsel for the Administrative Agents under each Material Credit Facility;

(e) the Noteholders shall have received a copy of the resolutions of the Board of Directors of the Company authorizing the execution, delivery and performance by the Company of this Fourth Amendment, certified by its Secretary or an Assistant Secretary;

(f) each Noteholder shall have received an amendment fee which shall be equal to 7.5 basis points (.075%) of the outstanding amount of Notes held by such Noteholder;

(g) the Noteholders shall have received the favorable opinion of counsel to the Company as to the matters set forth in **Sections 3.1(a), 3.1(b)** and **3.1(c)** hereof, which opinion shall be in form and substance satisfactory to the Noteholders; and

(h) the representations and warranties of the Company set forth in **Section 3.1** hereof are true and correct on and with respect to the date hereof; and

(i) the Company shall have paid the fees and expenses of Chapman and Cutler LLP, counsel to the Noteholders, in connection with the negotiation, preparation, approval, execution and delivery of this Fourth Amendment.

Article III

Representations and Warranties of the Company

Section 3.1. To induce the Noteholders to execute and deliver this Fourth Amendment, the Company and the Parent REIT represents and warrants (which representations and warranties shall survive the execution and delivery of this Fourth Amendment), to the Noteholders that:

(a) this Fourth Amendment has been duly authorized, executed and delivered by the Company and the Parent REIT and this Fourth Amendment constitutes the legal, valid and binding obligation, contract and agreement of the Company and the Parent REIT enforceable against each in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally;

(b) the Note Purchase Agreement and the Notes, as amended by this Fourth Amendment, constitute the legal, valid and binding obligations, contract and agreement of the Company and the Parent REIT enforceable against each in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or limiting creditors' rights generally;

(c) the execution, delivery and performance by the Company and the Parent REIT of this Fourth Amendment (i) has been duly authorized by all requisite corporate action and, if required, shareholder action, (ii) does not require the consent or approval of any governmental or regulatory body or agency, and (iii) will not (A) violate (1) any provision of law, statute, rule or regulation or its certificate of incorporation or bylaws, (2) any order of any court or any rule, regulation or order of any other agency or government binding upon it, or (3) any provision of any indenture, agreement or other instrument to which it is a party or by which its properties or assets are or may be bound, including, without limitation, any Material Credit Facility, or (B) result in a breach or constitute (alone or with due notice or lapse of time or both) a default under any indenture, agreement or other instrument referred to in clause (iii)(A)(3) of this **Section 3.1(c)**;

(d) as of the date hereof and after giving effect to this Fourth Amendment, no Default or Event of Default has occurred which is continuing; and

(e) neither the Parent REIT, the Company nor any of its Subsidiaries has paid or agreed to pay any fees or other consideration to the lenders under any Material Credit Facility or any agent acting on their behalf, except for customary and usual commitment and arrangement fees and agent fees paid in connection with entering into any Material Credit Facility, and reasonable out of pocket expenses, including attorneys' fees, incurred in connection therewith.

Article IV

Miscellaneous

Section 4.1. This Fourth Amendment shall be construed in connection with and as part of the Note Purchase Agreement, and except as modified and expressly amended by this Fourth Amendment, all terms, conditions and covenants contained in the Note Purchase Agreement and the Notes are hereby ratified and shall be and remain in full force and effect.

Section 4.2. The Parent REIT, on behalf of each Subsidiary Guarantor (a) acknowledges and consents to all of the terms and conditions of this Fourth Amendment, (b) affirms all of its obligations under the Subsidiary Guaranty, (c) agrees that this Fourth Amendment and all documents delivered in connection herewith do not operate to reduce or discharge its obligations under the Note Purchase Agreement or the Subsidiary Guaranty, and (d) agrees that this Fourth Amendment and all documents delivered in connection herewith do not operate as a waiver of any Default or Event of Default that may exist prior to the effectiveness of this Fourth Amendment.

Section 4.3. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Fourth Amendment may refer to the Note Purchase Agreement without making specific reference to this Fourth Amendment but nevertheless all such references shall include this Fourth Amendment unless the context otherwise requires.

Section 4.4. The descriptive headings of the various Sections or parts of this Fourth Amendment are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

Section 4.5. This Fourth Amendment shall be governed by and construed in accordance with New York law.

[*Remainder of page intentionally left blank*]

The execution hereof by you shall constitute a contract between us for the uses and purposes hereinabove set forth, and this Fourth Amendment may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one agreement.

Very truly yours,

Pebblebrook Hotel, L.P., a Delaware limited partnership

By: Pebblebrook Hotel Trust, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Executive Vice President and Chief Financial Officer

Pebblebrook Hotel Trust, a Maryland Real Estate Investment Trust

By /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Executive Vice President and Chief Financial Officer

As of the date first written above.

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY

By: Barings LLC, as Investment Advisor

By: /s/ James Moore
Name: James Moore
Title: Managing Director

YF LIFE INSURANCE INTERNATIONAL LIMITED

By: Barings LLC, as Investment Advisor

By: /s/ James Moore
Name: James Moore
Title: Managing Director

ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA

By: Allianz Global Investors U.S. LLC, as the authorized signatory and investment manager

By:/s/ Lawrence Halliday
Name: Lawrence Halliday
Title: Managing Director

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

By: /s/ Timothy Powell
Name: Timothy Powell
Title: Managing Director

Exhibit A

Composite Conformed Copy of Note Purchase Agreement

Reflecting Fourth Amendment to the Note Purchase Agreement

[see attached]

EXHIBIT A

Pebblebrook Hotel, L.P.

$60,000,000 4.70% Senior Notes, Series A, due December 1, 2023

$40,000,000 4.93% Senior Notes, Series B, due December 1, 2025

_____

Note Purchase and Guarantee Agreement

_____

Dated November 12, 2015

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Pebblebrook Hotel, L.P.
7315 Wisconsin Ave., 1110 W
Bethesda, MD 20814

$60,000,000 4.70% Senior Notes, Series A, due December 1, 2023
$40,000,000 4.93% Senior Notes, Series B, due December 1, 2025

November 12, 2015

To Each of the Purchasers Listed in
Schedule B Hereto:

Ladies and Gentlemen:

Pebblebrook Hotel, L.P., a Delaware limited partnership (together with any successor thereto that becomes a party hereto pursuant to **Section 10.2**, the **"Company"**) and Pebblebrook, Hotel Trust, a Maryland real estate investment trust (together with its successors and assigns, the **"Parent REIT"**), agree with each of the Purchasers as follows:

SECTION 1. AUTHORIZATION OF NOTES.

The Company will authorize the issue and sale of (i) $60,000,000 aggregate principal amount of its 4.70% Senior Notes, Series A, due December 1, 2023 (the **"Series A Notes"**) and (ii) $40,000,000 aggregate principal amount of its 4.93% Senior Notes, Series B, due December 1, 2025 (the **"Series B Notes"** and, together with the Series A Notes, as amended, restated or otherwise modified from time to time pursuant to **Section 17** and including any such notes issued in substitution therefor pursuant to **Section 13**, the **"Notes"**). The Series A Notes shall be substantially in the form set out in **Schedule 1(a)** and the Series B Notes shall be substantially in the form set out in **Schedule 1(b)**. Certain capitalized and other terms used in this Agreement are defined in **Schedule A**. References to a "Schedule" are references to a Schedule attached to this Agreement unless otherwise specified. References to a "Section" are references to a Section of this Agreement unless otherwise specified.

SECTION 2. SALE AND PURCHASE OF NOTES.

Section 2.1. Purchase and Sale of Notes. Subject to the terms and conditions of this Agreement, the Company will issue and sell to each Purchaser and each Purchaser will purchase from the Company, at the Closing provided for in **Section 3**, the relevant Notes in the respective principal amount(s) and in the Series specified opposite such Purchaser's name in **Schedule B** at the purchase price of 100% of the principal amount thereof. The Purchasers' obligations hereunder are several and not joint obligations and no Purchaser shall have any liability to any Person for the performance or non-performance of any obligation by any other Purchaser hereunder.

Section 2.2. Affiliate Guaranties. The payment by the Company of all amounts due with respect to the Notes and the performance by the Company of its obligations under this Agreement will be absolutely and unconditionally guaranteed by the Parent REIT pursuant to the Parent Guaranty as set forth in **Section 13** and by the Subsidiary Guarantors pursuant to the Subsidiary Guaranty substantially in the form of **Schedule 2.2** attached hereto and made a part hereof (the "**Subsidiary Guaranty**").

SECTION 3. CLOSING.

The execution of the Note Purchase Agreement shall occur at the office of Chapman and Cutler LLP, 111 West Monroe Street, Chicago, Illinois 60603 on November 12, 2015 (the **"Execution Date"**). The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of at the offices of Chapman and Cutler LLP, 111 West Monroe Street, Chicago, Illinois 60603 at 10:00 A.M. Chicago time, at a closing (the **"Closing"**) on December 1, 2015. At the Closing the Company will deliver to each Purchaser the Notes to be purchased by such Purchaser in the form of a single Note of each Series to be purchased by such Purchaser (or such greater number of Notes in denominations of at least $100,000 as such Purchaser may request) dated the date of the Closing and registered in such Purchaser's name (or in the name of its nominee), against delivery by such Purchaser to the Company or its order of immediately available funds in the amount of the purchase price therefor by wire transfer of immediately available funds for the account of the Company to account number Pebblebrook Hotel L.P. at U.S. Bank, N.A., Antioch, TN, ABA 064000059, Account #151203840377. If at the Closing the Company shall fail to tender such Notes to any Purchaser as provided above in this **Section 3**, or any of the conditions specified in **Section 4** shall not have been fulfilled to such Purchaser's satisfaction, such Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of any of the conditions specified in **Section 4** not having been fulfilled to such Purchaser's satisfaction or such failure by the Company to tender such Notes.

SECTION 4. CONDITIONS TO CLOSING.

Each Purchaser's obligation to purchase and pay for the Notes to be sold to such Purchaser at the Closing is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions:

Section 4.1. Representations and Warranties. (a) The representations and warranties of the Company in this Agreement shall be correct when made and at the time of such Closing.

(b) The representations and warranties of the Guarantors in this Agreement and the Affiliate Guaranties, as applicable, shall be correct when made and at the time of such Closing.

Section 4.2. Performance; No Default. (a) The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing and from the Execution Date to the Closing assuming that **Sections 9** and **10** of this Agreement are applicable. From the Execution

Date until the Closing, before and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by **Section 5.14**), no Default, Event of Default or Change in Control shall have occurred and be continuing. None of the Company Parties shall have entered into any transaction since the date of the Information Memorandum that would have been prohibited by **Section 10** had such Section applied since such date.

(b) Each Guarantor shall have performed and complied with all agreements and conditions contained in this Agreement and the applicable Affiliate Guaranty required to be performed and complied with by it prior to or at the Closing, and immediately after giving effect to the issue and sale of Notes at the Closing (and the application of the proceeds thereof as contemplated by **Section 5.14**), no Default or Event of Default shall have occurred and be continuing. None of the Company Parties shall have entered into any transaction since the date of the Memorandum that would have been prohibited by **Section 10** had such Section applied since such date.

Section 4.3. Compliance Certificates.

(a) Officer's Certificate. The Company shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying that the conditions specified in **Sections 4.1(a)**, **4.2(a)** and **4.9** have been fulfilled.

(b) Guarantor Officer's Certificate. Each Guarantor shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying that the conditions specified in **Section 4.1(b)**, **4.2(b)** and **4.9** have been fulfilled.

(c) Secretary's Certificate. The Company shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of the Closing, certifying as to (i) the resolutions attached thereto and other entity organizational proceedings relating to the authorization, execution and delivery of the Notes and this Agreement and (ii) the Company's Organization Documents as then in effect.

(d) Guarantor Secretary's Certificate. Each Guarantor shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of the Closing, certifying as to the resolutions attached thereto and other entity organizational proceedings relating to the authorization, execution and delivery of this Agreement (in the case of the Parent REIT) and the applicable Affiliate Guaranty.

(e) Certificates. The certificates provided under this **Section 4.3** may be combined and delivered as one or more certificates.

Section 4.4. Opinions of Counsel. Such Purchaser shall have received opinions in form and substance satisfactory to such Purchaser, dated the date of the Closing (a) from Honigman Miller Schwartz and Cohn LLP, counsel for the Company and the Guarantors, covering the matters set forth in **Schedule 4.4(a)** and covering such other matters incident to the transactions contemplated hereby as such Purchaser or its counsel may reasonably request (and the Company hereby instructs its counsel to deliver such opinion to the Purchasers) and (b) from

Chapman and Cutler LLP, the Purchasers' special counsel in connection with such transactions, substantially in the form set forth in **Schedule 4.4(b)** and covering such other matters incident to such transactions as such Purchaser may reasonably request.

Section 4.5. Purchase Permitted By Applicable Law, Etc. On the date of the Closing, such Purchaser's purchase of Notes shall (a) be permitted by the laws and regulations of each jurisdiction to which such Purchaser is subject, without recourse to provisions (such as section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment, (b) not violate any applicable law or regulation (including, without limitation, Regulation T, U or X of the Board of Governors of the Federal Reserve System) and (c) not subject such Purchaser to any tax, penalty or liability under or pursuant to any applicable law or regulation, which law or regulation was not in effect on the Execution Date. If requested by such Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such purchase is so permitted.

Section 4.6. Sale of Other Notes. Contemporaneously with the Closing, the Company shall sell to each other Purchaser and each other Purchaser shall purchase the Notes to be purchased by it at the Closing as specified in **Schedule B**.

Section 4.7. Payment of Special Counsel Fees. Without limiting **Section 15.1**, the Company shall have paid on or before the Execution Date and the Closing the fees, charges and disbursements of the Purchasers' special counsel referred to in **Section 4.4** to the extent reflected in a statement of such counsel rendered to the Company at least one Business Day prior to the Execution Date and the Closing.

Section 4.8. Private Placement Number. A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for the Notes of each Series.

Section 4.9. Changes in Corporate Structure. The Company Parties shall not have changed their respective jurisdiction of incorporation or organization, as applicable, or been a party to any merger or consolidation or succeeded to all or any substantial part of the liabilities of any other entity, at any time following the date of the most recent financial statements referred to in **Schedule 5.5**.

Section 4.10. Affiliate Guaranties. The Affiliate Guaranties shall have been executed and delivered by each Guarantor and shall be in full force and effect.

Section 4.11. Funding Instructions. At least three (3) Business Days prior to the date of the Closing, each Purchaser shall have received written instructions signed by a Responsible Officer on letterhead of the Company confirming the information specified in **Section 3** including (i) the name and address of the transferee bank, (ii) such transferee bank's ABA number and (iii) the account name and number into which the purchase price for the Notes is to be deposited.

Section 4.12. Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be satisfactory to such Purchaser and its special counsel, and such Purchaser and its special counsel shall have received all such counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE PARENT REIT.

The Company and the Parent REIT represent and warrant to each Purchaser as of the Execution Date and as of the Closing that:

Section 5.1. Organization; Power and Authority. The Company and the Parent REIT are each an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and duly qualified as a foreign entity and in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each of the Company and the Parent REIT has the entity organizational power and authority to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement, the Parent Guaranty and the Notes, as applicable and to perform the provisions hereof and thereof.

Section 5.2. Authorization, Etc. This Agreement, the Affiliate Guaranties and the Notes have been duly authorized by all necessary entity organizational action on the part of the Company Parties party thereto, and this Agreement and each Affiliate Guaranty constitutes, and upon execution and delivery thereof each Note will constitute, a legal, valid and binding obligation of each Company Party party thereto, enforceable against such Company Party party thereto in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 5.3. Disclosure. The Company, through its agent, U.S. Bancorp Investments, Inc. and Wells Fargo Securities LLC, has delivered to each Purchaser a copy of an Information Memorandum, dated August 2015 (the **"Information Memorandum"**), relating to the transactions contemplated hereby. The Information Memorandum fairly describes, in all material respects, the general nature of the business and principal properties of the Company and its Subsidiaries. This Agreement, the Information Memorandum, the financial statements listed in **Schedule 5.5** and the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company and the Parent REIT prior to September 9, 2015 in connection with the transactions contemplated hereby and identified in **Schedule 5.3** (this Agreement, the Memorandum and such documents, certificates or other writings and such financial statements delivered to each Purchaser being referred to, collectively, as the **"Disclosure Documents"**), taken as a whole, do not contain any untrue statement of a material fact or omit to state any

material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made. No representation is made as to any projections included in the Disclosure Documents other than that such projections are based on information that the Company and the Parent REIT believed to be accurate as of the date of preparation and were calculated in a manner the Company and the Parent REIT believe to be reasonable. Except as disclosed in the Disclosure Documents, since December 31, 2014, there has been no change in the financial condition, operations, business, properties or prospects of the Company Parties, taken as a whole, except changes that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no fact known to the Company or the Parent REIT that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the Disclosure Documents.

Section 5.4. Organization and Ownership of Shares of Subsidiaries; Affiliates. (a) **Schedule 5.4** contains (except as noted therein) complete and correct lists of (i) the Company Parties as of the date of the Closing showing, as to each Subsidiary, the name thereof, the jurisdiction of its organization, and the percentage of shares of each class of its capital stock or similar equity interests outstanding owned by each Company Party, (ii) the Parent REIT's and the Company's Affiliates, other than Subsidiaries, and (iii) the Parent REIT's and the Company's directors and senior officers.

(b) All of the outstanding shares of capital stock or similar equity interests of each Subsidiary shown in **Schedule 5.4** as being owned by the Company Parties have been validly issued, are fully paid and non-assessable and are owned by such Company Party or another Subsidiary free and clear of any Lien that is prohibited by this Agreement.

(c) Each Subsidiary is a corporation or other legal entity duly organized, validly existing and, where applicable, in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign corporation or other legal entity and, where applicable, is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each such Subsidiary has the corporate or other power and authority to own or hold under lease the properties it purports to own or hold under lease and to transact the business it transacts and proposes to transact.

(d) No Subsidiary is subject to any legal, regulatory, contractual or other restriction (other than the agreements listed on **Schedule 5.4** and customary limitations imposed by corporate law or similar statutes) restricting the ability of such Subsidiary to pay dividends out of profits or make any other similar distributions of profits to the Parent REIT or the Company or any of their respective Subsidiaries that owns outstanding shares of capital stock or similar equity interests of such Subsidiary.

Section 5.5. Financial Statements; Material Liabilities. The Parent REIT and the Company have delivered to each Purchaser copies of the financial statements of the Parent REIT and its Subsidiaries listed on **Schedule 5.5**. All of such financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated

financial position of the Company Parties as of the respective dates specified in such Schedule and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments). The Company Parties do not have any Material liabilities that are not disclosed in the Disclosure Documents.

Section 5.6. Compliance with Laws, Other Instruments, Etc. The execution, delivery and performance by the Company Parties of this Agreement, the Affiliate Guaranties and the Notes to which they are a party, will not (i) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien in respect of any property of any Company Party under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, shareholders agreement or any other agreement or instrument to which any Company Party is bound or by which any Company Party or any of their respective properties may be bound or affected, (ii) conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority applicable to any Company Party or any Subsidiary or (iii) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to any Company Party.

Section 5.7. Governmental Authorizations, Etc. No consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution, delivery or performance by the Company Parties of this Agreement, the Affiliate Guaranties or the Notes, as applicable.

Section 5.8. Litigation; Observance of Agreements, Statutes and Orders. (a) There are no actions, suits, investigations or proceedings pending or, to the best knowledge of the Parent REIT or the Company, threatened against or affecting any Company Party or any property of the Company Parties in any court or before any arbitrator of any kind or before or by any Governmental Authority that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) No Company Party is (i) in default under any agreement or instrument to which it is a party or by which it is bound, (ii) in violation of any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or (iii) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including, without limitation, Environmental Laws, the USA PATRIOT Act or any of the other laws and regulations that are referred to in **Section 5.16**), which default or violation could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.9. Taxes. Each Company Party has filed all tax returns that are required to have been filed in any jurisdiction, and have paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon them or their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (i) the amount of which, individually or in the aggregate, is not Material or (ii) the amount, applicability or validity of

which is currently being contested in good faith by appropriate proceedings and with respect to which a Company Party has established adequate reserves in accordance with GAAP. Neither the Parent REIT nor the Company knows of any basis for any other tax or assessment that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The charges, accruals and reserves on the books of the Company Parties in respect of U.S. federal, state or other taxes for all fiscal periods are adequate. The U.S. federal income tax liabilities of the Company Parties have been finally determined (whether by reason of completed audits or the statute of limitations having run) for all fiscal years up to and including the fiscal year ended 2011.

Section 5.10. Title to Property; Leases. The Company Parties have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheet referred to in **Section 5.5** or purported to have been acquired by the Company Parties after such date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases that individually or in the aggregate are Material are valid and subsisting and are in full force and effect except where the failure to be in full force and effect could not reasonably be expected to have a Material Adverse Effect.

Section 5.11. Licenses, Permits, Etc. (a) The Company Parties own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that individually or in the aggregate are Material, without known conflict with the rights of others.

(b) To the best knowledge of the Parent REIT and the Company, no product or service of any Company Party infringes in any material respect any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned by any other Person.

(c) To the best knowledge of the Parent REIT and the Company, there is no Material violation by any Person of any right of any Company Party with respect to any patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by any Company Party.

Section 5.12. Compliance with ERISA. (a) Each Company Party and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No Company Party nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in section 3 of ERISA), and no event, transaction or condition has occurred or exists that could, individually or in the aggregate, reasonably be expected to result in the incurrence of any such liability by any Company Party or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of any Company Party or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to section 430(k) of the Code or to any such penalty or excise tax provisions under the Code or federal law or section 4068 of ERISA or by the granting of a

security interest in connection with the amendment of a Plan, other than such liabilities or Liens as would not be individually or in the aggregate Material.

(b) Neither the Company, the Parent REIT nor their respective ERISA Affiliates maintain or contribute to any Plan that is subject to Title IV of ERISA.

(c) Each Company Party and their ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under section 4201 or 4204 of ERISA in respect of Multiemployer Plans that individually or in the aggregate are Material.

(d) The expected postretirement benefit obligation (determined as of the last day of the Parent REIT's most recently ended fiscal year in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 715-60, without regard to liabilities attributable to continuation coverage mandated by section 4980B of the Code) of the Company Parties is not Material.

(e) The execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Parent REIT and the Company to each Purchaser in the first sentence of this **Section 5.12(e)** is made in reliance upon and subject to the accuracy of such Purchaser's representation in **Section 6.2** as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Purchaser.

Section 5.13. Private Offering. Neither the Parent REIT, the Company nor anyone acting on its or their behalf has offered the Notes, Affiliate Guaranties or any similar Securities for sale to, or solicited any offer to buy the Notes or any similar Securities from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than twelve (12) other Institutional Investors, each of which has been offered the Notes and the Affiliate Guaranties at a private sale for investment. Neither the Parent REIT, the Company nor anyone acting on its or their behalf has taken, or will take, any action that would subject the issuance or sale of the Notes to the registration requirements of section 5 of the Securities Act or to the registration requirements of any Securities or blue sky laws of any applicable jurisdiction.

Section 5.14. Use of Proceeds; Margin Regulations. The Company will apply the proceeds of the sale of the Notes hereunder to reduce outstanding indebtedness under the Bank of America Credit Facility and for general corporate purposes. No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any Securities under such circumstances as to involve the Company in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Margin stock does not constitute more than 5% of the value of the consolidated assets of the Company Parties and the Parent REIT does not have any present intention that margin stock will constitute more than 5% of the value of such assets. As used in

this Section, the terms **"margin stock"** and **"purpose of buying or carrying"** shall have the meanings assigned to them in said Regulation U.

Section 5.15. Existing Indebtedness; Future Liens. (a) Except as described therein, **Schedule 5.15** sets forth a complete and correct list of all outstanding Indebtedness of the Company Parties as of September 30, 2015 (including descriptions of the obligors and obligees, principal amounts outstanding, any collateral therefor and any Guaranties thereof), since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of such Indebtedness. No Company Party is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of the Company Party and no event or condition exists with respect to any Indebtedness of the Company Parties that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in **Schedule 5.15**, none of the Company Parties has agreed or consented to cause or permit any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness or to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien that secures Indebtedness.

(c) None of the Company Parties is a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Company Party, any agreement relating thereto or any other agreement (including, but not limited to, its charter or other Organization Document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of the Company, except as disclosed in **Schedule 5.15**.

Section 5.16. Foreign Assets Control Regulations, Etc. (a) Neither any Company Party nor any Controlled Entity is (i) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by the Office of Foreign Assets Control, United States Department of the Treasury ("**OFAC**") (an "**OFAC Listed Person**") (ii) an agent, department, or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, (x) any OFAC Listed Person or (y) any Person, entity, organization, foreign country or regime that is subject to any OFAC Sanctions Program, or (iii) otherwise blocked, subject to sanctions under or engaged in any activity in violation of other United States economic sanctions, including but not limited to, the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act ("**CISADA**") or any similar law or regulation with respect to Iran or any other country, the Sudan Accountability and Divestment Act, any OFAC Sanctions Program, or any economic sanctions regulations administered and enforced by the United States or any enabling legislation or executive order relating to any of the foregoing (collectively, "**U.S. Economic Sanctions**") (each OFAC Listed Person and each other Person, entity, organization and government of a country described in clause (i), clause (ii) or clause (iii), a "**Blocked Person**"). Neither a Company Party nor any Controlled Entity has been notified that its name appears or may in the future appear on a state list of Persons that engage in investment or other commercial activities in Iran or any other country that is subject to U.S. Economic Sanctions.

(b) No part of the proceeds from the sale of the Notes hereunder constitutes or will constitute funds obtained on behalf of any Blocked Person or will otherwise be used by a Company Party or any Controlled Entity, directly or indirectly, (i) in connection with any investment in, or any transactions or dealings with, any Blocked Person, or (ii) otherwise in violation of U.S. Economic Sanctions.

(c) Neither any Company Party nor any Controlled Entity (i) has been found in violation of, charged with, or convicted of, money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes under the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the USA PATRIOT Act or any other United States law or regulation governing such activities (collectively, **"Anti-Money Laundering Laws"**) or any U.S. Economic Sanctions violations, (ii) to the Parent REIT's and the Company's actual knowledge after making due inquiry, is under investigation by any Governmental Authority for possible violation of Anti-Money Laundering Laws or any U.S. Economic Sanctions violations, (iii) has been assessed civil penalties under any Anti-Money Laundering Laws or any U.S. Economic Sanctions, or (iv) has had any of its funds seized or forfeited in an action under any Anti-Money Laundering Laws. The Company Parties have established procedures and controls which they reasonably believe are adequate (and otherwise comply with applicable law) to ensure that each Company Party and each Controlled Entity is and will continue to be in compliance with all applicable current and future Anti-Money Laundering Laws and U.S. Economic Sanctions.

(d) (1) Neither any Company Party nor any Controlled Entity (i) has been charged with, or convicted of bribery or any other anti-corruption related activity under any applicable law or regulation in a U.S. or any non-U.S. country or jurisdiction, including but not limited to, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010 (collectively, **"Anti-Corruption Laws"**), (ii) to the Parent REIT and the Company's actual knowledge after making due inquiry, is under investigation by any U.S. or non-U.S. Governmental Authority for possible violation of Anti-Corruption Laws, (iii) has been assessed civil or criminal penalties under any Anti-Corruption Laws or (iv) has been or is the target of sanctions imposed by the United Nations or the European Union;

(2) To the Parent REIT and the Company's actual knowledge, no Company Party nor any Controlled Entity has, within the last five years, directly or indirectly offered, promised, given, paid or authorized the offer, promise, giving or payment of anything of value to a Governmental Official or a commercial counterparty for the purposes of: (i) influencing any act, decision or failure to act by such Governmental Official in his or her official capacity or such commercial counterparty, (ii) inducing a Governmental Official to do or omit to do any act in violation of the Governmental Official's lawful duty, or (iii) inducing a Governmental Official or a commercial counterparty to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity; in each case in order to obtain, retain or direct business or to otherwise secure an improper advantage in violation of any applicable law or regulation or which would cause any holder to be in violation of any law or regulation applicable to such holder; and

(3) No part of the proceeds from the sale of the Notes hereunder will be used, directly or indirectly, for any improper payments, including bribes, to any Governmental Official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage. Each Company Party has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that each Company Party and each Controlled Entity is and will continue to be in compliance with all applicable current and future Anti-Corruption Laws.

Section 5.17. Status under Certain Statutes. No Company Party is subject to regulation under the Investment Company Act of 1940, as amended, the Public Utility Holding Company Act of 2005, as amended, the ICC Termination Act of 1995, as amended, or the Federal Power Act, as amended.

Section 5.18. Notes and Affiliate Guaranties Rank Pari Passu. The obligations of the Company under this Agreement and the Notes and the obligations of each Guarantor under their respective Affiliate Guaranties rank at least pari passu in right of payment with all other unsecured Senior Indebtedness of the Company or such Guarantor, as the case may be, including, without limitation, all unsecured Senior Indebtedness of the Company or such Guarantor, as the case may be, described in **Schedule 5.15** hereto.

Section 5.19. Environmental Matters. (a) No Company Party has knowledge of any claim or has received any notice of any claim and no proceeding has been instituted asserting any claim against the Company Party or any of its respective real properties or other assets now or formerly owned, leased or operated by any of them, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as could not reasonably be expected to result in a Material Adverse Effect.

(b) No Company Party has knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any of them or to other assets or their use, except, in each case, such as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(c) No Company Party has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them in a manner which is contrary to any Environmental Law that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(d) No Company Party has disposed of any Hazardous Materials in a manner which is contrary to any Environmental Law that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(e) All buildings on all real properties now owned, leased or operated by a Company Party are in compliance with applicable Environmental Laws, except where failure

to comply could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 5.20. REIT Status. The Parent REIT is qualified as a REIT and the Company is qualified as a REIT, a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS, and each of their Subsidiaries that is a corporation is either a TRS or a QRS. As of the Closing, the Subsidiaries of the Parent REIT and the Company that are taxable REIT subsidiaries, as such term is used in the Code, are identified on **Schedule 5.4**.

SECTION 6. REPRESENTATIONS OF THE PURCHASERS.

Section 6.1. Purchase for Investment. Each Purchaser severally represents that it is purchasing the Notes for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, *provided* that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control. Each Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the Notes.

Section 6.2. Source of Funds. Each Purchaser severally represents that at least one of the following statements is an accurate representation as to each source of funds (a **"Source"**) to be used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

(a) the Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption (**"PTE"**) 95-60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the NAIC (the **"NAIC Annual Statement"**)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Purchaser's state of domicile; or

(b) the Source is a separate account that is maintained solely in connection with such Purchaser's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(c) the Source is either (i) an insurance company pooled separate account, within the meaning of PTE 90-1 or (ii) a bank collective investment fund, within the meaning of the

PTE 91-38 and, except as disclosed by such Purchaser to the Company in writing pursuant to this clause (c), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(d) the Source constitutes assets of an "investment fund" (within the meaning of Part VI of PTE 84-14 (the **"QPAM Exemption"**)) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan's assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be "related" within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Company in writing pursuant to this clause (d); or

(e) the Source constitutes assets of a "plan(s)" (within the meaning of Part IV(h) of PTE 96-23 (the **"INHAM Exemption"**)) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company and (i) the identity of such INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (e); or

(f) the Source is a governmental plan; or

(g) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (g); or

(h) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this **Section 6.2**, the terms **"employee benefit plan," "governmental plan,"** and **"separate account"** shall have the respective meanings assigned to such terms in section 3 of ERISA.

SECTION 7. INFORMATION AS TO COMPANY.

Section 7.1. Financial and Business Information. The Company shall deliver to each Purchaser and each holder of a Note that is an Institutional Investor:

(a) *Quarterly Statements* — within forty-five (45) days (or such shorter period as is the earlier of (x) fifteen (15) days greater than the period applicable to the filing of the Parent REIT's Quarterly Report on Form 10-Q (the **"Form 10-Q"**) with the SEC regardless of whether the Parent REIT is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each quarterly fiscal period in each fiscal year of the Parent REIT (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

(i) a consolidated balance sheet of the Company Parties as at the end of such quarter, and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Company Parties, for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments, *provided* that delivery within the time period specified above of copies of the Parent REIT's Form 10-Q prepared in compliance with the requirements therefor and filed with the SEC shall be deemed to satisfy the requirements of this **Section 7.1(a)**;

(b) *Annual Statements* — within ninety (90) days (or such shorter period as is the earlier of (x) fifteen (15) days greater than the period applicable to the filing of the Parent REIT's Annual Report on Form 10-K (the **"Form 10-K"**) with the SEC regardless of whether the Parent REIT is subject to the filing requirements thereof and (y) the date by which such financial statements are required to be delivered under any Material Credit Facility or the date on which such corresponding financial statements are delivered under any Material Credit Facility if such delivery occurs earlier than such required delivery date) after the end of each fiscal year of the Parent REIT, duplicate copies of

(i) a consolidated balance sheet of the Company Parties as at the end of such year, and

(ii) consolidated statements of income, changes in shareholders' equity and cash flows of the Company Parties for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon (without a "going concern" or similar qualification or exception and without any qualification or exception as to the scope of the audit on which such opinion is based) of independent public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances, *provided* that the delivery within the time period specified above of the Parent REIT's Form 10-K for such fiscal year (together with the Parent REIT's annual report to shareholders, if any, prepared pursuant to Rule 14a-3 under the Securities Exchange Act of 1934) prepared in accordance with the requirements therefor and filed with the SEC, shall be deemed to satisfy the requirements of this **Section 7.1(b)**;

(c) *SEC and Other Reports* — promptly upon their becoming available, one copy of (i) each financial statement, report, notice or proxy statement sent by any Company Party to its principal lending banks as a whole (excluding information sent to such banks in the ordinary course of administration of a bank facility, such as information relating to pricing and borrowing availability) or to its public Securities holders generally, and (ii) each regular or periodic report, each registration statement (without exhibits except as expressly requested by such Purchaser or holder), and each prospectus and all amendments thereto filed by any Company Party with the SEC and of all press releases and other statements made available generally by any Company Party to the public concerning developments that are Material;

(d) *Notice of Default or Event of Default* — promptly, and in any event within five days after a Responsible Officer becoming aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in **Section 11(f)**, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

(e) *ERISA Matters* — promptly, and in any event within five days after a Responsible Officer becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan, any reportable event, as defined in section 4043(c) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the Execution Date; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by

the Parent REIT, the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Parent REIT, the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens then existing, could reasonably be expected to have a Material Adverse Effect;

(f) *Notices from Governmental Authority* — promptly, and in any event within 30 days of receipt thereof, copies of any notice to any Company Party from any federal or state Governmental Authority relating to any order, ruling, statute or other law or regulation that could reasonably be expected to have a Material Adverse Effect;

(g) *Resignation or Replacement of Auditors* — within ten days following the date on which the Parent REIT's or the Company's auditors resign or the Parent REIT or the Company elects to change auditors, as the case may be, notification thereof, together with such supporting information as the Required Holders may request; and

(h) *Requested Information* — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Company Parties (including, but without limitation, actual copies of the Parent REIT's Form 10-Q and Form 10-K) or relating to the ability of the Company to perform its obligations hereunder and under the Notes as from time to time may be reasonably requested by any such Purchaser or holder of a Note.

(i) *Waiver Period Reporting* — not later than seven (7) Business Days after the last Business Day of each month during the Waiver Period, a Liquidity Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Parent REIT (which delivery may, unless any Purchaser or holder of a Note that is an Institutional Investor requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), together with documentation reasonably satisfactory to any Purchaser or holder of a Note that is an Institutional Investor to verify the calculations set forth in such certificate.

Section 7.2. Officer's Certificate. Each set of financial statements delivered to a Purchaser or a holder of a Note pursuant to **Section 7.1(a)** or **Section 7.1(b)** shall be accompanied by a certificate of a Senior Financial Officer:

(a) *Covenant Compliance* — setting forth the information from such financial statements that is required in order to establish whether the Parent REIT and the Company were in compliance with the requirements of **Section 10.6** during the quarterly or annual period

covered by the statements then being furnished (including with respect to each such provision that involves mathematical calculations, the information from such financial statements that is required to perform such calculations), and detailed calculations of the maximum or minimum amount, ratio or percentage, as the case may be, permissible under the terms of such Section, and the calculation of the amount, ratio or percentage then in existence. In the event that any Company Party has made an election to measure any financial liability using fair value (which election is being disregarded for purposes of determining compliance with this Agreement pursuant to **Section 23.2(a)**) as to the period covered by any such financial statement, such Senior Financial Officer's certificate as to such period shall include a reconciliation from GAAP with respect to such election; and

(b) *Event of Default* — certifying that such Senior Financial Officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company Parties from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence during such period of any condition or event that constitutes a Default or an Event of Default or, if any such condition or event existed or exists (including, without limitation, any such event or condition resulting from the failure of any Company Party to comply with any Environmental Law), specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

Section 7.3. Visitation. The Parent REIT and the Company shall permit the representatives of each Purchaser and each holder of a Note that is an Institutional Investor:

(a) *No Default* — if no Default or Event of Default then exists, at the expense of such Purchaser or holder and upon reasonable prior notice to the Parent REIT and the Company, to visit the principal executive office of the Parent REIT and the Company, to discuss the affairs, finances and accounts of the Company Parties with the Parent REIT's and the Company's officers, and (with the consent of the Parent REIT, which consent will not be unreasonably withheld and presence of the Parent REIT if requested by the Parent REIT) its independent public accountants, and (with the consent of the Parent REIT, which consent will not be unreasonably withheld) to visit the other offices and properties of the Company Parties, all at such reasonable times and as often as may be reasonably requested in writing; and

(b) *Default* — if a Default or Event of Default then exists, at the expense of the Parent REIT and the Company to visit and inspect any of the offices or properties of the Company Parties, to examine all their respective books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and independent public accountants (and by this provision each of the Parent REIT and the Company authorizes said accountants to discuss the affairs, finances and accounts of the Company Parties), all at such times and as often as may be requested.

Section 7.4. Electronic Delivery. Financial statements, opinions of independent certified public accountants, other information and Officer's Certificates that are required to be

delivered by the Parent REIT or the Company pursuant to **Sections 7.1(a)**, **(b)** or **(c)** and **Section 7.2** shall be deemed to have been delivered if the Parent REIT or the Company, as the case may be, satisfies any of the following requirements with respect thereto:

(i) such financial statements satisfying the requirements of **Section 7.1(a) or (b)** and related Officer's Certificate satisfying the requirements of **Section 7.2** are delivered to each Purchaser or holder of a Note by e-mail;

(ii) the Parent REIT or the Company, as the case may be, shall have timely filed such Form 10-Q or Form 10-K, satisfying the requirements of **Section 7.1(a)** or **Section 7.1(b)**, as the case may be, with the SEC on EDGAR and shall have made such form and the related Officer's Certificate satisfying the requirements of **Section 7.2** available on its home page on the internet, which is located at http://pebblebrookhotels.com as of the Execution Date;

(iii) such financial statements satisfying the requirements of **Section 7.1(a)** or **Section 7.1(b)** and related Officer's Certificate(s) satisfying the requirements of **Section 7.2** are timely posted by or on behalf of the Parent REIT or the Company, as the case may be, on IntraLinks or on any other similar website to which each Purchaser or holder of Notes has free access; or

(iv) the Parent REIT or the Company, as the case may be, shall have filed any of the items referred to in **Section 7.1(c)** with the SEC on EDGAR and shall have made such items available on its home page on the internet or on IntraLinks or on any other similar website to which each Purchaser or holder of Notes has free access;

or the Company, as the case may be, *provided however,* that in the case of any of clauses (ii), (iii) or (iv), the Parent REIT shall have given each Purchaser and each holder of a Note prior written notice, which may be by e-mail or in accordance with **Section 19**, of such posting or filing in connection with each delivery, *provided further,* that upon request of any Purchaser or holder to receive paper copies of such forms, financial statements and Officer's Certificates or to receive them by e-mail, the Parent REIT or the Company, as the case may be, will promptly e-mail them or deliver such paper copies, as the case may be, to such Purchaser or holder.

SECTION 8. PAYMENT AND PREPAYMENT OF THE NOTES.

Section 8.1. Maturity. As provided therein, the entire unpaid principal balance of each Note shall be due and payable on the Maturity Date thereof.

Section 8.2. Optional Prepayments with Make-Whole Amount. (a) The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes of any Series, in an amount not less than 10% of the aggregate principal amount of the Notes of any Series to be prepaid then outstanding in the case of a partial prepayment, at 100% of the principal amount so prepaid, and the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of Notes written notice of each optional prepayment under this **Section 8.2** not

less than ten days and not more than 60 days prior to the date fixed for such prepayment unless the Company and the Required Holders agree to another time period pursuant to **Section 18**. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Notes of each Series to be prepaid on such date, the principal amount of each Note of each Series held by such holder to be prepaid (determined in accordance with **Section 8.3)**, and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due with respect to each Series of Notes to be prepaid in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of Notes a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

(b) Notwithstanding anything contained in this Section 8.2 to the contrary, if and so long as any Default or Event of Default shall have occurred and be continuing, any partial prepayment of the Notes pursuant to the provisions of Section 8.2(a) shall be allocated among all of the Notes of all Series at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof.

Section 8.3. Allocation of Partial Prepayments. In the case of each partial prepayment of the Notes of any Series pursuant to **Section 8.2**, the principal amount of the Notes of each Series to be prepaid shall be allocated among all of the Notes of such Series at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

Section 8.4. Maturity; Surrender, Etc. In the case of each optional prepayment of Notes pursuant to this **Section 8**, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

Section 8.5. Purchase of Notes. The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding Notes except (a) upon the payment or prepayment of the Notes in accordance with the terms of this Agreement and the Notes or (b) pursuant to an offer to purchase made by the Company or an Affiliate pro rata to the holders of all Notes at the time outstanding upon the same terms and conditions (except to the extent necessary to reflect differences in interest rates and maturities of the Notes of different series). Any such offer shall provide each holder with sufficient information to enable it to make an informed decision with respect to such offer, and shall remain open for at least 15 Business Days. If the holders of more than 33% of the principal amount of the Notes then outstanding accept such offer, the Company shall promptly notify the

remaining holders of such fact and the expiration date for the acceptance by holders of Notes of such offer shall be extended by the number of days necessary to give each such remaining holder at least 5 Business Days from its receipt of such notice to accept such offer. The Company will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to any provision of this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

Section 8.6. Make-Whole Amount. "Make-Whole Amount" means, with respect to any Note of any Series, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Note over the amount of such Called Principal, *provided* that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

"Called Principal" means, with respect to any Note of any Series, the principal of such Note that is to be prepaid pursuant to **Section 8.2** or has become or is declared to be immediately due and payable pursuant to **Section 12.1**, as the context requires.

"Discounted Value" means, with respect to the Called Principal of any Note of any Series, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Notes of such Series is payable) equal to the Reinvestment Yield with respect to such Called Principal.

"Reinvestment Yield" means, with respect to the Called Principal of any Note of any Series, .50% (50 basis points) over the yield to maturity implied by the yields reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as "Page PX1" (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities **("Reported")** having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the yields Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then **"Reinvestment Yield"** means, with respect to the Called Principal of any Note, .50% over the yield to maturity implied by the U.S. Treasury constant maturity yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such

Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Note.

"Remaining Average Life" means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360-day year composed of twelve 30-day months and calculated to two decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

"Remaining Scheduled Payments" means, with respect to the Called Principal of any Note of any Series, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the Notes of such Series, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to **Section 8.2** or **Section 12.1**.

"Settlement Date" means, with respect to the Called Principal of any Note of any Series, the date on which such Called Principal is to be prepaid pursuant to **Section 8.2** or has become or is declared to be immediately due and payable pursuant to **Section 12.1**, as the context requires.

Section 8.7. Prepayment of Notes upon Change in Control. (a) *Notice of Change in Control*. The Company will, within five Business Days after any Responsible Officer has knowledge of the occurrence of any Change in Control, give written notice of such Change in Control to each holder of Notes. Such notice shall contain and constitute an offer to prepay Notes as described in subparagraph (b) of this **Section 8.7** and shall be accompanied by the certificate described in subparagraph (e) of this **Section 8.7**.

(b) *Offer to Prepay Notes*. The offer to prepay Notes contemplated by subparagraph (a) of this **Section 8.7** shall be an offer to prepay, in accordance with and subject to this **Section 8.7**, all, but not less than all, the Notes held by each holder (in this case only, **"holder"** in respect of any Note registered in the name of a nominee for a disclosed beneficial owner shall mean such beneficial owner) on a date specified in such offer (the **"Proposed Prepayment Date"**) which shall be a Business Day. Such date shall be not less than 30 days and not more than 120 days after the Change in Control.

(c) *Acceptance/Rejection*. A holder of Notes may accept the offer to prepay made pursuant to this **Section 8.7** by causing a notice of such acceptance to be delivered to the Company not later than 15 days after receipt by such holder of the most recent offer of prepayment. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this **Section 8.7** shall be deemed to constitute a rejection of such offer by such holder.

(d) *Prepayment*. Prepayment of the Notes to be prepaid pursuant to this **Section 8.7** shall be at 100% of the principal amount of such Notes, together with interest on such Notes accrued to the date of prepayment, but without Make-Whole Amount or other premium. The prepayment shall be made on the Proposed Prepayment Date.

(e) *Officer's Certificate*. Each offer to prepay the Notes pursuant to this **Section 8.7** shall be accompanied by a certificate, executed by a Senior Financial Officer of the Company and dated the date of such offer, specifying: (i) the Proposed Prepayment Date; (ii) that such offer is made pursuant to this **Section 8.7**; (iii) the principal amount of each Note offered to be prepaid; (iv) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (v) that the conditions of this **Section 8.7** have been fulfilled; and (vi) in reasonable detail, the nature and date or proposed date of the Change in Control.

(f) *Deferral Pending Change in Control.* The obligation of the Company to prepay Notes pursuant to the offers required by Section 8.7(b) and accepted in accordance with Section 8.7(c) is subject to the occurrence of the Change in Control in respect of which such offers and acceptances shall have been made. In the event that such Change in Control does not occur on the Proposed Prepayment Date in respect thereof, the prepayment shall be deferred until and shall be made on the date on which such Change in Control occurs. The Company shall keep each holder of Notes reasonably and timely informed of (i) any such deferral of the date of prepayment, (ii) the date on which such Change in Control and the prepayment are expected to occur, and (iii) any determination by the Company that efforts to effect such Change in Control have ceased or been abandoned (in which case the offers and acceptances made pursuant to this Section 8.7(c) in respect of such Change in Control shall be deemed rescinded).

Section 8.8. Payments Due on Non-Business Days. Anything in this Agreement or the Notes to the contrary notwithstanding, (x) subject to clause (y), any payment of interest on any Note that is due on a date that is not a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day; and (y) any payment of principal of or Make-Whole Amount on any Note (including principal due on the Maturity Date of such Note) that is due on a date that is not a Business Day shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

Section 8.9. Prepayment of Notes upon Waiver Period Event.

(a) *Notice*. During the Waiver Period, if any Consolidated Party makes any Disposition (other than those permitted by Section 10.7(b)(i), (ii), (iii) and (iv)), issues any Equity Interests, or incurs any Indebtedness or if any Excess Un-Reinvested Proceeds no longer qualify as Excluded Net Proceeds pursuant to the definition thereof (each a "**Waiver Period Event**"), the Company shall offer to prepay the Notes in accordance with Section 8.9(b) below; provided that the 2020 Permitted Convertible Notes shall not constitute a Waiver Period Event. The Company shall give not less than three (3) Business Days prior written notice of the Waiver Period Event. ~~Such~~If there are Net Cash Proceeds that are expected to be received by the holders of the Notes pursuant to Section 2.10 of the Intercreditor Agreement in connection with such Waiver Period Event, such notice shall contain and constitute an offer to prepay Notes as described in subparagraph (b) of this Section 8.9 and shall be accompanied by the certificate described in subparagraph (e) of this Section 8.9.

(b) *Offer to Prepay Notes*. The offer to prepay Notes contemplated by subparagraph (a) of this Section 8.9 shall be an offer to prepay, in accordance with and subject to this Section 8.9, the pro rata amount of such Notes held by each holder in relation to the Net Cash Proceeds that are expected to be received by the holders of the Notes pursuant to Section 2.10 of the Intercreditor Agreement in connection with such Waiver Period Event. The Company shall propose a date for such prepayment, if accepted, which shall be a Business Day not less than 10 days and not more than 30 days after the notice pursuant to Section 8.9(a) is sent.

(c) *Acceptance/Rejection*. A holder of Notes may accept the offer to prepay made pursuant to this Section 8.9 by causing a notice of such acceptance to be delivered to the Company not later than 5 days after receipt by such holder of the most recent offer of prepayment. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 8.9 shall be deemed to constitute a rejection of such offer by such holder.

(d) *Prepayment*. Prepayment of the Notes to be prepaid pursuant to this Section 8.9 shall be at 100% of the principal amount which was offered pursuant to this Section 8.9, together with interest on such Notes accrued to the date of prepayment, but without Make-Whole Amount or other premium.

(e) *Officer's Certificate*. Each offer to prepay the Notes pursuant to this Section 8.9 shall be accompanied by a certificate, executed by a Senior Financial Officer of the Company and dated the date of such offer, specifying: (i) the date proposed for prepayment; (ii) that such offer is made pursuant to this Section 8.9; (iii) a good faith estimate of the principal amount of each Note offered to be prepaid; and (iv) the interest that would be due on each Note offered to be prepaid, accrued to the date proposed for prepayment.

Section 8.10. Additional Prepayment Offer upon Waiver Period Event.*Notice*. During the Waiver Period, after the occurrence of any Waiver Period Event and the disposition of Net Cash Proceeds pursuant to Section 2.10(a)(i) or 2.10(a)(ii) of the Intercreditor Agreement, the Company shall offer to prepay the Notes in accordance with Section 8.10(b) below. The Company shall give not less than three (3) Business Days prior written notice of such offer to prepay. Such notice shall contain and constitute an offer to prepay Notes as described in

subparagraph (b) of this Section 8.10 and shall be accompanied by the certificate described in subparagraph (e) of this Section 8.10.

(b) *Offer to Prepay Notes.* The offer to prepay Notes contemplated by subparagraph (a) of this Section 8.10 shall be an offer to prepay each Note, which shall be the pro rata amount of such Note held by each holder in relation to the Additional Amount. The "**Additional Amount**" shall be a dollar amount equal to 4% of the amount of the Net Cash Proceeds that are distributed pursuant to Section 2.10(a)(i) or 2.10(a)(ii) of the Intercreditor Agreement in connection with such Waiver Period Event. Notwithstanding the foregoing, if the holders of Notes are entitled to a prepayment offer pursuant to Section 8.9 hereof and Section 2.10 of the Intercreditor Agreement in connection with such Waiver Period Event, such Additional Amount shall be reduced by the amount offered under such provisions. The Company shall propose a date for such prepayment, if accepted, which shall be a Business Day not less than 10 days and not more than 30 days after the notice pursuant to Section 8.10(a) is sent.

(c) *Acceptance/Rejection*. A holder of Notes may accept the offer to prepay made pursuant to this Section 8.10 by causing a notice of such acceptance to be delivered to the Company not later than 5 days after receipt by such holder of the most recent offer of prepayment. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 8.10 shall be deemed to constitute a rejection of such offer by such holder. If a holder of Notes rejects such offer to prepay pursuant to this Section 8.10, the Company shall have no further obligation to the holder of Notes with respect to such Waiver Period Event and the Company may retain the Additional Amount, which Additional Amount is not subject to Section 2.10 of the Intercreditor Agreement.

(d) *Prepayment.* Prepayment of the Notes to be prepaid pursuant to this Section 8.10 shall be at 100% of the principal amount which was offered pursuant to this Section 8.10, together with interest on such Notes accrued to the date of prepayment, but without Make-Whole Amount or other premium.

(e) *Officer's Certificate*. Each offer to prepay the Notes pursuant to this Section 8.10 shall be accompanied by a certificate, executed by a Senior Financial Officer of the Company and dated the date of such offer, specifying: (i) the date proposed for prepayment; (ii) that such offer is made pursuant to this Section 8.10; (iii) a good faith estimate of the principal amount of each Note offered to be prepaid; and (iv) the interest that would be due on each Note offered to be prepaid, accrued to the date proposed for prepayment.

Section 8.11. Waiver Period Optional Prepayment. The Company may, at its option at any time on or prior to June 30, 2021 and from time to time during such period, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes of all Series, in an amount not less than 10% of the aggregate principal amount of the Notes then outstanding in the case of a partial prepayment, at 100% of the principal amount to be prepaid plus a premium equal to 2.00% of such principal to be prepaid (such premium, a "**Waiver Period Prepayment Premium**"). The Company will give each holder of Notes written notice of each optional prepayment under this Section 8.11 not less than 10 days and not more than 60 days

prior to the date fixed for such prepayment unless the Company and the Required Holders agree to another time period pursuant to Section 18. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note of each Series held by such holder to be prepaid (determined in accordance with Section 8.3), the Waiver Period Prepayment Premium and the interest accrued to the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Waiver Period Prepayment Premium due with respect to the Notes to be prepaid in connection with such prepayment, setting forth the details of such computation.

SECTION 9. AFFIRMATIVE COVENANTS.

From the Execution Date until the Closing and thereafter, so long as any of the Notes are outstanding, the Company and the Parent REIT covenant that:

Section 9.1. Compliance with Laws. Without limiting **Section 10.4**, the Company and the Parent REIT will, and will cause each other Company Party to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, ERISA, Environmental Laws, the USA PATRIOT Act and the other laws and regulations that are referred to in **Section 5.16**, and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.2. Insurance. The Company and the Parent REIT will, and will cause each other Company Party to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated and as otherwise required under the Primary Credit Facilities.

Section 9.3. Maintenance of Properties. The Company and the Parent REIT will, and will cause each other Company Party to, maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times, *provided* that this Section shall not prevent any of the Company Parties from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company and the Parent REIT have concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.4. Payment of Taxes and Claims. The Company and the Parent REIT will, and will cause each other Company Party to, file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent the same have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien on properties or assets of the Company and the Parent REIT or any other Company Party, *provided* that none of the Company Parties need pay any such tax, assessment, charge, levy or claim if (i) the amount, applicability or validity thereof is contested by such Company Party on a timely basis in good faith and in appropriate proceedings, and the Company Parties have established adequate reserves therefor in accordance with GAAP on the books of the Company Parties or (ii) the nonpayment of all such taxes, assessments, charges, levies and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.5. Legal Existence, Etc. Subject to **Section 10.2**, the Company and the Parent REIT will at all times preserve and keep their respective legal existence in full force and effect. Subject to **Sections 10.2** and **10.7**, the Company and the Parent REIT will at all times preserve and keep in full force and effect the legal existence of each other Company Party and all rights and franchises of the Company Parties unless, in the good faith judgment of the Company and the Parent REIT, the termination of or failure to preserve and keep in full force and effect such legal existence, right or franchise could not, individually or in the aggregate, have a Material Adverse Effect.

Section 9.6. Notes to Rank Pari Passu. The Notes and all other obligations under this Agreement of the Company and the obligations of each Guarantor under their respective Affiliate Guaranties are and at all times shall rank at least *pari passu* in right of payment with all other present and future unsecured Senior Indebtedness of the Company or such Guarantor, as the case may be, which is not expressed to be subordinate or junior in rank to any other unsecured Senior Indebtedness of the Company or such Guarantor, as the case may be.

Section 9.7. Books and Records. The Company and the Parent REIT will, and will cause each of its Subsidiaries to, maintain proper books of record and account in conformity with GAAP and all applicable requirements of any Governmental Authority having legal or regulatory jurisdiction over the Company the Parent REIT, or such other Company Party, as the case may be. The Company and the Parent REIT will, and will cause the Company Parties to, keep books, records and accounts which, in reasonable detail, accurately reflect all transactions and dispositions of assets. The Company Parties have devised a system of internal accounting controls sufficient to provide reasonable assurances that their respective books, records, and accounts accurately reflect all transactions and dispositions of assets and the Company Parties will continue to maintain such system.

Section 9.8. Subsidiary Guarantors. The Parent REIT and the Company will cause each of its Subsidiaries that guarantees or otherwise becomes liable at any time, whether as a borrower or an additional or co-borrower or otherwise, for or in respect of any Indebtedness under any Primary Credit Facility to concurrently therewith:

(a) enter into a joinder to the Subsidiary Guaranty in the form and substance appended to the Subsidiary Guaranty as **Exhibit A** thereto executed at the Closing, a guarantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), and a Grantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable); and

(b) deliver the following to each Purchaser and holder of a Note:

(i) an executed counterpart of such joinder to the Subsidiary Guaranty;

(ii) a certificate signed by an authorized responsible officer of such Subsidiary containing representations and warranties on behalf of such Subsidiary to the same effect, *mutatis mutandis*, as those contained in **Sections 5.1**, **5.2**, **5.6**, **5.7**, **5.16** and **5.18** of this Agreement (but with respect to such Subsidiary and such Subsidiary Guaranty rather than the Company) in the form of **Exhibit B to the Subsidiary Guaranty**;

(iii) all documents as may be reasonably requested by the Required Holders to evidence the due organization, continuing existence and good standing of such Subsidiary and the due authorization by all requisite action on the part of such Subsidiary of the execution and delivery of such Subsidiary Guaranty and the performance by such Subsidiary of its obligations thereunder; and

(iv) an opinion of counsel with respect to such Subsidiary and such joinder in substantially the form of opinion delivered at the Closing with respect to the Subsidiary Guaranty and Subsidiary Guarantors that existed as of the Closing.

(c) Release of Guarantors. A Subsidiary Guarantor shall be automatically released from the Subsidiary Guaranty, so long as: (i) after giving effect to such release, such Consolidated Subsidiary does not have any liability as a guarantor, borrower, co-borrower or otherwise with respect to any Indebtedness under any Primary Credit Facility, (ii) no Default or Event of Default exists immediately after giving effect to such release and (iii) if any fee or other form of consideration is given to any holder of Indebtedness under any Primary Credit Facility directly related to releasing such Subsidiary Guarantor, the holders of the Notes shall receive an equivalent fee payable *pro rata* in accordance with each holder's outstanding principal amount of Notes. Each of the Parent REIT and the Company shall deliver to the holders of the Notes an Officer's Certificate certifying that the conditions set forth in immediately preceding clauses (i), (ii) and (iii) will be true and correct upon the release of such Subsidiary Guarantor. Upon the receipt by the holders of the Notes of the Officer's Certificate referenced above, the release shall be effective automatically without any further action by any party and each holder of Notes shall thereafter execute and deliver, at the sole cost and expense of the Parent REIT and the Company, such documents and instruments as the Parent REIT and the Company may reasonably request to evidence such release, *provided*, that, the execution and delivery of such documents and instruments shall not be necessary to give effect to such release.

Section 9.9. Most Favored Lender Status. (a) If at any time after the Execution Date, a Primary Credit Facility contains a Financial Covenant by the Company that is more favorable to the lenders under such Primary Credit Facility than the covenants, definitions and/or defaults contained in this Agreement (any such provision (including any necessary definition), a **"More Favorable Covenant"**), then the Company shall provide a Most Favored Lender Notice (as defined herein below) in respect of such More Favorable Covenant. Unless waived in writing by the Required Holders, within 15 days after each holder's receipt of such notice, such More Favorable Covenant shall be deemed automatically incorporated by reference into **Section 10** of this Agreement, mutatis mutandis, as if set forth in full herein, effective as of the date when such More Favorable Covenant shall have become effective under such Primary Credit Facility.

(b) Any More Favorable Covenant incorporated into this Agreement (herein referred to as an **"Incorporated Covenant"**) pursuant to this **Section 9.9** (i) shall be deemed automatically amended herein to reflect any subsequent amendments made to such More Favorable Covenant under the applicable Primary Credit Facility; *provided* that, if the amendment of such More Favorable Covenant would make such covenant less restrictive on the Company, such Incorporated Covenant shall only be deemed automatically amended at such time, if it should occur, when such Default or Event of Default no longer exists and (ii) shall be deemed automatically deleted from this Agreement at such time as such More Favorable Covenant is deleted or otherwise removed from the applicable Primary Credit Facility or such applicable Primary Credit Facility ceases to be a Primary Credit Facility or shall be terminated; provided that, if a Default or an Event of Default then exists, such Incorporated Covenant shall only be deemed automatically deleted from this Agreement at such time, if it should occur, when such Default or Event of Default no longer exists; *provided further, however*, that if any fee or other consideration shall be given to the lenders under such Primary Credit Facility for such amendment or deletion, the equivalent of such fee or other consideration shall be given, pro rata, to the holders of the Notes.

(c) **"Most Favored Lender Notice"** means, in respect of any More Favorable Covenant, a written notice to each of the holders of the Notes delivered promptly, and in any event within ten Business Days after the inclusion of such More Favorable Covenant in any Primary Credit Facility (including by way of amendment or other modification of any existing provision thereof) from a Responsible Officer referring to the provisions of this **Section 9.9** and setting forth a reasonably detailed description of such More Favorable Covenant (including any defined terms used therein) and related explanatory calculations, as applicable.

(d) Notwithstanding the foregoing, no covenant, definition or default expressly set forth in this Agreement as of the Execution Date (or incorporated into this Agreement by an amendment or modification to this Agreement other than pursuant to this **Section 9.9**) shall be deemed to be amended or deleted in any manner that is less favorable to the holders of Notes by virtue of the provisions of this **Section 9.9**.

Section 9.10. Collateral. During any Collateral Period, on or prior to the times specified below (or such later date as the Required Holders shall reasonably determine), the Company will cause, subject to **clause (f)** below, all of the issued and outstanding Equity Interests of each Guarantor (other than the Parent REIT) (collectively, the "**Collateral**"), to be,

subject to the terms of the Intercreditor Agreement, subject to a perfected Lien in favor of the Collateral Agent to secure the Obligations in accordance with the terms and conditions of the Collateral Documents:

(i) within thirty (30) days of the Collateral Trigger Date; and

(ii) contemporaneously with the occurrence of any date any Subsidiary shall be required to become a Guarantor pursuant to **Section 9.8** hereof.

(b) During a Collateral Period, and without limiting the foregoing, the Company will, and will cause each Company Party that owns any Collateral to, execute and deliver, or cause to be executed and delivered, to the Collateral Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements), which may be required by applicable Law and which the Collateral Agent may, from time to time during a Collateral Period, reasonably request to carry out the terms and conditions of this Agreement and the other Note Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the reasonable expense of the Company; *provided*, *however*, that no Pledged Subsidiary shall be permitted to certificate its Equity Interests or make an election under *Article 8* of the UCC unless such certificates are promptly delivered to the Collateral Agent, together with an endorsement in blank. Without limiting the foregoing, the Company shall cause each Company Party that owns any Collateral to execute and deliver to the Collateral Agent a Grantor Joinder Agreement (as defined in the Intercreditor Agreement).

(c) During a Collateral Period, without limiting the release provisions set forth in **clause (d)** below, the Company may request in writing that the Collateral Agent release, and upon receipt of such request the Collateral Agent shall promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release, the Equity Interests in any Pledged Subsidiary from the Pledge Agreement with respect to any Unencumbered Borrowing Base Property that is being removed pursuant to **Section 9.8(c)** if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal, so long as no Default or Event of Default exists or would result therefrom. The Collateral Agent agrees to furnish to the Company, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, after the Company's request and at the Company's reasonable expense, any release, termination, or other agreement or document evidencing the foregoing release as may be reasonably requested by the Company.

(d) The Company may deliver to the Collateral Agent, on or prior to the date that is five (5) Business Days (or such shorter period of time as agreed to by the Collateral Agent) before the date on which the Collateral Release is to be effected, written notice that it is requesting the Collateral Release, which notice shall identify the Collateral to be released and the proposed effective date for the Collateral Release, together with a certificate signed by a Responsible Officer of the Company (such certificate, a "**Collateral Release Certificate**"), certifying that:

(i) the Consolidated Leverage Ratio is either (A) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (B) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to **Section 7.2(a)**; and

(ii) at the time of the delivery of notice requesting such release, on the proposed effective date of the Collateral Release and immediately before and immediately after giving effect to the Collateral Release, (A) no Default or Event of Default has occurred and is continuing or would result therefrom and (B) the representations and warranties contained in **Section 5** and the other Note Documents are true and correct in all material respects on and as of the effective date of the Collateral Release, 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 as of such earlier date, and except that for purposes of this **Section 9.10**, the representations and warranties contained in **subsections (a)** and **(b)** of **Section 5.5** shall be deemed to refer to the most recent statements furnished pursuant to **clauses (a)** and **(b)**, respectively, of **Section 7.1**.

(e) On or after any Collateral Release Date, the Collateral Agent shall, subject to the satisfaction of the requirements of **clause (d)** above, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release all of the Liens granted to the Collateral Agent pursuant to the requirements of this **Section 9.10** and the Collateral Documents (the "**Collateral Release**"). Upon the release of any Collateral pursuant to this **Section 9.10**, the Collateral Agent shall (to the extent applicable) promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, deliver to the Company, upon the Company's request and at the Company's reasonable expense, such documentation as may be reasonably satisfactory to the Collateral Agent and otherwise necessary or advisable to evidence the release of such Collateral from the Note Documents.

(f) Notwithstanding the foregoing, if (i) a Collateral Trigger Date occurs in connection with a First Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals fifty percent (50%) of the amount of the aggregate amount of ~~Unsecured Indebtedness~~the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the First Limited Collateral Trigger Event and (ii) a Collateral Trigger Date occurs in connection with a Second Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals the amount of the aggregate amount of the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the Second Limited Collateral Trigger Event.

Section 9.11. Note Rating. The Company will any time upon request from the Required Holders, obtain a private letter rating with respect to the Notes from one Rating Agency requested by the Required Holders.

Section 9.12. Waiver Period Interest. For the period of time commencing on the Fourth Amendment Effective Date through and including the last day of the Waiver Period, the per annum interest rate of the Notes shall be increased by 45 basis points (.45%) (the "**Waiver Period Increased Interest**"). For the avoidance of doubt, (i) the payment or accrual of the Waiver Period Increased Interest on the Notes does not waive any Default or Event of Default otherwise applicable under this Agreement and (ii) such additional interest shall not be included in the calculation of any Make-Whole Amount.

Although it will not be a Default or an Event of Default if the Company fails to comply with any provision of **Section 9** on or after the Execution Date and prior to the Closing, if such failure occurs then any of the Purchasers may elect not to purchase the Notes on the date of the Closing that is specified in **Section 3**.

SECTION 10. NEGATIVE COVENANTS.

From the Execution Date until the Closing and thereafter, so long as any of the Notes are outstanding, the Company and the Parent REIT covenant that:

Section 10.1. Transactions with Affiliates. The Company and the Parent REIT will not and will not permit any other Company Party to enter into directly or indirectly any transaction or group of related transactions (including without limitation the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than another Company Party Subsidiary), except in the ordinary course and pursuant to the reasonable requirements of the Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Company or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

Section 10.2. Merger, Consolidation, Etc. The Company and the Parent REIT will not, nor will they permit any other Company Party to, consolidate with or merge with any other Person or convey, transfer or lease all or substantially all of its assets in a single transaction or series of transactions to any Person (including, in each case, pursuant to a Division) unless:

(a) the successor formed by such consolidation or the survivor of such merger or the Person that acquires by conveyance, transfer or lease all or substantially all of the assets of the Company or any such Guarantor as an entirety, as the case may be, shall be a solvent corporation or limited liability company organized and existing under the laws of the United States or any state thereof (including the District of Columbia), and, if the Company or such Guarantor is not such corporation or limited liability company, as the case may be, (i) such corporation or limited liability company shall have executed and delivered to each holder of any Notes its assumption of the due and punctual performance and observance of each covenant and condition of this Agreement and the Notes, in the case of a transaction involving the Company, or the related Affiliate Guaranty in the case of a transaction involving any

Guarantor and (ii) such corporation or limited liability company shall have caused to be delivered to each holder of any Notes an opinion of nationally recognized independent counsel, or other independent counsel reasonably satisfactory to the Required Holders, to the effect that all agreements or instruments effecting such assumption are enforceable in accordance with their terms and comply with the terms hereof;

(b) each Guarantor under any Affiliate Guaranty that is outstanding at the time such transaction or each transaction in such a series of transactions occurs reaffirms its obligations under such Affiliate Guaranty in writing at such time pursuant to documentation that is reasonably acceptable to the Required Holders; and

(c) immediately before and immediately after giving effect to such transaction or each transaction in any such series of transactions, no Default or Event of Default shall have occurred and be continuing.

Provided that (i) any Non-Guarantor Subsidiary may consolidate with or merge with any other Person or transfer or lease all or substantially all of its assets in a single transaction or series of transactions to any other Person; *provided* such merger or Disposition shall be permitted only if (A) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after such transaction and (B) no Default or Event of Default would result therefrom and (ii) any Non-Guarantor Subsidiary may merge with a Note Party; *provided that* (A) the Note Party shall be the continuing or surviving Person and (B) no Default or Event of Default would result therefrom.

No such conveyance, transfer or lease of substantially all of the assets of the Company shall have the effect of releasing the Company or any Guarantor or any successor corporation or limited liability company that shall theretofore have become such in the manner prescribed in this **Section 10.2** from its liability under this Agreement, the Affiliate Guaranties or the Notes, respectively except that the foregoing shall not limit the automatic release of a Subsidiary Guarantor as provided in **Section 9.8(c)** of this Agreement.

Section 10.3. Line of Business. The Company and the Parent REIT will not and will not permit any other Company Party to engage in any business if, as a result, the general nature of the business in which the Company Parties, taken as a whole, would then be engaged would be substantially changed from the general nature of the business in which the Company Parties, taken as a whole, are engaged on the Execution Date as described in the Memorandum.

Section 10.4. Terrorism Sanctions Regulations. The Company and the Parent REIT will not and will not permit any Controlled Entity (a) to become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or any Person that is the target of sanctions imposed by the United Nations or by the European Union, or (b) directly or indirectly to have any investment in or engage in any dealing or transaction (including, without limitation, any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (i) would cause any holder to be in violation of any law or regulation applicable to such holder, or (ii) is prohibited by or subject to sanctions under any U.S. Economic Sanctions, or (c) to engage, nor shall any Affiliate of either engage, in any activity that could subject such Person or any holder to sanctions under CISADA

or any similar law or regulation with respect to Iran or any other country that is subject to U.S. Economic Sanctions.

Section 10.5. Liens. The Company and the Parent REIT will not and will not permit any Company Party to directly or indirectly create, incur, assume or permit to exist (upon the happening of a contingency or otherwise) any Lien on or with respect to any property or asset of any Company Party, whether now owned or held or hereafter acquired, or any income or profits therefrom, or assign or otherwise convey any right to receive income or profits, except (the items described in clauses (a) through (h) below to be referred to as "Permitted Liens"):

(a) Liens, if any, that secure the Obligations;

(b) Liens that secure Indebtedness of the Company Parties on a pari passu basis with the Lien described in **Section 10.5(a)** subject to the terms of the Intercreditor Agreement;

(c) Liens existing on the Execution Date and listed in **Schedule 5.15** and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except by an amount equal to a reasonable premium or other reasonable amount paid and fees and expenses reasonably incurred in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, and (iii) the direct or any contingent obligor with respect thereto is not changed;

(d) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) 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 are maintained on the books of the applicable Person;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(g) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting any Real Property owned by the Company or any Guarantor 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 and which, with respect to Unencumbered Borrowing Base Properties, have been reviewed and approved in accordance with the requirements of the Bank of America Credit Facility;

(i) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 11(i)**;

(j) (i) the interests of any ground lessor under an Eligible Ground Lease and the interests of any TRS under a lease of any Unencumbered Borrowing Base Property and (ii) Liens in connection with Permitted Intercompany Mortgages;

(k) Liens on any assets (other than any Unencumbered Borrowing Base Property and related assets) securing Indebtedness of any Note Party or Non-Guarantor Subsidiary incurred or assumed after the Execution Date; *provided*, such Lien to secure such Indebtedness can only be incurred if: (i) no Default shall exist immediately before or immediately after the incurrence or assumption such Indebtedness and (ii) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the incurrence or assumption of such Indebtedness, including Liens on such Real Property existing at the time such Real Property is acquired by the Company or applicable Guarantor or any Non-Guarantor Subsidiary;

(l) Liens on the Equity Interests of any Non-Guarantor Subsidiary; *provided*, no such Liens shall be permitted with respect to the Equity Interests of Pebblebrook Hotel Lessee, any entity which is the lessee with respect to an Unencumbered Borrowing Base Property or the direct or indirect parent thereof;

(m) other Liens on assets (other than Unencumbered Borrowing Base Properties) securing claims or other obligations of the Note Parties and their Subsidiaries (other than Indebtedness) in amounts not exceeding $5,000,000 in the aggregate; and

(n) any interest of title of a lessor under, and Liens arising from or evidenced by protective UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, operating leases permitted hereunder.

Notwithstanding anything contained in this **Section 10.5**, the Company and the Parent REIT shall not, and shall not permit any of their Subsidiaries to, secure pursuant to this **Section 10.5** any Indebtedness outstanding under or pursuant to any Primary Credit Facility unless and until the Notes (and any guaranty delivered in connection therewith) shall concurrently be secured equally and ratably with such Indebtedness pursuant to documentation reasonably acceptable to the Required Holders in substance and in form, including, without limitation, an intercreditor agreement and opinions of counsel to the Company and/or any such Subsidiary, as the case may be, from counsel that is reasonably acceptable to the Required Holders.

Section 10.6. Financial Covenants.

(a) **Consolidated Leverage Ratio**.

(i) The Parent REIT and the Company will not permit the Consolidated Leverage Ratio to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (I) as of the Initial Compliance Date ~~and the last day of the first fiscal quarter ending after the Initial Compliance Date~~, exceed 8.50 to 1.00; (II) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed 8.00 to 1.00; (III) as of the last day of the ~~fourth~~third fiscal quarter ending after the Initial Compliance Date, exceed 7.50 to 1.00; and (IV) as of the last day of any fiscal quarter thereafter, exceed 6.75 to 1.00; *provided that*, notwithstanding the foregoing,

(A) if as of the last day of any fiscal quarter, commencing ~~with~~on the earlier of June 30, 2022 or the last day of the fiscal quarter ~~ending on the Initial Compliance Date~~following the expiration of the Waiver Period, the Consolidated Leverage Ratio exceeds 6.50 to 1.00 but does not exceed 6.75 to 1.00 as of the last day of any fiscal quarter (the **"Leverage Surge Date**"), (1) the Company shall provide written notice to each holder of a Note in an officer's certificate timely delivered pursuant to Section 7.2; and (2) the Notes shall be subject to the Increased Interest Rate pursuant to **Section 10.6(a)(ii)** (such period, the **"Leverage Surge Period**"); and further,

(B) if, as of the last day of any fiscal quarter, commencing ~~with~~on the earlier of June 30, 2022 or the last day of the fiscal quarter ~~ending on~~following the ~~Initial Compliance Date~~expiration of the Waiver Period, the Consolidated Leverage Ratio exceeds 6.75 to 1.00 (the "**Additional Surge Date"**), the Notes shall be subject to the Increased Interest Rate pursuant to **Section 10.6(a)(ii)** (such period, the "**Additional Surge Period**") and provided the availability of such Additional Surge Period shall end on the fiscal quarter in which the Company is required to be in compliance with Section 10.6(a)(i)(IV);

(ii) ~~The~~During a Leverage Surge Period or an Additional Surge Period, as applicable, the per annum interest rate (in addition to any Default Rate, if any) otherwise applicable to each series of the Notes as specified in the first paragraph thereof shall be increased as follows (for each series of Notes, the "**Increased Interest Rate**"):

(A) If ~~at any time,~~ the Consolidated Leverage Ratio exceeds 6.50 to 1.00 but is not greater than 6.75 to 1.00, then the per annum interest rate shall be increased by ~~35~~45 basis points (.~~35~~45%);

(B) For the first fiscal quarter in which the Consolidated Leverage Ratio exceeds 6.75 to 1.00, then the per annum interest rate shall be increased by ~~35~~45 basis points (.~~35~~45%);

(C) For the second fiscal quarter in which the Consolidated Leverage Ratio exceeds 6.75 to 1.00, then the per annum interest rate shall be increased by 50 basis points (.50%);

(D) For the third fiscal quarter in which the Consolidated Leverage Ratio exceeds 6.75 to 1.00, then the per annum interest rate shall be increased by 75 basis points (.75%); and

(E) For the fourth and fifth fiscal quarter in which the Consolidated Leverage Ratio exceeds 6.75 to 1.00, then the per annum interest rate shall be increased by 100 basis points (1.00%);

provided that the additional basis points in Section 10.6(a)(ii)(A) through (E) are not cumulative; and *further provided* that changes to the applicable rate of interest shall be effective as of the first day of the first calendar month after the Additional Surge Date or Leverage Surge Date, as applicable, until (A) the first day of the first calendar month after the last day of the fiscal quarter for which an officer's certificate has been timely delivered pursuant to Section 7.2 containing a written statement to each holder of a Note terminating the Additional Surge Period or Leverage Surge Period, as applicable, and evidencing that the Consolidated Leverage Ratio, as of the last day of such fiscal quarter, is equal to or less than 6.75 to 1.00 (in the case of an Additional Surge Period) or 6.50 to 1.00 (in the case of a Leverage Surge Period) or (B) in the case of an Additional Surge Period, the last day of the fiscal quarter in which such Additional Surge Date is allowed, if earlier. For the avoidance of doubt, (i) the payment or accrual of an Increased Interest Rate of the Notes does not waive any Default or Event of Default otherwise applicable under Section 10.6(a) and (ii) such additional interest shall not be included in the calculation of any Make-Whole Amount.

(b) **Consolidated Recourse Secured Indebtedness Limitation**. The Parent REIT and the Company will not permit Consolidated Recourse Secured Indebtedness to, at any time on or after the Initial Compliance Date, exceed an amount equal to five percent (5%) of Consolidated Total Asset Value; provided that, notwithstanding the foregoing, once during the term of this Agreement, so long as no Default or Event of Default has occurred and is continuing, for up to four (4) consecutive quarters, Consolidated Recourse Secured Indebtedness may exceed five percent (5%) but not exceed ten percent (10%) of Consolidated Total Asset Value.

(c) **Consolidated Secured Debt Limitation**. The Parent REIT and the Company will not permit Consolidated Secured Debt to, at any time on or after the Initial Compliance Date, to exceed an amount equal to forty-five percent (45%) of Consolidated Total Asset Value.

(d) **Consolidated Fixed Charge Coverage Ratio**. The Parent REIT and the Company will not permit the Consolidated Fixed Charge Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the

Initial Compliance Date, 1.05 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.25 to 1.00, and (iii) as of the last day of any fiscal quarter thereafter, 1.50 to 1.00.

(e) **Unsecured Leverage Ratio.** The Parent REIT and the Company will not permit the Unsecured Indebtedness (less Adjusted Unrestricted Cash as of such date) to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of ~~the Initial Compliance Date and the last day of the first fiscal quarter ending after~~ the Initial Compliance Date, exceed sixty-seven and one-half of one percent (67.5%); (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed sixty five percent (65%); and (iii) as of the last day of any fiscal quarter thereafter, exceed sixty percent (60%) of Unencumbered Asset Value; provided that, notwithstanding the foregoing, so long as no Default has occurred and is continuing, as of the last day of the fiscal quarter in which any Material Acquisition occurs and the last day of the two (2) consecutive quarters thereafter, such ratio may exceed sixty percent (60%) but not exceed sixty five percent (65%) (such period being an **"Unsecured Leverage Increase Period"**); provided further that (i) the Company may not elect more than three (3) Unsecured Leverage Increase Periods during the term of this Agreement and (ii) any such Unsecured Leverage Increase Periods shall be non-consecutive.

(f) **Consolidated Unsecured Interest Coverage Ratio**. The Parent REIT and the Company will not permit the Consolidated Unsecured Interest Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date ~~and~~, 1.25 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.50 to 1.00, (iii) as of the last day of the second fiscal quarter ending after the Initial Compliance Date, 1.75 to 1.00, and (~~ii~~iv) as of the last day of any fiscal quarter thereafter, 2.00 to 1.00.

(g) **Consolidated Tangible Net Worth**. The Parent REIT and the Company will not permit Consolidated Tangible Net Worth, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than the sum of (i) $1,400,772,000 *plus* (ii) seventy-five percent (75%) of the Net Proceeds of all Equity Issuances by the Company Parties after June 30, 2017.

(h) **Restricted Payments**. Permit, for any fiscal year of the Company Parties, the amount of Restricted Payments (excluding Restricted Payments payable solely in the common stock or other common Equity Interests of the Parent REIT or the Company) made by the Company Parties to the holders of their Equity Interests (excluding any such holders of Equity Interests which are the Company or any Guarantor) during such period to exceed the FFO Distribution Allowance for such period; *provided that*, to the extent no Event of Default then exists or will result from such Restricted Payments (or if a Default or Event of Default then exists or will result from such Restricted Payments, then so long as no acceleration of the Notes shall have occurred), the Company, the Guarantors, and each other Subsidiary (including Pebblebrook Hotel Lessee) shall be permitted to make Restricted Payments to the Company and the Company shall be permitted to make Restricted Payments to Parent REIT, in each case to permit the Parent REIT to make Restricted Payments to the holders of the Equity Interests in

the Parent REIT to the extent necessary to maintain Parent REIT's status as a REIT and as necessary to pay any special or extraordinary tax liabilities then due (after taking into account any losses, offsets and credits, as applicable) on capital gains attributable to Parent REIT. In addition, so long as no acceleration of the Notes shall have occurred, each TRS may make Restricted Payments to its parent entity to the extent necessary to pay any Taxes then due in respect of the income of such TRS. Notwithstanding the foregoing, during the Waiver Period and at any time thereafter until the Consolidated Leverage Ratio is less than 6.75 to 1.00 as of the last day of any fiscal quarter, as reflected on the most recently delivered Compliance Certificate delivered pursuant to **Section 7.2(a)**, the Parent REIT shall not purchase, redeem, retire, or defease any of its Equity Interests except as expressly permitted in **Section 10.10(e).**

(i) **Minimum Liquidity**. At any time during the Waiver Period, permit Liquidity to be less than $~~150,000,000~~200,000,000.

(j) **Waiver Period Financial Covenants; Adjustments**.

(i) During the ~~Waiver Period~~period of time commencing on the Second Amendment Effective Date up to, but excluding, the Initial Compliance Date the Parent REIT and the Company shall continue to deliver to the Purchaser and any holder of the Notes that is an Institutional Investor duly completed Compliance Certificates, for informational purposes only, as and when required under **Section 7.2(a)** certifying as to the Company's calculations of the financial tests set forth in this **Section 10.6**.

(ii) Immediately following the expiration of the Waiver Period, the financial covenants set forth in this **Section 10.6** (including the related defined terms) (other than the covenants set forth in ***clauses (d), (f) (g)*** and ***(i)*** thereof) shall be modified as follows~~:~~

(A) in the event the Company elects to terminate the Waiver Period on the date occurring under **clause (b)** of the definition of "Waiver Period", the testing period for the covenants set forth in this **Section 10.6** shall be measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under **clause (a)** of the definition of "Waiver Period", the testing period for the covenants set forth in this **Section 10.6** shall be measured as follows: (w) for the fiscal quarter ending June 30, ~~2021~~2022, the trailing quarter, annualized; (x) for the fiscal quarter ending September 30, ~~2021~~2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending December 31, ~~2021~~2022, the

trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

(iii) From and after the Initial Compliance Date, the financial covenants set forth in **Sections 10.6(d)** and **10.6(f)** shall be modified as follows:

(A) in the event the Company elects to terminate the Waiver Period on the date occurring under **clause (b)** of the definition of "Waiver Period", the testing period for the covenants set forth in **Sections 10.6(d)** and **10.6(f)** shall be measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under **clause (a)** of the definition of "Waiver Period", the testing period for the covenants set forth in this **Section 10.6** shall be measured as follows: (w) for the fiscal quarter ending March 31, 2022, the trailing quarter, annualized; (x) for the fiscal quarter ending June 30, 2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending September 30, 2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

Section 10.7. Dispositions. The Parent REIT and the Company will not make any Disposition of any assets or property, except:

(a) Dispositions in the ordinary course of business (other than those Dispositions permitted under **clause (b)** of this **Section 10.7**), so long as (i) no Default or Event of Default shall exist immediately before or immediately after such Disposition, and (ii) the Company Parties will be in compliance, on a Pro Forma Basis following such Disposition, with the covenants set forth in **Section 10.6** of this Agreement as demonstrated by a compliance certificate with supporting calculations delivered to the Required Holders on or prior to the date of such Disposition showing the effect of such Disposition;

(b) Any of the following:

(i) Dispositions of obsolete, surplus or worn out property or other property not necessary for operations, whether now owned or hereafter acquired, in the ordinary course of business and for no less than fair market value;

(ii) Dispositions of equipment or real property to the extent that (A) such property is exchanged for credit against the purchase price of

similar replacement property or (B) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property, in each case in the ordinary course of business and for no less than fair market value;

(iii) Dispositions of inventory and Investments of the type described in **Sections 10.9(b)** and **(c)** in the ordinary course of business;

(iv) leases of Real Property (other than any Unencumbered Borrowing Base Property) and personal property assets related thereto to any TRS; and

(v) in order to resolve disputes that occur in the ordinary course of business, the Company and any Subsidiary of the Company may discount or otherwise compromise, for less than the face value thereof, notes or accounts receivable;

(c) Dispositions of property by the Company or any Guarantor to the Company or to another Note Party;

(d) Dispositions pursuant to **Section 10.2**, and

(e) Any other Disposition approved in writing by the Required Holders.

Notwithstanding the foregoing provisions of this **Section 10.7**, neither the Company nor any Guarantor shall sell or make any other Disposition of assets or property that will have the effect of causing the Company or any Guarantor to become liable under any tax protection or tax sharing agreement if the amount of such liability would exceed an amount equal to one percent (1%) of the total assets of the Company or any Guarantor without the prior written consent of the Required Holders.

Section 10.8. Restricted Payments. The Parent REIT and the Company will not declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(a) so long as no Default or Event of Default shall exist at the time of such Restricted Payment or would result therefrom, each Subsidiary may make Restricted Payments to the Company, the Guarantors and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Company and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Company and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests; and

(d) so long as no acceleration shall have occurred, each TRS may make Restricted Payments to its TRS parent entity to the extent necessary to pay any tax liabilities then due (after taking into account any losses, offsets and credits, as applicable); *provided that* any such Restricted Payments by a TRS shall only be made after it has paid all of its operating expenses currently due or anticipated within the current month and next following month.

Notwithstanding the foregoing, the Company and the Guarantors shall be permitted to make Restricted Payments of the type and to the extent permitted pursuant to **Section 10.6(h)** of this Agreement.

Section 10.9. Investments. The Parent REIT and the Company will not make any Investments, except:

(a) Investments by the Company Parties (other than by the Parent REIT) in (i) Unencumbered Borrowing Base Properties, and (ii) other real properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels, and which real properties shall, upon the making of such Investments, be wholly owned by such Company Party;

(b) Investments held by the Company or such Guarantor or other Subsidiary in the form of cash or Cash Equivalents;

(c) Investments existing as of the Closing and set forth in **Schedule 5.15**

(d) Advances to officers, directors and employees of the Company, the Guarantors and other Subsidiaries in aggregate amounts not to exceed (i) $500,000 at any time outstanding for employee relocation purposes, and (ii) $100,000 at any time outstanding for travel, entertainment, and analogous ordinary business purposes;

(e) Investments of (i) the Company in any Guarantor (including (A) Investments by the Company in any private REIT, so long as the Company owns one hundred percent (100%) of the "common" Equity Interests in such private REIT and (B) Investments by the Company in a Guarantor in the form of an intercompany loan), (ii) any Guarantor in the Company or in another Guarantor (including Investments by a Guarantor in the Company or in another Guarantor in the form of an intercompany loan), and (iii) the Company, any Guarantor or any Non-Guarantor Subsidiary in Non-Guarantor Subsidiaries (including Investments by the Company, any Guarantor or any

Non-Guarantor Subsidiary in a Non-Guarantor Subsidiary in the form of an intercompany loan) that own, directly or indirectly, and operate Real Properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels; *provided*, notwithstanding the foregoing or any other provision herein or in any other Note Document to the contrary, the Parent REIT shall not own any Equity Interests in any Person other than the Company;

(f) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(g) Guarantees of Indebtedness which are permitted under the Primary Credit Facilities and so long as the Company is in compliance with Section 9.8;

(h) Other Investments of the Company and its Subsidiaries in:

(i) Real properties consisting of undeveloped or speculative land (valued at cost for purposes of this **clause (h)**) with an aggregate value not greater than five percent (5%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Company or such Subsidiary;

(ii) Incoming-producing real properties (other than hotels or similar hospitality properties) (valued at cost for purposes of this **clause (h)**) with an aggregate value not greater than ten percent (10%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Company or such Subsidiary;

(iii) Development/Redevelopment Properties (valued at cost for purposes of this **clause (h)**; provided that all costs and expenses associated with all existing development activities with respect to such Development/Redevelopment Properties (budget to completion) shall be included in determining the aggregate Investment of the Company or such Subsidiary with respect to such activities) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value and which Development/Redevelopment Properties shall, upon the making of such Investments, be wholly owned by the Company or such Subsidiary and;

(iv) Unconsolidated Affiliates (valued at cost for purposes of this **clause (h)**) with an aggregate value not greater than twenty percent (20%) of Consolidated Total Asset Value;

(v) mortgage or real estate-related loan assets (valued at cost for purposes of this **clause (h)**) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value; and

(vi) Equity Interests (including preferred Equity Interests) in any Person (other than any Affiliate of the Company) (valued at cost for purposes of this **clause (h)**) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value; *provided, however*, that the collective aggregate value of the Investments owned pursuant to **items (i)** through **(vi)** of this **clause (h)** above shall not at any time exceed thirty-five percent (35%) of Consolidated Total Asset Value.

Although it will not be a Default or an Event of Default if the Company fails to comply with any provision of **Section 10** on or after the Execution Date and prior to the Closing, if such failure occurs then any of the Purchasers may elect not to purchase the Notes on the date of the Closing that is specified in **Section 3**.

Section 10.10. Enhanced Negative Covenants. Notwithstanding anything to the contrary contained in this Agreement, during the Waiver Period the Note Parties shall not, nor shall they permit any other Company Party (except where expressly limited to the Company or the Note Parties, as applicable), directly or indirectly, to:

(a) make any Investments other than (i) Investments in one or more new Unencumbered Borrowing Base Properties (or in Equity Interests in Subsidiaries that own or will own new Unencumbered Borrowing Base Properties) solely with the proceeds of Excluded Net Proceeds or (ii) any other Investments otherwise permitted pursuant to **Section 10.9** not to exceed $100,000,000 in the aggregate;

(b) make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than (i) in connection with emergency repairs, life safety repairs or ordinary course maintenance repairs (ii) capital expenditures to complete ongoing renovations in an amount not to exceed ~~$90,000,000~~155,000,000 in the aggregate during the period commencing with the Fourth Amendment Effective Date through the remainder of the Waiver Period;

(c) create, incur, assume or suffer to exist any Indebtedness not existing and permitted as of the Second Amendment Effective Date other than (i) to the extent the proceeds of such Indebtedness are used to fully or partially refinance or replace Indebtedness existing and permitted as of the Second Amendment Effective Date ~~and pursuant to which the Company has made the mandatory offer to purchase required pursuant to **Section 8.9**~~; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this clause (c)(i) be earlier than the existing maturity date of the Indebtedness being refinanced or replaced; provided further, that any amounts in excess of the amounts used to fully or partially refinance or replace Indebtedness are otherwise permitted to be incurred pursuant to this **Section 10.10(c)**, (ii) Secured Non-Recourse Debt not to exceed $250,000,000 in the aggregate and pursuant to which the Company has made the mandatory offer to purchase pursuant to **Section 8.9**; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under

this clause (c)(ii) be earlier than one (1) year after the Maturity Date of the Notes, or (iii) Indebtedness that is recourse to ~~a~~one or more Company ~~Party not to exceed $250,000,000 in the aggregate~~Parties and pursuant to which the Company has made the mandatory offer to purchase pursuant to **Section 8.9**; provided, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this clause (c)(iii) (other than (A) increases of any Indebtedness under any Material Credit Facility pursuant to the terms thereof and (B) Indebtedness under a 364-day facility not to exceed $100,000,000) be earlier than one (1) year after the Maturity Date of the Notes;

(d) make any Disposition other than Dispositions (i) permitted by **Section 10.7(b)(i)**, **(ii)**, **(iii)** and **(iv)**, or **(ii)** to a Person that is not a Note Party or Related Party of any Consolidated Party, (A) for fair market value in an arms' length transaction, (B) in which the price for such asset shall be paid to a Consolidated Party solely in cash, and (C) pursuant to which the Company has made the mandatory offer to purchase, if any, required pursuant to **Section 8.9**;

(e) declare or make any Restricted Payments other than (i) Restricted Payments to the holders of the common Equity Interests in the Parent REIT of not more than $0.01 per share, (ii) Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain the Parent REIT's status as a REIT, (iii) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Restricted Payments with respect to any preferred Equity Interests, (iv) Restricted Payments by Subsidiaries of the Company to Company and by Company to the Parent REIT the proceeds of which are used by the Parent REIT to make Restricted Payments permitted by clauses (i) through (iii) preceding and (v) the purchase or redemption by the Parent REIT of its preferred Equity Interests solely with Net Cash Proceeds from Permitted Preferred Issuances;

(f) voluntarily prepay (i) the principal amount of any Permitted Convertible Notes other than pursuant to a conversion thereof into Equity Interests of the Parent REIT~~;~~ or (ii) any Indebtedness incurred after the Fourth Amendment Effective Date;

(g) create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, not existing and permitted as of the Second Amendment Effective Date other than (i) Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement, (ii) Liens permitted by **Sections 10.5(d)**, **(e)**, **(f)**, **(g)**, **(h)**, **(i)**, **(j)** and **(n)**, (iii) Liens securing Indebtedness permitted under **Section 10.10(c)(i)**; provided that (A) the amount secured or benefited thereby is not increased except as contemplated by Section 7.03(b) of the Bank of America Credit Facility, (B) the direct or any contingent obligor with respect thereto is not changed, (C) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.03(b) of the Bank of America Credit Facility, and (D) to the extent such existing Indebtedness being refinanced or replaced is Secured Debt, incurred to refinance or replace Secured Debt secured by the same property or assets, and (iv) Liens securing Indebtedness permitted under **Section 10.10(c)(ii)**; or

(h) enter into any Contractual Obligation (other than this Agreement) that limits the ability of the Company to make any prepayment offers hereunder, including for avoidance of doubt, **Section 8.10** or **Section 8.11**.

SECTION 11. EVENTS OF DEFAULT.

An **"Event of Default"** shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Company defaults in the payment of any principal or Make-Whole Amount, if any, on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Company defaults in the payment of any interest on any Note for more than five Business Days after the same becomes due and payable; or

(c) the Company or the Parent REIT defaults in the performance of or compliance with any term contained in **Section 7.1(d)** or **Section 10**; or

(d) the Company or any Subsidiary Guarantor defaults in the performance of or compliance with any term contained herein (other than those referred to in **Sections 11(a)**, **(b)** and **(c)**) or in any Subsidiary Guaranty and such default is not remedied within 30 days after the earlier of (i) a Responsible Officer obtaining actual knowledge of such default and (ii) the Company receiving written notice of such default from any holder of a Note (any such written notice to be identified as a "notice of default" and to refer specifically to this **Section 11(d)**); provided that if the auditor's opinion accompanying any audited financial statements is subject to any "going concern" or like qualification or exception, then the Parent REIT shall have a period of 45 days from the delivery date of such statements for the auditor to reissue its opinion without any "going concern" or like qualification or exception; or

(e) (i) any representation or warranty made in writing by or on behalf of the Company or by any officer of the Company in this Agreement or any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made, or (ii) any representation or warranty made in writing by or on behalf of any Subsidiary Guarantor or by any officer of such Subsidiary Guarantor in any Subsidiary Guaranty or any writing furnished in connection with such Subsidiary Guaranty proves to have been false or incorrect in any material respect on the date as of which made; or

(f) (i) the Company or any Subsidiary is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least $25,000,000 beyond any period of grace provided with respect thereto, or (ii) the Company or any Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least $25,000,000 or of

any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests), (x) the Company or any Subsidiary has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least $25,000,000, or (y) one or more Persons have the right to require the Company or any Subsidiary so to purchase or repay such Indebtedness; or

(g) the Company or any Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate action for the purpose of any of the foregoing; or

(h) a court or other Governmental Authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Subsidiaries, or any such petition shall be filed against the Company or any of its Subsidiaries and such petition shall not be dismissed within 60 days; or

(i) one or more final judgments or orders for the payment of money aggregating in excess of $25,000,000, including, without limitation, any such final order enforcing a binding arbitration decision, are rendered against one or more of the Company and its Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay; or

(j) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of section 4001(a)(18) of ERISA) under all

Plans, determined in accordance with Title IV of ERISA, shall exceed an amount that could reasonably be expected to have a Material Adverse Effect, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect. As used in this **Section 11(j)**, the terms **"employee benefit plan"** and **"employee welfare benefit plan"** shall have the respective meanings assigned to such terms in section 3 of ERISA; or

(k) any Affiliate Guaranty shall cease to be in full force and effect, any Subsidiary Guarantor or any Person acting on behalf of any Guarantor shall contest in any manner the validity, binding nature or enforceability of any Affiliate Guaranty, or the obligations of any Guarantor under any Affiliate Guaranty are not or cease to be legal, valid, binding and enforceable in accordance with the terms of such Affiliate Guaranty; or

(l) any Collateral Document shall for any reason fail to create a valid and perfected security interest in any portion of the Collateral purported to be covered thereby, with the priority required by the applicable Collateral Document, except as (i) permitted by the terms of any Note Document or (ii) as a result of the release of such security interest in accordance with the terms of any Note Document, it being understood and agreed that the failure of the Collateral Agent to maintain possession of any Collateral actually delivered to it or file any UCC (or equivalent) continuation statement shall not result in an Event of Default under this **clause (l)**.

SECTION 12. REMEDIES ON DEFAULT, ETC.

Section 12.1. Acceleration. (a) If an Event of Default with respect to the Parent REIT or the Company described in **Section 11(g)** or **(h)** (other than an Event of Default described in clause (i) of **Section 11(g)** or described in clause (vi) of **Section 11(g)** by virtue of the fact that such clause encompasses clause (i) of **Section 11(g)**) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any other Event of Default has occurred and is continuing, the Required Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) If any Event of Default described in **Section 11(a)** or **(b)** has occurred and is continuing, any holder or holders of Notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to the Company, declare all the Notes held by it or them to be immediately due and payable.

Upon any Notes becoming due and payable under this **Section 12.1**, whether automatically or by declaration, such Notes will forthwith mature and the entire unpaid principal amount of such Notes, plus (x) all accrued and unpaid interest thereon (including, but not limited to, interest accrued thereon at the Default Rate) and (y) the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Parent REIT and the Company acknowledge, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default, is intended to provide compensation for the deprivation of such right under such circumstances.

Section 12.2. Other Remedies. If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under **Section 12.1**, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note or in any Affiliate Guaranty, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

Section 12.3. Rescission. At any time after any Notes have been declared due and payable pursuant to **Section 12.1(b)** or **(c)**, the Required Holders in principal amount of the Notes then outstanding, by written notice to the Company, may rescind and annul any such declaration and its consequences if (a) the Parent REIT and the Company have paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, on any Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Notes, at the applicable Default Rate, (b) neither the Parent REIT, the Company nor any other Person shall have paid any amounts which have become due solely by reason of such declaration, (c) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to **Section 17**, and (d) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Notes. No rescission and annulment under this **Section 12.3** will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

Section 12.4. No Waivers or Election of Remedies, Expenses, Etc. No course of dealing and no delay on the part of any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement, any Affiliate Guaranty or any Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Parent REIT and the Company under **Section 15**, the Company will pay to the holder of each Note on demand such further amount as shall be

sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this **Section 12**, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

SECTION 13. PARENT GUARANTY, ETC.

Section 13.1. Parent Guaranty. The Parent REIT hereby irrevocably, absolutely and unconditionally guarantees as primary obligors and not as surety to each holder of any Note or Notes at any time outstanding the prompt payment in full, in Dollars, when due (whether at stated maturity, by acceleration, by mandatory or optional prepayment or otherwise) of the principal of and Make-Whole Amount (if any) and interest on the Notes (including interest on any overdue principal and Make-Whole Amount (if any) and interest at the Default Rate (if any) and interest accruing at the then applicable rate provided in the Notes after the filing of any petition in bankruptcy, or the commencement of any insolvency reorganization or like proceeding, relating to the Company, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) and all other amounts from time to time owing by the Company under this Agreement and the other Note Documents to any holder (including costs, expenses and taxes) (such payments being herein collectively called the **"Guaranteed Obligations"**). The Parent REIT hereby further agrees that if the Company shall default in the payment of any of the Guaranteed Obligations (after giving effect to all applicable grace and cure periods), the Parent REIT will (x) promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration, by mandatory prepayment or otherwise) in accordance with the terms of such extension or renewal and (y) pay to the holder of any Note such amounts, to the extent lawful, as shall be sufficient to pay the costs and expenses of collection or of otherwise enforcing any of such holder's rights under this Agreement, including reasonable counsel fees. All obligations of the Parent REIT under this **Section 13** shall be referred to as the **"Parent Guaranty"** and shall survive the transfer of any Note. Any obligations of the Parent REIT under this **Section 13** with respect to which the underlying obligation of the Company is expressly stated to survive payment of any Note shall also survive payment of such Note.

Section 13.2. Obligations Unconditional. (a) The obligations of the Parent REIT under **Section 13.1** constitute a present and continuing guaranty of payment and not collectibility and are absolute, unconditional and irrevocable, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of the Company under this Agreement, the other Note Documents or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, other than the payment in full in Dollars of the Guaranteed Obligations. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Parent REIT hereunder which shall remain absolute and unconditional as described above:

(i) any amendment, modification, compromise, release or extension of any provision of this Agreement, the other Note Documents or any assignment or transfer thereof, including the renewal or extension of the time of payment of any of the Notes or the granting of time in respect of such payment thereof, or of any furnishing or acceptance of security or any additional guarantee or any release of any security or guarantee so furnished or accepted for any of the Notes;

(ii) any waiver, consent, extension, granting of time, forbearance, indulgence or other action or inaction under or in respect of this Agreement or the other Note Documents, or any exercise or non-exercise of any right, remedy or power in respect hereof or thereof;

(iii) any bankruptcy, receivership, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceedings with respect to the Company or any other Person or the properties or creditors of any of them;

(iv) the occurrence of any Default or Event of Default under, or any invalidity or any unenforceability of, or any misrepresentation, irregularity or other defect in, this Agreement, the other Note Documents or any other agreement or the failure to give notice to the Company or the Parent REIT of the occurrence of any Default or Event of Default under the terms and provisions of this Agreement;

(v) any transfer of any assets to or from the Company, including any transfer or purported transfer to the Company from any Person, any invalidity, illegality of, or inability to enforce, any such transfer or purported transfer, any consolidation or merger of the Issuer with or into any Person, any change in the ownership of any Equity Interests of the Company, or any change whatsoever in the objects, capital structure, constitution or business of the Company;

(vi) any default, failure or delay, willful or otherwise, on the part of the Company or any other Person to perform or comply with, or the impossibility or illegality of performance by the Company or any other Person of, any term of this Agreement, the other Note Documents or any other agreement;

(vii) any suit or other action brought by, or any judgment in favor of, any beneficiaries or creditors of, the Company or any other Person for any reason whatsoever, including any suit or action in any way attacking or involving any issue, matter or thing in respect of this Agreement, the other Note Documents or any other agreement;

(viii) any lack or limitation of status or of power, incapacity or disability of the Company or any trustee or agent thereof; or

(ix) the power or authority or the lack of power or authority of any Company Party to issue the Notes or to execute and deliver this Agreement or the other Note Documents, as the case may be, and irrespective of the validity of the Notes, this Agreement or the other Note Documents or of any defense whatsoever that any Company

Party may or might have to the payment of the Notes (principal, interest and Make-Whole Amount, if any), or to the performance or observance of any of the provisions or conditions of this Agreement or the other Note Documents, or the existence or continuance of any Company Party as a legal entity;

(x) any failure to present the Notes for payment or to demand payment thereof, or to give the Company or the Parent REIT notice of dishonor for non-payment of the Notes, when and as the same may become due and payable, or notice of any failure on the part of the Company to do any act or thing or to perform or to keep any covenant or agreement by it to be done, kept or performed under the terms of the Notes or this Agreement;

(xi) any other thing, event, happening, matter, circumstance or condition whatsoever (other than the irrevocable payment in full in Dollars of the Guaranteed Obligations), not in any way limited to the foregoing.

provided that the specific enumeration of the above-mentioned acts, failures or omissions shall not be deemed to exclude any other acts, failures or omissions, though not specifically mentioned above, it being the purpose and intent of this paragraph that the obligations of the Parent REIT hereunder shall be absolute and unconditional and shall not be discharged, impaired or varied except by the payment to the holders thereof of the principal of, Make-Whole Amount, if any, and interest on the Notes, and of all other sums due and owing to the holders of the Notes pursuant to this Agreement and the Notes, and then only to the extent of such payments in Dollars. Without limiting any of the other terms or provisions hereof, it is understood and agreed that in order to hold the Parent REIT liable hereunder, there shall be no obligation on the part of any holder of any Note to resort, in any manner or form, for payment, to the Company or to any other Person or to the properties or estates of any of the foregoing. All rights of the holder of any Note pursuant thereto or to this Agreement may be transferred or assigned at any time or from time to time and shall be considered to be transferred or assigned upon the transfer of such Note, whether with or without the consent of or notice to the Parent REIT or the Company. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, the Company shall default under the terms of the Notes or this Agreement and that notwithstanding recovery hereunder for or in respect of any given default or defaults by the Company under the Notes or this Agreement the obligations of the Parent REIT under this **Section 13** shall remain in full force and effect and shall apply to each and every subsequent default.

(b) The Parent REIT hereby unconditionally waives diligence, presentment, demand of payment, protest and all notices whatsoever and any requirement that any holder of a Note exhaust any right, power or remedy against the Company under this Agreement, the other Note Documents or any other agreement or instrument referred to herein or therein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

(c) In the event that the Parent REIT shall at any time pay any amount on account of the Guaranteed Obligations or take any other action in performance of its obligations hereunder, the Parent REIT shall not exercise any subrogation or other rights hereunder or under the Notes

and the Parent REIT hereby waives all rights it may have to exercise any such subrogation or other rights, and all other remedies that it may have against the Company, in respect of any payment made hereunder unless and until the Guaranteed Obligations shall have been paid in full in Dollars. If any amount shall be paid to the Parent REIT on account of any such subrogation rights or other remedy, notwithstanding the waiver thereof, such amount shall be received in trust for the benefit of the holders of the Notes and shall forthwith be paid to such holders to be credited and applied upon the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof. The Parent REIT agrees that its obligations under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment (including payment in full) by or on behalf of the Company is rescinded or must be otherwise restored by any holder of a Note, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, all as though such amount had not been paid.

(d) If an event permitting the acceleration of the maturity of the principal amount of the Notes shall at any time have occurred and be continuing and such acceleration (and the effect thereof on the Guaranteed Obligations) shall at such time be prevented by reason of the pendency against the Company or any other Person of a case or proceeding under a bankruptcy or insolvency law, the Parent REIT agrees that, for purposes of the guarantee in this **Section 13** and the Parent REIT's obligations under this Agreement, the maturity of the principal amount of the Notes, as applicable, shall be deemed to have been accelerated (with a corresponding effect on the Guaranteed Obligations) with the same effect as if the holders of the Notes had accelerated the same in accordance with the terms of this Agreement, and the Parent REIT shall forthwith pay such principal amount, any interest thereon, any Make-Whole Amount and any other amounts guaranteed hereunder without further notice or demand.

(e) The guarantee in this **Section 13** is a continuing guarantee and shall apply to the Guaranteed Obligations whenever arising. Each default in the payment or performance of any of the Guaranteed Obligations shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.

Section 13.3. Marshalling and Accounts. (a) None of the holders of the Notes shall be under any obligation (i) to marshal any assets in favor of the Parent REIT or in payment of any or all of the liabilities of the Company under or in respect of the Notes and this Agreement or the obligation of the Parent REIT hereunder or (ii) to pursue any other remedy that the Parent REIT may or may not be able to pursue itself and that may lessen the Parent REIT's burden or any right to which the Parent REIT hereby expressly waives.

(b) Until all amounts which may be or become payable by the Company under or in connection with the Notes have been irrevocably paid in full in Dollars while an Event of Default is continuing, any moneys received from the Parent REIT under this Agreement may be held in an interest-bearing bank account.

(c) This guarantee is in addition to and is not in any way prejudiced by any other guarantee (including, without limitation, any Subsidiary Guaranty) now or subsequently held by a holder of a Note.

Section 13.4. General Limitation on Guarantee Obligations.

In any action or proceeding involving any state or provincial corporate law, or any foreign, state, provincial or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of the Parent REIT under **Section 13.1** would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 13.1**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by the Parent REIT, any holder or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

SECTION 14. REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.

Section 14.1. Registration of Notes. The Company shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. If any holder of one or more Notes is a nominee, then (a) the name and address of the beneficial owner of such Note or Notes shall also be registered in such register as an owner and holder thereof and (b) at any such beneficial owner's option, either such beneficial owner or its nominee may execute any amendment, waiver or consent pursuant to this Agreement. Prior to due presentment for registration of transfer, the Person(s) in whose name any Note(s) shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Note that is an Institutional Investor promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

Section 14.2. Transfer and Exchange of Notes. Upon surrender of any Note to the Company at the address and to the attention of the designated officer (all as specified in **Section 19(iii)**), for registration of transfer or exchange (and in the case of a surrender for registration of transfer accompanied by a written instrument of transfer duly executed by the registered holder of such Note or such holder's attorney duly authorized in writing and accompanied by the relevant name, address and other information for notices of each transferee of such Note or part thereof), within ten Business Days thereafter, the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new Notes (as requested by the holder thereof) of the same Series in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of **Schedule 1(a)** or **1(b)**, as applicable. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of Notes. Notes shall not be transferred in denominations of less than **$100,000**, *provided* that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than **$100,000**. Any transferee, by its acceptance of a

Note registered in its name (or the name of its nominee), shall be deemed to have made the representation set forth in **Section 6.2**.

Section 14.3. Replacement of Notes. Upon receipt by the Company at the address and to the attention of the designated officer (all as specified in **Section 19(iii)**) of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Note is, or is a nominee for, an original Purchaser or another holder of a Note with a minimum net worth of at least $30,000,000 or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

within ten Business Days thereafter, the Company at its own expense shall execute and deliver, in lieu thereof, a new Note of the same Series, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

SECTION 15. PAYMENTS ON NOTES.

Section 15.1. Place of Payment. Subject to **Section 15.2**, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made in New York, New York at the principal office of U.S. Bank, N.A. in such jurisdiction. The Company may at any time, by notice to each holder of a Note, change the place of payment of the Notes so long as such place of payment shall be either the principal office of the Company in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

Section 15.2. Home Office Payment. So long as any Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in **Section 15.1** or in such Note to the contrary, the Company will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, interest and all other amounts becoming due hereunder by the method and at the address specified for such purpose below such Purchaser's name in **Schedule B**, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any Note, such Purchaser shall surrender such Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to **Section 15.1**. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Company in exchange for a new Note or Notes

pursuant to **Section 14.2**. The Company will afford the benefits of this **Section 15.2** to any Institutional Investor that is the direct or indirect transferee of any Note purchased by a Purchaser under this Agreement and that has made the same agreement relating to such Note as the Purchasers have made in this **Section 15.2**.

SECTION 16. EXPENSES, ETC.

Section 16.1. Transaction Expenses. Whether or not the transactions contemplated hereby are consummated, the Company will pay all costs and expenses (including reasonable attorneys' fees of a special counsel and, if reasonably required by the Required Holders, local or other counsel) incurred by the Purchasers and each other holder of a Note in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement, any Subsidiary Guaranty or the Notes (whether or not such amendment, waiver or consent becomes effective) within 15 Business Days after the Company's receipt of an invoice therefor, including, without limitation: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, any Subsidiary Guaranty or the Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, any Subsidiary Guaranty or the Notes, or by reason of being a holder of any Note, (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes and any Subsidiary Guaranty and (c) the costs and expenses incurred in connection with the initial filing of this Agreement and all related documents and financial information with the SVO *provided,* that such costs and expenses under this clause (c) shall not exceed $3,500 for each Series. The Company will pay, and will save each Purchaser and each other holder of a Note harmless from, (i) all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those, if any, retained by a Purchaser or other holder in connection with its purchase of the Notes) and (ii) any and all wire transfer fees that any bank deducts from any payment under such Note to such holder or otherwise charges to a holder of a Note with respect to a payment under such Note.

Section 16.2. Survival. The obligations of the Company under this **Section 16** will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement, any Subsidiary Guaranty or the Notes, and the termination of this Agreement.

SECTION 17. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Notes, the purchase or transfer by any Purchaser of any Note or portion thereof or interest therein and the payment of any Note, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of such Purchaser or any other holder of a Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company pursuant to this Agreement shall be

deemed representations and warranties of the Company under this Agreement. Subject to the preceding sentence, this Agreement, the Notes and any Subsidiary Guaranties embody the entire agreement and understanding between each Purchaser and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

SECTION 18. AMENDMENT AND WAIVER.

Section 18.1. Requirements. This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), only with the written consent of the Company and the Required Holders, except that:

(a) no amendment or waiver of any of **Sections 1**, **2**, **3**, **4**, **5**, **6** or **22** hereof, or any defined term (as it is used therein), will be effective as to any Purchaser unless consented to by such Purchaser in writing; and

(b) no amendment or waiver may, without the written consent of each Purchaser and the holder of each Note at the time outstanding, (i) subject to **Section 12** relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of (x) interest on the Notes or (y) the Make-Whole Amount, (ii) change the percentage of the principal amount of the Notes the holders of which are required to consent to any amendment or waiver, or the principal amount of the Notes that the Purchasers are to purchase pursuant to **Section 2** upon the satisfaction of the conditions to Closing that appear in **Section 4**, or (iii) amend any of **Sections 8 (**except as set forth in the second sentence of **Section 8.2) 11(a)**, **11(b)**, **12**, **18** or **21**.

Section 18.2. Solicitation of Holders of Notes. (a) *Solicitation.* The Company will provide each Purchaser and holder of a Note with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Purchaser and such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes or any Subsidiary Guaranty. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this **Section 18** or any Subsidiary Guaranty to each Purchaser and holder of a Note promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Purchasers or holders of Notes.

(b) *Payment.* The Company will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security or provide other credit support, to any Purchaser or holder of a Note as consideration for or as an inducement to the entering into by such Purchaser or holder of any waiver or amendment of any of the terms and provisions hereof or of any Subsidiary Guaranty or any Note unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each Purchaser and each holder of a Note even if such Purchaser or holder did not consent to such waiver or amendment.

(c) *Consent in Contemplation of Transfer*. Any consent given pursuant to this **Section 18** or any Subsidiary Guaranty by a holder of a Note that has transferred or has agreed to transfer its Note to the Company, any Subsidiary or any Affiliate of the Company in connection with such consent shall be void and of no force or effect except solely as to such holder, and any amendments effected or waivers granted or to be effected or granted that would not have been or would not be so effected or granted but for such consent (and the consents of all other holders of Notes that were acquired under the same or similar conditions) shall be void and of no force or effect except solely as to such holder.

Section 18.3. Binding Effect, Etc. Any amendment or waiver consented to as provided in this **Section 18** or any Subsidiary Guaranty applies equally to all Purchasers and holders of Notes and is binding upon them and upon each future holder of any Note and upon the Company without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company and any Purchaser or holder of a Note and no delay in exercising any rights hereunder or under any Note or Subsidiary Guaranty shall operate as a waiver of any rights of any Purchaser or holder of such Note.

Section 18.4. Notes Held by Company, Etc. Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement, any Subsidiary Guaranty or the Notes, or have directed the taking of any action provided herein or in any Subsidiary Guaranty or the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Affiliates shall be deemed not to be outstanding.

SECTION 19. NOTICES.

Except to the extent otherwise provided in **Section 7.4**, all notices and communications provided for hereunder shall be in writing and sent (a) by telecopy if the sender on the same day sends a confirming copy of such notice by an internationally recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by an internationally recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to any Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications in **Schedule B**, or at such other address as such Purchaser or nominee shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iii) if to the Parent REIT or the Company, to the Company at its address set forth at the beginning hereof to the attention of Finance Department, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this **Section 19** will be deemed given only when actually received.

SECTION 20. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at the Closing (except the Notes themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, electronic, digital, or other similar process and such Purchaser may destroy any original document so reproduced. The Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This **Section 20** shall not prohibit the Company or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

SECTION 21. CONFIDENTIAL INFORMATION.

For the purposes of this **Section 21**, **"Confidential Information"** means information delivered to any Purchaser by or on behalf of the Parent REIT, the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of the Parent REIT, the Company or such Subsidiary, provided that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on such Purchaser's behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under **Section 7.1** that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser, provided that such Purchaser may deliver or disclose Confidential Information to (i) its directors, officers, employees, agents, attorneys, trustees and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by its Notes), (ii) its auditors, financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with this **Section 21**, (iii) any other holder of any Note, (iv) any Institutional Investor to which it sells or offers to sell such Note or any part thereof or any participation therein (if such Person has agreed

in writing prior to its receipt of such Confidential Information to be bound by this **Section 21**), (v) any Person from which it offers to purchase any Security of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this **Section 21**, (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the NAIC or the SVO or, in each case, any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser's investment portfolio, or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's Notes, this Agreement or any Subsidiary Guaranty. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this **Section 21** as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying this **Section 21**.

In the event that as a condition to receiving access to information relating to the Parent REIT, the Company or its Subsidiaries in connection with the transactions contemplated by or otherwise pursuant to this Agreement, any Purchaser or holder of a Note is required to agree to a confidentiality undertaking (whether through IntraLinks, another secure website, a secure virtual workspace or otherwise) which is different from this **Section 21**, this **Section 21** shall not be amended thereby and, as between such Purchaser or such holder and the Parent REIT and the Company, this **Section 21** shall supersede any such other confidentiality undertaking.

SECTION 22. SUBSTITUTION OF PURCHASER.

Each Purchaser shall have the right to substitute any one of its Affiliates or another Purchaser or any one of such other Purchaser's Affiliates (a **"Substitute Purchaser"**) as the purchaser of the Notes that it has agreed to purchase hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Substitute Purchaser, shall contain such Substitute Purchaser's agreement to be bound by this Agreement and shall contain a confirmation by such Substitute Purchaser of the accuracy with respect to it of the representations set forth in **Section 6**. Upon receipt of such notice, any reference to such Purchaser in this Agreement (other than in this **Section 22**), shall be deemed to refer to such Substitute Purchaser in lieu of such original Purchaser. In the event that such Substitute Purchaser is so substituted as a Purchaser hereunder and such Substitute Purchaser thereafter transfers to such original Purchaser all of the Notes then held by such Substitute Purchaser, upon receipt by the Company of notice of such transfer, any reference to such Substitute Purchaser as a "Purchaser" in this Agreement (other than in this **Section 22**), shall no longer be deemed to refer to such Substitute Purchaser, but shall refer to such original Purchaser, and such original Purchaser shall again have all the rights of an original holder of the Notes under this Agreement.

SECTION 23. MISCELLANEOUS.

Section 23.1. Successors and Assigns. All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not.

Section 23.2. Accounting Terms.

(a) All accounting terms used herein which are not expressly defined in this Agreement have the meanings respectively given to them in accordance with GAAP. Except as otherwise specifically provided herein, (i) all computations made pursuant to this Agreement shall be made in accordance with GAAP, and (ii) all financial statements shall be prepared in accordance with GAAP. For purposes of determining compliance with this Agreement (including, without limitation, **Section 9**, **Section 10** and the definition of **"Indebtedness"**), any election by the Company to measure any financial liability using fair value (as permitted by Financial Accounting Standards Board Accounting Standards Codification Topic No. 825-10-25 – *Fair Value Option,* International Accounting Standard 39 – *Financial Instruments: Recognition and Measurement* or any similar accounting standard) shall be disregarded and such determination shall be made as if such election had not been made.

(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 Note Document, and either the Company or the Required Holders shall so request, the holders of Notes and the Company 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 Holders); *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 Company shall provide to the holders of Notes financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) **Financial Covenant Calculation Conventions**. Notwithstanding the above, the parties hereto acknowledge and agree that, for purposes of all calculations made under the financial covenants set forth in **Section 10.6** (including without limitation for purposes of the definitions of "Pro Forma Basis" set forth in **Schedule A**, (i) after consummation of any Disposition or removal of an Unencumbered Borrowing Base Property (A) income statement items (whether income or expense) and capital expenditures attributable to the property disposed of or removed shall, to the extent not otherwise excluded in such income statement items for the Company Parties in accordance with GAAP or in accordance with any defined terms set forth in **Schedule A**, be excluded as of the first day of the applicable period and (B) Indebtedness which is retired shall be excluded and deemed to have been retired as of the first day of the applicable period and (ii) after consummation of any acquisition (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall, to the extent not otherwise included in such income

statement items for the Company Parties in accordance with GAAP or in accordance with any defined terms set forth in **Schedule A** be included to the extent relating to any period applicable in such calculations, (B) to the extent not retired in connection with such acquisition, Indebtedness of the Person or property acquired shall be deemed to have been incurred as of the first day of the applicable period, (iii) in connection with any incurrence of Indebtedness, any Indebtedness which is retired in connection with such incurrence shall be excluded and deemed to have been retired as of the first day of the applicable period and (iv) pro forma adjustments may be included to the extent that such adjustments would give effect to items that are (1) directly attributable to the relevant transaction, (2) expected to have a continuing impact on the Company Parties and (3) factually supportable (in the opinion of the Required Holders).

Section 23.3. 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 (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 23.4. Construction, Etc. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Section 23.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

Section 23.6. Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would permit the application of the laws of a jurisdiction other than such State.

Section 23.7. Jurisdiction and Process; Waiver of Jury Trial. (a) The Company irrevocably submits to the non-exclusive jurisdiction of any New York State or federal court sitting in the Borough of Manhattan, The City of New York, over any suit, action or proceeding arising out of or relating to this Agreement or the Notes. To the fullest extent permitted by applicable law, the Company irrevocably waives and agrees not to assert, by way of motion, as a defense or otherwise, any claim that it is not subject to the jurisdiction of any such court, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Company consents to process being served by or on behalf of any holder of Notes in any suit, action or proceeding of the nature referred to in **Section 23.7(a)** by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, return receipt requested, to it at its address specified in **Section 19** or at such other address of which such holder shall then have been notified pursuant to said Section. The Company agrees that such service upon receipt (i) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (ii) shall, to the fullest extent permitted by applicable law, be taken and held to be valid personal service upon and personal delivery to it. Notices hereunder shall be conclusively presumed received as evidenced by a delivery receipt furnished by the United States Postal Service or any reputable commercial delivery service.

(c) Nothing in this **Section 23.7** shall affect the right of any holder of a Note to serve process in any manner permitted by law, or limit any right that the holders of any of the Notes may have to bring proceedings against the Company in the courts of any appropriate jurisdiction or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

(d) The parties hereto hereby waive trial by jury in any action brought on or with respect to this Agreement, the Notes or any other document executed in connection herewith or therewith.

Section 23.8. Subordination. If the Company or any other Note Party is now or hereafter becomes indebted to one or more Guarantors including with respect to any Permitted Intercompany Mortgage (such indebtedness and all interest thereon and other obligations with respect thereto being referred to as **"Affiliated Debt"**), then such Affiliated Debt shall be subordinate in all respects to the full payment and performance of the Obligations, and no Guarantor shall be entitled to enforce or receive payment with respect to any Affiliated Debt until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated; *provided* that, so long as no Event of Default has occurred and is continuing, a Guarantor may receive payments with respect to any Affiliated Debt including the payment in full of same. Each Guarantor agrees that any Liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon the Company's or any other Note Party's assets securing the payment of the Affiliated Debt shall be and remain subordinate and inferior to any Liens, security interests, judgment liens, charges or other encumbrances upon the Company's or any other Note Party's assets securing the payment and performance of the Obligations. If an Event of Default exists, then, without the prior written consent of the holders of the Notes, no Guarantor shall exercise or enforce any creditor's rights of any nature against the Company or any other Note Party to collect the Affiliated Debt (other than demand payment therefor) or enforce any such Liens, security interests, judgment liens, charges or other encumbrances. In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving the Company or any applicable Note Party as a debtor, the holders of the Notes have the right and authority, either in their own name or as attorney-in-fact for any applicable Guarantor, to file such proof of debt, claim, petition or other documents and to take such other steps as are necessary to prove its rights hereunder and receive directly from the receiver, trustee or other court custodian, payments,

distributions or other dividends which would otherwise be payable upon the Affiliated Debt. Each Guarantor hereby assigns such payments, distributions and dividends to the holders of the Notes, and irrevocably appoints the each holder of the Notes as its true and lawful attorney-in-fact (which appointment is coupled with an interest) with authority to make and file in the name of such Guarantor any proof of debt, amendment of proof of debt, claim, petition or other document in such proceedings and to receive payment of any sums becoming distributable on account of the Affiliated Debt, and to execute such other documents and to give acquittances therefor and to do and perform all such other acts and things for and on behalf of such Guarantor as may be reasonably necessary in the opinion of the holders of the Notes in order to have the Affiliated Debt allowed in any such proceeding and to receive payments, distributions or dividends of or on account of the Affiliated Debt.

* * * * *

If you are in agreement with the foregoing, please sign the form of agreement on a counterpart of this Agreement and return it to the Company, whereupon this Agreement shall become a binding agreement between you and the Company.

Very truly yours,

Pebblebrook Hotel, L.P.
a Delaware limited partnership

By: Pebblebrook Hotel Trust, a Maryland real estate investment trust, its general partner

By /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Executive Vice President and Chief Financial Officer

Pebblebrook Hotel Trust
a Maryland real estate investment trust,

By /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Executive Vice President and Chief Financial Officer

This Agreement is hereby accepted and agreed to as of the date hereof.

[**Add Purchaser Signature Blocks**]

Defined Terms

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

~~"**2020 Permitted Convertible Notes**" shall mean the Permitted Convertible Notes to be issued by the Parent REIT on or about December 10-21, 2020, as generally described to holders of Notes the week of December 7, 2020.~~

"Additional Surge Date" is defined in **Section 10.6(a)(i)(B).**

"Additional Surge Period" is defined in **Section 10.6(a)(i)(B)**.

"Adjusted NOI" means, as of any date of calculation, the sum of Net Operating Incomes for all Real Properties for the most recently-ended Calculation Period (and, if specifically required, including adjustments for subsequent events or conditions on a Pro Forma Basis).

"**Adjusted Unrestricted Cash**" means, on any date, an amount, not less than zero ($0), equal to the Company Party's Unrestricted Cash *less* (a) with respect to the calculation of the Consolidated Leverage Ratio, $10,000,000, and (b) with respect to the calculation of the Unsecured Leverage Ratio, $100,000,000.

"Affiliate" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, the Person specified. Unless the context otherwise clearly requires, any reference to an "Affiliate" is a reference to an Affiliate of the Company.

"Affiliate Guaranties" means the Parent Guaranty and the Subsidiary Guaranty, and *"Affiliate Guaranty*" means any one of the Affiliate Guaranties.

"Affiliated Debt" has the meaning specified in Section 23.8.

"Agreement" means this Agreement, including all Schedules attached to this Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Anti-Corruption Laws" is defined in **Section 5.16(d)(1)**.

"Anti-Money Laundering Laws" is defined in **Section 5.16(c)**.

"**Attributable Indebtedness**" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"Bank of America Credit Facility" means the agreement referenced in clause (c) of the definition of Material Credit Facility; provided that if the Bank of America Credit Facility shall no longer be in existence, then the discretion given under this Agreement to the Bank of America Credit Facility shall instead be at the discretion of the Required Holders.

"**Bank of America Term Facility**" means the facility evidenced by that certain Credit Agreement, dated as of October 31, 2018, among the Company, the Parent REIT, certain lenders party thereto, and Bank of America, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"**Blocked Person**" is defined in **Section 5.16(a)**.

"Business Day" means (a) for the purposes of **Section 8.6** only, any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed, and (b) for the purposes of any other provision of this Agreement, any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

"Calculation Period" means, as of any date of determination commencing with the delivery of the Required Financial Information for the fiscal quarter ending June 30, 2017, the most recent four (4) fiscal quarter period for which the Company has provided the Required Financial Information; *provided that*, for calculations made on a Pro Forma Basis, the amounts calculated for the applicable Calculation Period shall be adjusted as set forth in **Section 23.2(c)** but shall otherwise relate to the applicable Calculation Period (as defined above).

"Capitalization Rate" shall have the meaning ascribed to such term in the Primary Credit Facilities from time to time, and, if for any reason no Primary Credit Facility then exists or such term is no longer used therein, the Capitalization Rate most recently in effect. Notwithstanding the foregoing, in no event shall the "Capitalization Rate" at any time be less than (a) 6.75% in the case of Real Properties in the central business districts of New York, New York; San Diego, California; San Francisco, California; Washington, D.C.; and Boston, Massachusetts; (b) 6.75% in the case of Los Angeles, California urban Real Properties (including Real Properties located in Santa Monica, California) and LaPlaya Beach Resort & Club; and (c) 7.50% in the case of all other Real Properties.

"**Capital One Facility**" means the facility evidenced by that certain Credit Agreement, dated as of the date hereof, among the Company, the Parent REIT, certain lenders party thereto, and Capital One, National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"**Cash Equivalents**" means any of the following types of Investments, to the extent owned by any Company Party:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of

not more than 360 days from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i)(A) is a lender under the Bank of America Term Facility or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in ***clause (c)*** of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least "Prime-1" (or then equivalent grade) by Moody's or at least "A-1" (or then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of any Company Party, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in **clauses (a)**, **(b)** and **(c)** of this definition.

"**Change in Control**" means an event or series of events by which:

(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 twenty-five percent (25%) or more of the equity securities of the Company or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Company or Parent REIT 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);

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Company or Parent REIT 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 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 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 passage of thirty (30) days from the date upon which any Person or two (2) or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Company or Parent REIT, or control over the equity securities of the Company or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Company or Parent REIT 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) representing twenty-five percent (25%) or more of the combined voting power of such securities.

"CISADA" means the Comprehensive Iran Sanctions, Accountability and Divestment Act.

"Closing" is defined in **Section 3**.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"**Collateral**" is defined in **Section 9.10**.

"**Collateral Agent**" means Truist Bank, a North Carolina banking corporation.

"**Collateral Agency Agreement**" means that certain Collateral Agency Agreement dated as of the Second Amendment Effective Date among the Collateral Agent and the holders of Notes.

"**Collateral Documents**" means, collectively, the Collateral Agency Agreement, the Pledge Agreement, the Intercreditor Agreement and all other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations, including all other security agreements, pledge agreements, deeds of trust, pledges, powers of attorney, consents, assignments, notices, financing statements and all other written matter whether heretofore, now, or hereafter executed by the Company or any of its Subsidiaries and delivered to the Collateral Agent to create, perfect or evidence Liens to secure the Obligations.

"**Collateral Period**" means any period after the Second Amendment Effective Date commencing on the occurrence of a Collateral Trigger Date and ending on the Collateral Release Date.

"**Collateral Release**" is defined in **Section 9.10**.

"**Collateral Release Certificate**" is defined in **Section 9.10**.

"**Collateral Release Date**" means any date after the expiration of the Waiver Period on which (a) no Default or Event of Default is continuing, (b) the Company delivers a Collateral Release Certificate as required by **Section 9.10**, and (c) the Consolidated Leverage Ratio is either (i) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (ii) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to **Section 7.2(a)**.

"**Collateral Trigger Date**" means any date during the Waiver Period, on which (a) the Liquidity of the Consolidated Parties does not exceed $~~300,000,000~~400,000,000 after the Fourth Amendment Effective Date (the "**First Limited Collateral Trigger Event**"), (b) the Liquidity of the Consolidated Parties does not exceed $300,000,000 after the Second Amendment Effective Date (the "**Second Limited Collateral Trigger Event**"), (c) the Liquidity of the Consolidated Parties does not exceed $250,000,000 after the Second Amendment Effective Date, or (~~e~~d) the ~~"~~Total Revolving Credit Outstandings~~" under the Bank of America Credit Facility (as defined therein)~~ exceed $400,000,000 at any time on or after the fourth (4th) Business Day following the Second Amendment Effective Date.

"Company" means Pebblebrook Hotel, L.P., a Delaware limited partnership or any successor that becomes such in the manner prescribed in **Section 10.2**.

"**Company Parties**" means, without duplication, the Parent REIT and its consolidated Subsidiaries (including the Company), and "Company Party" means any one of the Company Parties.

"Confidential Information" is defined in **Section 21**.

"**Consolidated Adjusted EBITDA**" means, for any period, EBITDA less an annual replacement reserve equal to four percent (4.0%) of gross property revenues (excluding revenues with respect to third party space or retail leases).

"**Consolidated Fixed Charge Coverage Ratio**" means, as of any date of determination, the ratio of (a) Consolidated Adjusted EBITDA for the Calculation Period ending on such date to (b) Consolidated Fixed Charges for such period.

"**Consolidated Fixed Charges**" means, for any period, the sum of (a) Consolidated Interest Charges for such period, plus (b) current scheduled principal payments on Consolidated Funded Indebtedness for such period (including, for purposes hereof, current scheduled reductions in commitments, but excluding any payment of principal under the Material Credit Facilities or under this Agreement and any "balloon" payment or final payment at maturity that is significantly larger than the scheduled payments that preceded it), plus (c) dividends and distributions paid in cash on preferred stock by the Company Parties on a consolidated basis and all Unconsolidated Affiliates, if any, for such period, in each case, determined in accordance with GAAP; provided that, to the extent the calculations under **clauses (a)**, **(b)** and **(c)** above

include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Company Party).

"**Consolidated Funded Indebtedness**" means, as of any date of determination, without duplication, the sum of (a) the outstanding principal amount of all obligations of the Company Parties on a consolidated basis, whether current or long-term, for borrowed money (including all obligations hereunder and under the Notes and, without duplication, Affiliate Guaranties) and all obligations of the Company Parties on a consolidated basis evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness of the Company Parties on a consolidated basis, (c) all obligations of the Company Parties on a consolidated basis arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations of the Company Parties on a consolidated basis in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (e) Attributable Indebtedness of the Company Parties on a consolidated basis in respect of capital leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees of the Company Parties on a consolidated basis with respect to outstanding Indebtedness of the types specified in **clauses (a)** through **(e)** above of Persons other than the Parent REIT or any Subsidiary, (g) without duplication, all Indebtedness of the Company Parties on a consolidated basis of the types referred to in **clauses (a)** through **(f)** above of any partnership or joint venture in which the Parent REIT or a Subsidiary is a general partner or joint venturer, and (h) without duplication, the aggregate amount of Unconsolidated Affiliate Funded Indebtedness for all Unconsolidated Affiliates. Notwithstanding the foregoing, Consolidated Funded Indebtedness shall exclude Excluded Capital Leases.

"**Consolidated Interest Charges**" means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Company Parties on a consolidated basis and all Unconsolidated Affiliates, in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Company Parties on a consolidated basis and all Unconsolidated Affiliates with respect to such period under capital leases (other than Excluded Capital Leases) that is treated as interest in accordance with GAAP; provided that, to the extent the calculations under **clauses (a)** and **(b)** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Company Party).

"**Consolidated Leverage Ratio**" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness less Adjusted Unrestricted Cash as of such date to (b) EBITDA for the Calculation Period most recently ended.

"**Consolidated Net Income**" means, for any period, the sum of (a) the net income of the Company Parties on a consolidated basis (excluding extraordinary gains, extraordinary losses

and gains and losses from the sale of assets) for such period, calculated in accordance with GAAP, plus (b) without duplication, an amount equal to the aggregate of net income (excluding extraordinary gains and extraordinary losses) for such period, calculated in accordance with GAAP, of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"**Consolidated Recourse Secured Indebtedness**" means, as of any date of determination, for the Company Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt that is recourse to any Company Party or any Unconsolidated Affiliate (except to the extent such recourse is limited to customary non-recourse carve-outs); provided that, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Company Party).

"**Consolidated Secured Debt**" means, as of any date of determination, for the Company Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt; provided that, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Company Party).

"**Consolidated Tangible Net Worth**" means, as of any date of determination, for the Company Parties on a consolidated basis and all Unconsolidated Affiliates, Shareholders' Equity on that date, minus the amount of Intangible Assets, plus the amount of accumulated depreciation; provided that there shall be excluded from the calculation of "Consolidated Tangible Net Worth" any effects resulting from the application of FASB ASC No. 715: Compensation – Retirement Benefits; provided, further, that, to the extent the calculation of the foregoing amounts includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

"**Consolidated Total Asset Value**" means, without duplication, as of any date of determination, for the Company Parties on a consolidated basis, the sum of: (a) the Operating Property Value of all Real Properties (other than Development/Redevelopment Properties); (b) the amount of all Unrestricted Cash; (c) the book value of all Development/Redevelopment Properties, mortgage or real estate-related loan assets and undeveloped or speculative land; (d) the contract purchase price for all assets under contract for purchase (to the extent included in Indebtedness); and (e) the Company's applicable Unconsolidated Affiliate Interests of the preceding items for its Unconsolidated Affiliates.

"**Consolidated Unsecured Interest Coverage Ratio**" means, as of any date of determination, the ratio of (a) Net Operating Income from the Unencumbered Borrowing Base Properties for the Calculation Period ending on such date to (b) Unsecured Interest Charges for such period; provided that, there shall be excluded from the calculation of Consolidated Unsecured Interest Coverage Ratio: (a) any excess above forty percent (40%) of aggregate Net

Operating Income from the Unencumbered Borrowing Base Properties from any one Major MSA and (b) any excess above thirty-three percent (33%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Other MSA.

"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.

"Controlled Entity" means (i) any of the Subsidiaries of the Company and any of their or the Company's respective Controlled Affiliates and (ii) if the Company has a parent company, such parent company and its Controlled Affiliates.

"**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 an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Default Rate" means that rate of interest that is the greater of (i) 2.00% per annum above the rate of interest ~~stated in clause (a) of the first paragraph of~~currently applicable to the Notes or (ii) 2.00% over the rate of interest publicly announced by U.S. Bank, N.A. in New York, New York as its "base" or "prime" rate.

"**Development/Redevelopment Property**" means Real Property with respect to which development activities are being undertaken by the applicable owner thereof. A Real Property shall cease to be a Development/Redevelopment Property on the last day of the sixth (6th) full fiscal quarter after opening or reopening (or such earlier date as elected by the Company by written notice to the holders of the Notes).

"Disclosure Documents" is defined in **Section 5.3**.

"**Disposition**" or "**Dispose**" means the sale, transfer, license, lease (excluding the lease of any Unencumbered Borrowing Base Property and personal property assets related thereto to any TRS pursuant to a form of Lease approved in the manner required under the Bank of America Credit Facility) or other disposition of any property by any Person (including any sale leaseback transaction), 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. For the avoidance of doubt, leases of personal or Real Property (other than sale and leaseback

transactions) entered into in the ordinary course of business shall not be deemed to be Dispositions.

"**Dividing Person**" is defined in the definition of "Division."

"**Division**" means the division of the assets, liabilities and/or obligations of a Person (the "**Dividing Person**") among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"**Dollar**" and "**$**" mean lawful money of the United States.

"**EBITDA**" means, for any period, the sum of (a) an amount equal to Consolidated Net Income for such period plus (b) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by the Company Parties and Unconsolidated Affiliates for such period, (iii) depreciation and amortization expense of the Company Parties and Unconsolidated Affiliates, (iv) other non-recurring expenses of the Company Parties and Unconsolidated Affiliates reducing such Consolidated Net Income which do not represent a cash item in such period or any future period, (v) without duplication of any of the foregoing, amounts deducted from net income as a result of fees or expenses incurred in connection with acquisitions permitted under this Agreement, that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, (vi) all non-cash items with respect to straight-lining of rents materially decreasing Consolidated Net Income for such period, and (vii) all other non-cash items decreasing Consolidated Net Income (including non-cash expenses or losses with respect to Excluded Capital Leases), minus (c) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits of the Company Parties and Unconsolidated Affiliates for such period, (ii) all non-cash items with respect to straight-lining of rents materially increasing Consolidated Net Income for such period, and (iii) all other non-cash items increasing Consolidated Net Income for such period (including non-cash revenues or gains with respect to Excluded Capital Leases); provided that, to the extent the calculations under **clauses (a)**, **(b)** and **(c)** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests. **"EDGAR"** means the SEC's Electronic Data Gathering, Analysis and Retrieval System or any successor SEC electronic filing system for such purposes

"**Eligible Ground Lease**" means a ground or similar building lease with respect to an Unencumbered Borrowing Base Property executed by the Company or a Subsidiary of the Company, as lessee, (a) that has a remaining lease term (including extension or renewal rights) of at least thirty-five (35) years, calculated as of the date such property becomes an Unencumbered Borrowing Base Property, (b) that is in full force and effect, (c) that may be transferred and/or assigned without the consent of the lessor (or as to which (i) such lease may be transferred and/or assigned with the consent of the lessor and (ii) such consent shall not be unreasonably withheld

or delayed or is subject to certain customary and reasonable requirements), and (d) pursuant to which (i) no default or terminating event exists thereunder, and (ii) no event has occurred which but for the passage of time, or notice, or both would constitute a default or terminating event thereunder.

"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 but not limited to those related to Hazardous Materials.

"**Equity Interests**" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; *provided* that neither Permitted Convertible Notes (prior to conversion thereof) nor Permitted Convertible Notes Swap Contracts shall constitute Equity Interests of the Parent REIT~~.~~.

"Equity Issuance" means the issuance or sale by any Person of any of its Equity Interests or any capital contribution to such Person by any holder of its Equity Interests.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under section 414 of the Code.

"Event of Default" is defined in **Section 11**.

"Excess Un-Reinvested Proceeds" has the meaning specified in the definition of Excluded Net Proceeds.

"Excluded Capital Lease" means any long-term ground lease or building lease that is treated as a capital lease in accordance with GAAP.

"Excluded Net Proceeds" means (a) Net Cash Proceeds from the issuance of any common Equity Interests of the Parent REIT after the Second Amendment Effective Date in an aggregate amount of up to $~~300,000,000~~500,000,000 to be used to acquire one or more Unencumbered Borrowing Base Properties, (b) Net Cash Proceeds of Dispositions after the Second Amendment Effective Date in the aggregate amount of up to $~~200,000,000~~500,000,000

that the Company has designated in writing as being held for reinvestment in one or more new Unencumbered Borrowing Base Properties; *provided* that, if any such Net Cash Proceeds in excess of $200,000,000 are not reinvested in one or more new Unencumbered Borrowing Base Properties on or before March 31, 2022 (the "**Excess Un-Reinvested Proceeds**"), then such Excess Un-Reinvested Proceeds shall no longer be qualified as Excluded Net Proceeds and shall be used to make an offer to prepay the Notes in accordance with Section 8.9, and (c) Net Cash Proceeds from Permitted Preferred Issuances which are contemporaneously (or not later than thirty (30) days after the issuance thereof) being used to redeem existing preferred Equity Interests of the Parent REIT.

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

"Execution Date" is defined in **Section 3.**

"FAS 141R Changes" means those changes made to a buyer's accounting practices by the Financial Accounting Standards Board's Statement of Financial Accounting Standard No. 141R, Business Combinations, which is effective for annual reporting periods that begin in calendar year 2009.

"FFO Distribution Allowance" means, for any fiscal year of the Company Parties, an amount equal to ninety-five percent (95%) of Funds From Operations for such fiscal year.

"Financial Covenant" mean any covenant that relates to one or more numerical measures of the financial condition or results of operations (consolidated or otherwise) of the Company Parties (however expressed and whether stated as a ratio, as a fixed threshold, as an event of default, or otherwise, including, without limitation, financial covenants of the type included in **Section 7.11** of the Primary Credit Facilities) (or any thereof shall be amended, restated or otherwise modified) and such financial covenant would be more beneficial, directly or indirectly, to the holders of the Notes than the financial covenants in **Sections 10.6** of this Agreement as of the Execution Date.

"First Limited Collateral Trigger Event" has the meaning specified in the definition of Collateral Trigger Date.

"Form 10-K" is defined in **Section 7.1(b)**.

"Form 10-Q" is defined in **Section 7.1(a)**.

"Fourth Amendment Effective Date" means February 18, 2021.

"Funds From Operations" means, with respect to the immediately prior fiscal quarter period, Consolidated Net Income, plus depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures as hereafter provided; provided that, to the extent such calculations include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests. Without limiting the foregoing, notwithstanding contrary treatment under GAAP, for purposes hereof, (a) "Funds From Operations" shall include, and be adjusted to take into account, (i) the Parent REIT's interests in unconsolidated partnerships and joint ventures, on the same basis as consolidated partnerships and subsidiaries, as provided in the "white paper" issued in April 2002 by the National Association of Real Estate Investment Trusts, as may be amended from time to time, and (ii) amounts deducted from net income as a result of pre-funded fees or expenses incurred in connection with acquisitions permitted under the Note Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, and (b) net income (or loss) of the Company Parties on a consolidated basis shall not include gains (or, if applicable, losses) resulting from or in connection with (i) restructuring of indebtedness, (ii) sales of property, (iii) sales or redemptions of preferred stock, (iv) non-cash asset impairment charges or (v) other non-cash items including items with respect to Excluded Capital Leases.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States of America.

"Glass Houses" means Glass Houses, a Maryland real estate investment trust.

"Governmental Authority" means

(a) the government of

(i) the United States of America or any state or other political subdivision thereof, or

(ii) any other jurisdiction in which any Company Party conducts all or any part of its business, or which asserts jurisdiction over any properties of any Company Party, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"Governmental Official" means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of a political

party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

"Guarantors" means, collectively, (a) the Parent REIT and (b) each of the Subsidiary Guarantors.

"Guaranty" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or

(d) otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any Guaranty, the indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

"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 Laws**.**

"holder" means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to **Section 14.1**, *provided, however,* that if such Person is a nominee, then for the purposes of **Sections 7**, **12**, **18.2** and **19** and any related definitions in this **Schedule A**, "holder" shall mean the beneficial owner of such Note whose name and address appears in such register.

"Immaterial Subsidiary" means any Subsidiary whose assets constitute less than one percent (1%) of Consolidated Total Asset Value; *provided that* if at any time the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" exceeds ten percent (10%) of

all Consolidated Total Asset Value, then the Company shall designate certain "Immaterial Subsidiaries" as Guarantors such that the aggregate Consolidated Total Asset Value of the "Immaterial Subsidiaries" which are not Guarantors does not exceed ten percent (10%) of all Consolidated Total Asset Value.

"Incorporated Covenant" is defined in **Section 9.9(b)**.

"Increased Interest Rate" is defined in **Section 10.6(a)(ii)**.

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

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

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

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

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business and, in each case, not overdue by more than ninety (90) days after such trade account payable was created, except to the extent that any such trade payables are being disputed in good faith);

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

(f) capital leases (other than Excluded Capital 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 or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include, without duplication, the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer. The amount of any net obligation under any Swap Contract

on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease (other than an Excluded Capital Lease) or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date. For avoidance of doubt, the Indebtedness of the Parent REIT shall include Permitted Convertible Notes (prior to conversion thereof)~~.~~.

"Information Memorandum" is defined in **Section 5.3**.

"INHAM Exemption" is defined in **Section 6.2(e)**.

"**Initial Compliance Date**" means (a) if the Waiver Period ends on the date occurring under **clause (a)** of the definition of Waiver Period, ~~June 30, 2021~~(i) March 31, 2022 with respect to the financial covenants set forth in **Sections 10.6(d)**, **10.6(f)** and **10.6(j)(iii)** and (ii) June 30, 2022 with respect to the financial covenants set forth in **Section 10.6** (other than the covenants set forth in **clauses (d)**, **(e)** and **(j)(iii)** thereof) or (b) if the Waiver Period ends on the date occurring under **clause (b)** of the definition of Waiver Period, the last day of the applicable fiscal quarter set forth in the Compliance Certificate delivered pursuant to such **clause (b)**.

"Institutional Investor" means (a) any Purchaser of a Note, (b) any holder of a Note holding (together with one or more of its affiliates) more than 5% of the aggregate principal amount of the Notes then outstanding, (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form, and (d) any Related Fund of any holder of any Note.

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

"**Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of the Second Amendment Effective Date, by and among the Company, the Parent REIT, certain grantors and guarantors party thereto, Bank of America, N.A., U.S. Bank National Association, Capital One, National Association, the Collateral Agent, and each additional pari passu collateral agent from time to time party thereto.

"Intermediate REIT" means (a) Glass Houses and (b) any Subsidiary of the Company that is formed as a real estate investment trust under its jurisdiction of formation, which Subsidiary does not own any assets (other than any Equity Interests in any Subsidiary that owns any Real Property assets); *provided that* such Subsidiary (i) shall not incur or guarantee any other Indebtedness and (ii) may receive Restricted Payments paid in cash from its Subsidiaries so long as such Restricted Payments are immediately distributed upon receipt to the Company.

"**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.

"Leverage Surge Date" is defined in **Section 10.6(a)(i)(A).**

"Leverage Surge Period" is defined in **Section 10.6(a)(i)(A)**.

"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).

~~"**Limited Collateral Trigger Event**" has the meaning specified in the definition of Collateral Trigger Date.~~

"**Liquidity**" means, as of any date of determination, the sum of (a) cash and Cash Equivalents not subject to any Liens, Negative Pledges or other restrictions *plus* (b) undrawn availability under the Bank of America Credit Facility or under any other credit facilities of the Consolidated Parties (to the extent available to be drawn at the date of determination in accordance with the Bank of America Credit Facility or the other applicable credit facility).

"**Liquidity Compliance Certificate**" means a certificate substantially in the form of **Exhibit A** or in such other form as may be agreed by the Company and the Required Holders.

"**Major MSA**" means the metropolitan statistical area of any of the following: (a) New York City, New York; (b) Chicago, Illinois; (c) Washington, DC; (d) Los Angeles, California (excluding Santa Monica, California); (e) Boston, Massachusetts; (f) San Diego, California; and (g) San Francisco, California.

"Material Acquisition" means the acquisition by any Company Party, in a single transaction or in a series of related transactions, of one or more Real Properties or Persons owning Real Properties in which the total investment with respect to such acquisition is equal to or greater than ten percent (10%) of Consolidated Total Asset Value at such time.

"Make-Whole Amount" is defined in **Section 8.6**.

"Material" means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of the Company Parties taken as a whole.

"Material Adverse Effect" means a material adverse effect on (a) the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Company Parties taken as a whole, (b) the ability of the Parent REIT and the Company to perform its obligations under this Agreement and the Notes, respectively (c) the ability of any Guarantor to perform its obligations under its Affiliate Guaranty, or (d) the validity or enforceability of this Agreement, the Notes or any Affiliate Guaranty.

"Material Credit Facility" means, as to the Company Parties:

(a) the Bank of America Credit Facility;

(b) the Bank of America Term Facility;

(c) the US Bank Facility;

(d) The US Bank Lessee Line of Credit;

(e) the Capital One Facility; and

(f) any other agreement(s) creating or evidencing indebtedness for borrowed money entered into on or after the date of the execution and delivery of this Agreement by the Company or any Subsidiary, or in respect of which the Company or any Subsidiary is an obligor or otherwise provides a guarantee or other credit support (**"Credit Facility"**), in a principal amount outstanding or available for borrowing equal to or greater than $25,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency) but excluding Secured Non-Recourse Debt; and if no Credit Facility or Credit Facilities equal or exceed such amounts, then the largest Credit Facility shall be deemed to be a Material Credit Facility.

"**Material Lease**" shall mean as to any Unencumbered Borrowing Base Property (a) any Lease of such Unencumbered Borrowing Base Property (and any personal property assets related thereto) between the applicable Company Party that owns such Unencumbered Borrowing Base Property and any TRS, (b) any Lease which, individually or when aggregated with all other Leases at such Unencumbered Borrowing Base Property with the same tenant or any of its Affiliates, accounts for ten percent (10%) or more of such Unencumbered Borrowing Base Property's revenue, or (c) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Property.

"Maturity Date" is defined in the first paragraph of each Note.

"More Favorable Covenant" is defined in **Section 9.9(a)**.

"Most Favored Lender Notice" is defined in **Section 9.9**.

"Multiemployer Plan" means any Plan that is a "multiemployer plan" (as such term is defined in section 4001(a)(3) of ERISA).

"NAIC" means the National Association of Insurance Commissioners or any successor thereto.

"**Negative Pledge**" means a provision of any agreement (other than this Agreement or any other Note Document or any document relating to a Material Credit Facility) that prohibits the creation of any Lien on any assets of a Person; provided, however, that neither (a) an agreement that establishes a maximum ratio of unsecured debt to unencumbered assets, or of secured debt to total assets, or that otherwise conditions a Person's ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets nor (b) any requirement for the grant in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations, shall constitute a "Negative Pledge" for purposes of this Agreement.

"**Net Cash Proceeds**" means:

(a) with respect to any Disposition by any Company Party, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction, including any accrued interest, repayment fees or charges due in connection with such repayment (other than Indebtedness under the Notes), (B) the reasonable and customary out-of-pocket expenses incurred by such Company Party in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two (2) years of the date of the relevant transaction as a result of any gain recognized in connection therewith; *provided that*, if the amount of any estimated taxes pursuant to **subclause (C)** exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds;

(b) with respect to the sale or issuance of any Equity Interest by any Company Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Company Party in connection therewith; and

(c) with respect to the incurrence or issuance of any Indebtedness by any Company Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the sum of (A) the principal amount of any

Indebtedness that is refinanced, replaced and/or repaid with the proceeds of such Indebtedness, including any accrued interest, repayment fees or charges due in connection with such refinancing, replacement and/or repayment (other than Indebtedness under the Notes) and (B) the reasonable and customary out-of-pocket expenses incurred by such Company Party in connection therewith.

"**Net Operating Income**" means, with respect to any Real Property and for the most recently ended Calculation Period, an amount equal to (a) the aggregate gross revenues from the operations of such Real Property during the applicable Calculation Period, minus (b) the sum of (i) all expenses and other proper charges incurred in connection with the operation of such Real Property during such period pro-rated as appropriate (including real estate taxes, but excluding any management fees, debt service charges, income taxes, depreciation, amortization and other non-cash expenses), and (ii) actual management fees paid during such period and (iii) an annual replacement reserve equal to four percent (4.0%) of the aggregate revenues from the operations of such Real Property (excluding revenues with respect to third party space or retail leases).

"**Net Proceeds**" means, with respect to any Equity Issuance by any Company Party, the amount of cash received by such Company Party in connection with any such transaction after deducting therefrom the aggregate, without duplication, of the following amounts to the extent properly attributable to such transaction and such amounts are usual, customary, and reasonable: (a) brokerage commissions; (b) attorneys' fees; (c) finder's fees; (d) financial advisory fees; (e) accounting fees; (f) underwriting fees; (g) investment banking fees; and (h) other commissions, costs, fees, expenses and disbursements related to such Equity Issuance, in each case to the extent paid or payable by such Company Party.

"**New Property**" means each Real Property acquired by the Company Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) from the date of acquisition for a period of six (6) full fiscal quarters after the acquisition thereof; provided, however, that, upon the Seasoned Date for any New Property (or any earlier date selected by Company), such New Property shall be converted to a Seasoned Property and shall cease to be a New Property.

"Non-Guarantor Subsidiary" means any Subsidiary (whether direct or indirect) of the Company, other than any Subsidiary which owns an Unencumbered Borrowing Base Property, which (a) is a TRS; (b) is an Intermediate REIT; (c) is (i) formed for or converted to the specific purpose of holding title to Real Property assets which are collateral for Indebtedness owing or to be owed by such Subsidiary, *provided that* such Indebtedness must be incurred or assumed within ninety (90) days (or such longer period as permitted under the Bank of America Credit Facility) of such formation or conversion or such Subsidiary shall cease to qualify as a Non-Guarantor Subsidiary, and (ii) expressly prohibited in writing from guaranteeing Indebtedness of any other person or entity pursuant to (A) a provision in any document, instrument or agreement evidencing such Indebtedness of such Subsidiary or (B) a provision of such Subsidiary's Organization Documents, in each case, which provision was included in such Organization Document or such other document, instrument or agreement at the request of the applicable third party creditor and as an express condition to the extension or assumption of such Indebtedness; *provided that* a Subsidiary meeting the requirements set forth in this **clause (c)** shall only remain

a "Non-Guarantor Subsidiary" for so long as (1) each of the foregoing requirements set forth in this **clause (c)** are satisfied, (2) such Subsidiary does not guarantee any other Indebtedness and (3) the Indebtedness with respect to which the restrictions noted in **clause (c)** (ii) are imposed remains outstanding *provided further that* in no event shall any party to a Permitted Intercompany Mortgage encumbering an Unencumbered Borrowing Base Property be a Non-Guarantor Subsidiary; (d)(i) becomes a Subsidiary following the date of Closing, (ii) is not a Wholly Owned Subsidiary of the Company, and (iii) with respect to which the Company and its Affiliates, as applicable, do not have sufficient voting power to cause such Subsidiary to become a Guarantor hereunder; or (e) is an Immaterial Subsidiary.

"Note Document" means the Note Purchase Agreement, the Notes, the Affiliate Guaranties, the Intercreditor Agreement, each Collateral Document and any other agreement entered into in connection with any of the above.

"Note Parties" means, collectively, the Company and Guarantors, and **"Note Party"** means any one of the Note Parties.

"Notes" is defined in **Section 1**.

"**Obligations**" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Note Party arising under any Note Document or otherwise with respect to any Note, 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 Note 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 the "Obligations" with respect to a Guarantor shall exclude any Excluded Swap Obligations of such Guarantor.

"OFAC" is defined in **Section 5.16(a)**.

"OFAC Listed Person" is defined in **Section 5.16(a)**.

"OFAC Sanctions Program" means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx.

"Officer's Certificate" means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

"**Operating Property Value**" means, at any date of determination, (a) for each Seasoned Property, (i) the Adjusted NOI for such Real Property divided by (ii) the applicable Capitalization Rate, and (b) for each New Property, the GAAP book value for such New Property (until the Seasoned Date or such earlier date as elected by the Company by written notice to the holders of the Notes).

"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, trust 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 MSA**" means any metropolitan statistical area other than a Major MSA. For the avoidance of doubt, Santa Monica, California shall constitute an Other MSA.

"**Parent Guaranty**" means the guaranty by the Parent REIT set forth in **Section 13** of this Agreement as amended, restated or modified from time to time.

"Parent REIT" means Pebblebrook Hotel Trust, a Maryland real estate investment trust and any successor entity.

"**Pari Passu Obligations**" is defined in the Intercreditor Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

"Pebblebrook Hotel Lessee" means Pebblebrook Hotel Lessee, Inc., a Delaware corporation, and its permitted successors.

"Permitted Convertible Notes" means senior convertible debt securities of the Parent REIT (a) that are unsecured, (b) that do not have the benefit of any Guarantee of any Subsidiary, (c) that are otherwise permitted under this Agreement, including **Section 10.10**, (d) the Net Cash Proceeds of which are applied during the Waiver Period, if applicable, in accordance with this Agreement and the Intercreditor Agreement, (e) that are not subject to any sinking fund or any prepayment, redemption or repurchase requirements, whether scheduled, triggered by specified events or at the option of the holders thereof (it being understood that none of the following will be deemed to constitute such a sinking fund or prepayment, redemption or repurchase requirement: (i) a customary "change in control" or "fundamental change" put, (ii) a right to convert such securities into common shares of the Parent REIT, cash or a combination thereof (in each case, at election of the Parent REIT) or (iii) an acceleration upon an event of default), and (f) that have the benefit of covenants and events of default customary for comparable convertible securities (as determined by the Parent REIT in good faith).

"Permitted Convertible Notes Swap Contract" means a Swap Contract entered into by the Parent REIT in connection with, and prior to or concurrently with, the issuance of any Permitted Convertible Notes pursuant to which the Parent REIT acquires a call or a capped call option requiring the counterparty thereto to deliver to the Parent REIT common shares of the Parent REIT, the cash value of such shares or a combination of such shares and cash from time to

time upon exercise of such option; provided that the terms, conditions and covenants of each such Swap Contract shall be such as are typical and customary for Swap Contracts of such type (as determined by the Parent REIT in good faith).

"Permitted Intercompany Mortgage" means a loan by a Note Party to another Note Party secured by a Lien in Real Property so long as such loan is subordinated to the Obligations pursuant to **Section 23.8** or otherwise on terms acceptable to the holders of the Notes.

"Permitted Liens" is defined in **Section 10.5**.

"Permitted Preferred Issuances" means the issuance after the Second Amendment Effective Date by the Parent REIT of preferred Equity Interests that (a) are not subject to mandatory redemption or are otherwise not treated as Indebtedness pursuant to GAAP and (b) to the extent used to purchase or redeem existing preferred Equity Interests, have a yield to maturity yield (including any voluntary or involuntary liquidation preference and any accrued and unpaid dividends) not greater than any preferred Equity Interest purchased or redeemed with the proceeds thereof.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by the Company or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate

"Pledge Agreement" means any pledge or security agreement entered into, after the Second Amendment Effective Date between the Company, certain Subsidiaries of the Company party thereto, and the Collateral Agent, for the benefit of the holders of the Notes, substantially in the form of **Exhibit B**.

"Preferred Stock" means any class of capital stock of a Person that is preferred over any other class of capital stock (or similar equity interests) of such Person as to the payment of dividends or the payment of any amount upon liquidation or dissolution of such Person.

"Primary Credit Facilities" means the agreements referenced in clauses (a), (b) and (c) of the definition of Material Credit Facility, and **"Primary Credit Facility"** means any one of the Agreements.

"property" or **"properties"** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"Proposed Prepayment Date" is defined in **Section 8.7(b)**.

"Pro Forma Basis" means, for purposes of calculating (utilizing the principles set forth in **Section 23.2**) compliance with each of the financial covenants set forth in **Section 10.6** in respect of a proposed transaction, that such transaction shall be deemed to have occurred as of

the first day of the four (4) fiscal-quarter period ending as of the most recent fiscal quarter end preceding the date of such transaction with respect to which the holders of Notes has received the Required Financial Information. As used herein, "**transaction**" shall mean (a) any borrowing, (b) any incurrence or assumption of Indebtedness, (c) any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to **Section 10.7(a)** or **Section 10.7(b)** or any other Disposition as referred to in **Section 10.7**, or (d) any acquisition of any Person (whether by merger or otherwise) or other property. In connection with any calculation relating to the financial covenants set forth in **Section 10.6** upon giving effect to a transaction on a Pro Forma Basis:

(i) for purposes of any such calculation in respect of any Disposition as referred to in **Section 10.7(a)**, (A) income statement items (whether positive or negative) attributable to the Person or property disposed of shall be excluded, (B) any Indebtedness which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the first day of the applicable period, and (C) pro forma adjustments shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Company Parties and (3) factually supportable (in the reasonable judgment of the Required Holders); and

(ii) for purposes of any such calculation in respect of any acquisition of any Person (whether by merger or otherwise) or other property, (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall be deemed to be included as of the first day of the applicable period, and (B) pro forma adjustments (with the calculated amounts annualized to the extent the period from the date of such acquisition through the most-recently ended fiscal quarter is not at least twelve (12) months or four (4) fiscal quarters, in the case of any applicable period that is based on twelve months or four (4) fiscal quarters) shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Company Parties and (3) factually supportable (in the reasonable judgment of the Required Holders).

"PTE" is defined in **Section 6.2(a)**.

"Purchaser" or **"Purchasers"** means each of the purchasers that has executed and delivered this Agreement to the Company and such Purchaser's successors and assigns (so long as any such assignment complies with **Section 14.2**), *provided, however,* that any Purchaser of a Note that ceases to be the registered holder or a beneficial owner (through a nominee) of such Note as the result of a transfer thereof pursuant to **Section 14.2** shall cease to be included within the meaning of "Purchaser" of such Note for the purposes of this Agreement upon such transfer.

"QPAM Exemption" is defined in **Section 6.2(d)**.

"Qualified Institutional Buyer" means any Person who is a "qualified institutional buyer" within the meaning of such term as set forth in Rule 144A(a)(1) under the Securities Act.

"Rating Agency" means any nationally recognized statistical rating organization recognized by the NAIC.

"Real Properties" means, at any time, a collective reference to each of the facilities and real properties owned or leased by the Company or any other Subsidiary or in which any such Person has an interest at such time; and "**Real Property**" means any one of such Real Properties.

"Related Fund" means, with respect to any holder of any Note, any fund or entity that (i) invests in Securities or bank loans, and (ii) is advised or managed by such holder, the same investment advisor as such holder or by an affiliate of such holder or such investment advisor.

"Required Financial Information" means, with respect to each fiscal period or quarter of the Company, (a) the financial statements required to be delivered pursuant to **Section 7.1** for such fiscal period or quarter of the Parent REIT, and (b) the compliance certificate required by **Section 7.2** to be delivered with the financial statements described in **clause (a)** above.

"Required Holders" means at any time (a) prior to the Closing, the Purchasers, (b) on or after the Closing the holders of more than 50% in principal amount of the Notes (without regard to Series) at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

"Responsible Officer" means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Parent REIT or any Subsidiary or any Unconsolidated Affiliate, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Parent REIT's shareholders, partners or members (or the equivalent Person thereof); provided that, to the extent the calculation of the amount of any dividend or other distribution for purposes of this definition of "Restricted Payment" includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests; *provided*, further, that payments for, in respect of or in connection with Permitted Convertible Notes Swap Contracts shall not constitute Restricted Payments.

"Seasoned Date" means the first day on which an acquired Real Property has been owned for six (6) full fiscal quarters following the date of acquisition of such Real Property.

"Seasoned Property" means (a) each Real Property (other than a New Property) owned by the Company Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) and (b) upon the occurrence of the Seasoned Date of any New Property, such Real Property.

"SEC" means the Securities and Exchange Commission of the United States or any successor thereto.

"Second Amendment Effective Date" means the date of effectiveness of the Second Amendment to this Agreement among the Company and the holders of Notes.

"Second Limited Collateral Trigger Event" has the meaning specified in the definition of Collateral Trigger Date.

"Secured Debt" means, for any given calculation date, without duplication, the total aggregate principal amount of any Indebtedness of the Company Parties on a consolidated basis that is secured in any manner by any lien (other than Permitted Liens of the type described in **Sections 10.5(a), (b), (c), (d), (e), (g), (h)** and **(j)**; *provided* that (a) Indebtedness in respect of obligations under any capitalized lease shall not be deemed to be "Secured Debt" and (b) Secured Debt shall exclude Excluded Capital Leases and any Indebtedness in respect of the Pari Passu Obligations which is secured by Common Collateral pursuant to and as defined in the Intercreditor Agreement as a result of a Collateral Trigger Event.

"Securities" or **"Security"** shall have the meaning specified in section 2(1) of the Securities Act.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"Senior Financial Officer" means the chief financial officer, principal accounting officer, treasurer or comptroller of the Company.

"Senior Indebtedness" means all Indebtedness of the Company or any Guarantor, as applicable, which is not expressed to be subordinate or junior in rank to any other Indebtedness of the Company or such Guarantor, as applicable.

"Series" means any one of the Series of Notes issued hereunder.

"Series A Notes" is defined in **Section 1**.

"Series B Notes" is defined in **Section 1**.

"Source" is defined in **Section 6.2**.

"State Sanctions List" means a list that is adopted by any state Governmental Authority within the United States of America pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target of economic sanctions imposed under U.S. Economic Sanctions.

"Subsidiary" means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having

ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Parent REIT.

"Subsidiary Guarantor" means each Subsidiary that has executed and delivered a Subsidiary Guaranty.

"Subsidiary Guaranty" is defined in **Section 2.2**.

"Substitute Purchaser" is defined in **Section 22**.

"SVO" means the Securities Valuation Office of the NAIC or any successor to such Office.

"Swap Contract" means (a) any and all interest rate swap transactions, basis 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 foreign exchange transactions, cap transactions, floor transactions, currency options, spot contracts or any other similar transactions or any of the foregoing (including, without limitation, any options to enter into any of the foregoing), 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. or any International Foreign Exchange Master Agreement.

"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 amounts(s) determined as the mark-to-market values(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.

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

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

"TRS" means each of (a) Pebblebrook Hotel Lessee and (b) each other taxable REIT subsidiary that is a Wholly Owned Subsidiary of Pebblebrook Hotel Lessee.

"**2020 Permitted Convertible Notes**" shall mean the Permitted Convertible Notes which were issued by the Parent REIT on December 10, 2020, as approved by the holders of Notes on December 10, 2020.

"USA PATRIOT Act" means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"**UCC**" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

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

"**Unconsolidated Affiliate Funded Indebtedness**" means, as of any date of determination for any Unconsolidated Affiliate, the product of (a) the sum of (i) the outstanding principal amount of all obligations of such Unconsolidated Affiliate, whether current or long-term, for borrowed money and all obligations of such Unconsolidated Affiliate evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all purchase money Indebtedness of such Unconsolidated Affiliate, (iii) all obligations of such Unconsolidated Affiliate arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (iv) all obligations of such Unconsolidated Affiliate in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (v) Attributable Indebtedness of such Unconsolidated Affiliate in respect of capital leases and Synthetic Lease Obligations, (vi) without duplication, all Guarantees of such Unconsolidated Affiliate with respect to outstanding Indebtedness of the types specified in **clauses (i)** through **(v)** above of Persons other than such Unconsolidated Affiliate, and (vii) all Indebtedness of such Unconsolidated Affiliate of the types referred to in **clauses (i)** through **(vi)** above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Unconsolidated Affiliate is a general partner or joint venturer, multiplied by (b) the respective Unconsolidated Affiliate Interest of each Company Party in such Unconsolidated Affiliate.

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

"**Unencumbered Asset Value**" means, without duplication, as of any date of determination, the Operating Property Value of all Unencumbered Borrowing Base Properties for the Note Parties on a consolidated basis (other than Development/Redevelopment Properties).

"**Unencumbered Borrowing Base Properties**" means, as of any date, a collective reference to each Real Property listed in the most recent compliance certificate delivered by the Company hereunder that meets the following criteria:

(i) such Real Property is, or is expected to be, a "luxury", "upper upscale", or "upscale" full or select service hotel located in the United States;

(ii) such Real Property is wholly-owned, directly or indirectly, by the Company or a Subsidiary Guarantor in fee simple or ground leased pursuant to an Eligible Ground Lease (and such Real Property, whether owned in fee simple by the Company or a Subsidiary Guarantor of the Company or ground leased pursuant to an Eligible Ground Lease, is leased to the applicable TRS);

(iii) if such Real Property is owned or ground leased pursuant to an Eligible Ground Lease by a Subsidiary of the Company, then (A) such Subsidiary is a Guarantor (unless such Subsidiary has been released as, or is not required to be, a Guarantor pursuant to the terms of **Section 9.8(c)** provided that if any such Subsidiary is released, the Real Property shall no longer be considered Unencumbered Borrowing Base Property, (B) the Company directly or indirectly owns at least ninety percent (90%) of the issued and outstanding Equity Interests of such Subsidiary, and (C) such Subsidiary is controlled exclusively by the Company and/or one or more Wholly Owned Subsidiaries of the Company (including control over operating activities of such Subsidiary and the ability of such Subsidiary to dispose of, grant Liens in, or otherwise encumber assets, incur, repay and prepay Indebtedness, provide Guarantees and make Restricted Payments, in each case without any requirement for the consent of any other Person);

(iv) such Real Property is free of any Liens (other than Permitted Liens of the type described in **Sections 10.5(a), (b), (d), (e), (g), (h)** and **(j)**) or Negative Pledges;

(v) such Real Property is free of all material title defects;

(vi) if such Real Property is subject to an Eligible Ground Lease, then there is no default by the lessee under the Eligible Ground Lease and such Eligible Ground Lease is in full force and effect;

(vii) such Real Property is free of all material structural defects;

(viii) such Real Property complies in all material respects with all applicable Environmental Laws and is not subject to any material Environmental Liabilities;

(ix) neither all nor any material portion of such Real Property is subject to any proceeding for the condemnation, seizure or appropriation thereof, nor the subject of negotiations for sale in lieu thereof;

(x) such Real Property has not otherwise been removed as an "Unencumbered Borrowing Base Property" pursuant to the provisions of this Agreement; and

(xi) the Company has executed and delivered to the holders of Notes all documents and taken all actions reasonably required by the Required Holders to confirm the rights created or intended to be created under the Note Documents and the holders of Notes have received all other evidence and information that it may reasonably require;

provided that, if any Real Property does not meet all of the foregoing criteria, then, upon the request of the Company, such Real Property may be included as an "Unencumbered Borrowing Base Property" with the written consent of the Required Holders.

"Unencumbered Borrowing Base Value" means the Consolidated Total Asset Value of the Unencumbered Borrowing Base Properties.

"Unencumbered Leverage Ratio" means, as of any date, then current Unencumbered Asset Value divided by then current Unsecured Indebtedness.

"Unrestricted Cash" means as of any date of determination, all cash of the Company on such date that (a) does not appear (or would not be required to appear) as "restricted" on a balance sheet of the Company, (b) is not subject to a Lien in favor of any Person other than Liens granted to the holders of Notes and statutory Liens in favor of any depositary bank where such cash is maintained, (c) does not consist of or constitute "deposits" or sums legally held by the Company in trust for another Person, (d) is not subject to any contractual restriction or obligation regarding the payment thereof for a particular purpose (including insurance proceeds that are required to be used in connection with the repair, restoration or replacement of any property of the Company), and (e) is otherwise generally available for use by the Company.

"Unsecured Indebtedness" means, with respect to any Person, all Consolidated Funded Indebtedness which is not Secured Debt.

"Unsecured Interest Charges" means, as of any date of determination, Consolidated Interest Charges on the Unsecured Indebtedness for the most recently ended Calculation Period.

"Unsecured Leverage Increase Period" is defined in **Section 10.6(h)**.

"**US Bank Facility**" means the facility evidenced by that certain Amended and Restated Credit Agreement, dated as of the date hereof, among the Company, the Parent REIT, certain lenders party thereto, and U.S. Bank National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"US Bank Lessee Line of Credit" means the facility evidenced by that certain ~~Third~~Fourth Amended and Restated Revolving Credit Note, dated as of the First Amendment Effective Date, among Pebblebrook Hotel Lessee, as maker, and U.S. Bank National Association, as payee (as the same may be amended, restated, modified or supplemented from time to time).

"U.S. Economic Sanctions" is defined in **Section 5.16(a)**.

"Waiver Period" means the period commencing on the Second Amendment Effective Date and ending on the earlier to occur of (a) the date the Company is required to deliver a duly completed Compliance Certificate for the fiscal quarter ending June 30, ~~2021~~2022 pursuant to **Section 7.2(a)** (or, if earlier, the date on which the Company delivers such Compliance Certificate pursuant to **Section 7.2(a)** evidencing, to the Required Holders' reasonable satisfaction, the Company's compliance with the financial covenants contained in **Section 10.6** as of June 30, ~~2021~~2022) and (b) the date the Company delivers a Compliance Certificate in accordance with **Section 7.2(a)** with respect to any fiscal quarter ending after the Second Amendment Effective Date but prior to June 30, ~~2021~~2022 evidencing, to the Required Holders' reasonable satisfaction, the Company's compliance with the financial covenants contained in **Section 10.6** as of the last day of such fiscal quarter as if such covenants had applied for such quarter, together with a written notice to the Purchaser and each holder of the Notes irrevocably electing to terminate the Waiver Period concurrently with such delivery.

"**Waiver Period Event**" is defined in Section 8.9.

"**Waiver Period Increased Interest**" is defined in Section 9.12.

"**Waiver Period Prepayment Premium**" is defined in Section 8.11.

"Wholly-Owned Subsidiary" means, at any time, any Subsidiary all of the equity interests (except directors' qualifying shares) with voting power owned by any one or more of the Company and the Company's other Wholly-Owned Subsidiaries at such time.

THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "***Amendment***") is entered into as of February 18, 2021, among **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership (the "***Borrower***"), **PEBBLEBROOK HOTEL TRUST**, a Maryland real estate investment trust (the "***Parent REIT***"), each Guarantor (defined below) party hereto, each Lender (defined below) party hereto, and **BANK OF AMERICA, N.A.**, as Administrative Agent (the "***Administrative Agent***;" the Administrative Agent and Lenders are each a "***Credit Party***" and collectively "***Credit Parties***").

R E C I T A L S

A. The Borrower, the Parent REIT, certain guarantors (each a "***Guarantor***" and collectively "***Guarantors***;" the Borrower, the Parent REIT and the Guarantors are each a "***Loan Party***" and collectively the "***Loan Parties***"), the Administrative Agent and certain lenders (each, a "***Lender***" and collectively, "***Lenders***") are parties to that certain Credit Agreement dated as of October 31, 2018, as amended by that certain First Amendment to Credit Agreement (the "***First Amendment***") dated as of June 29, 2020, and as further amended by that certain Second Amendment to Credit Agreement (the "***Second Amendment***") dated as of December 10, 2020 (as amended by the First Amendment, the Second Amendment and as may be further modified, amended, renewed, extended, or restated from time to time, the "***Credit Agreement***").

B. The parties hereto desire to amend the Credit Agreement, subject to the terms and conditions set forth herein.

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

1. Terms and References. Unless otherwise stated in this Amendment (a) terms defined in the Credit Agreement have the same meanings when used in this Amendment, and (b) references to "*Sections*" are to the Credit Agreement's sections.

2. Amendments to the Credit Agreement. On and as of the date hereof, the Credit Agreement is hereby amended (including the schedules and exhibits thereto) to delete the red font stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the blue font double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the composite conformed copy of the Credit Agreement attached hereto as ***Exhibit A***.

3. Amendments to other Loan Documents.

(a) All references in the Loan Documents to the Credit Agreement shall henceforth include references to the Credit Agreement, as modified and amended hereby, and as may, from time to time, be further amended, modified, extended, renewed, and/or increased.

(b) Any and all of the terms and provisions of the Loan Documents are hereby amended and modified wherever necessary, even though not specifically addressed herein, so as to conform to the amendments and modifications set forth herein.

4. Conditions Precedent. This Amendment shall not be effective unless and until:

(a) the Administrative Agent receives fully executed counterparts of this Amendment signed by the Loan Parties, the Administrative Agent and the Required Lenders;

(b) the Administrative Agent receives a certificate of a Responsible Officer of each Loan Party certifying (i) the incorporation, formation and organization documents, as the case may be, of such Loan Party (or that there have been no changes thereto since the date last certified to the Administrative Agent), (ii) resolutions or other action of such Loan Party authorizing this Amendment and the other documents executed by the Loan Parties in connection herewith, (iii) the identity, authority, incumbency and signatures of each Responsible Officer executing this Amendment and any other document executed in connection herewith, and (iv) such other matters as the Administrative Agent may reasonably require;

(c) the Administrative Agent receives evidence dated within thirty (30) days as of the date hereof that each Loan Party is validly existing and in good standing in its jurisdiction of incorporation, formation or organization, as the case may be;

(d) the Administrative Agent receives a favorable opinion of counsel of Honigman LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender and in form and substance reasonably acceptable to the Administrative Agent;

(e) upon the reasonable request of any Lender made at least five (5) days prior to the date hereof, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested 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 two (2) days prior to the date hereof;

(f) at least five (5) days prior to the date hereof, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation as set forth in 31 C.F.R. §1010.230 (the "***Beneficial Ownership Regulation***") shall have delivered, to each Lender that so requests, a certification regarding beneficial ownership required by the Beneficial Ownership Regulation in relation to such Loan Party (a "***Beneficial Ownership Certification***");

(g) the representations and warranties in the Credit Agreement, as amended by this Amendment, and each other Loan Document are true and correct in all material respects on and as of the date of this Amendment as though made as of the date of this Amendment except to the extent that (i) any of them speak to a different specific date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided*, that for purposes of this Amendment, the representations and warranties contained in ***subsections (a)*** and ***(b)*** of ***Section 5.05*** of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to ***clauses (a)*** and ***(b)***, respectively, of ***Section 6.01*** of the Credit Agreement, or (ii) the facts on which any of them were based have been changed by transactions contemplated or permitted by the Credit Agreement;

(h) the Administrative Agent receives payment of all reasonable fees and expenses of the Administrative Agent in connection with this Amendment;

(i) the Borrower shall have paid to the Administrative Agent, for the benefit of the Credit Parties, all fees required to be paid on or before the date hereof in connection with this Amendment;

(j) the Borrower and the Parent REIT shall have entered into amendments to all Specified Debt, each in form and substance reasonably satisfactory to the Administrative Agent, as necessary to conform the applicable terms of such Specified Debt to the amendments set forth herein;

(k) the Administrative Agent and the holders (or an authorized representative thereof) of all Specified Debt shall have entered into an amendment to the Intercreditor Agreement, in form and substance reasonably satisfactory to the Administrative Agent, and each Lender party hereto hereby authorizes the Administrative Agent to enter into such amendment; and

(l) after giving effect to this Amendment, no Default or Event of Default exists.

5. Ratifications. Each Loan Party, (a) ratifies and confirms all provisions of the Loan Documents as amended by this Amendment, (b) ratifies and confirms that all guaranties, assurances, and liens granted, conveyed, or assigned to or for the benefit of the Credit Parties under the Loan Documents are not released, reduced, or otherwise adversely affected by this Amendment and continue to guarantee, assure, and secure full payment and performance of the present and future obligations of the Borrower under the Credit Agreement and the other Loan Documents, and (c) agrees to perform such acts and duly authorize, execute, acknowledge, deliver, file, and record such additional documents, and certificates as the Administrative Agent may request in order to create, perfect, preserve, and protect those guaranties, assurances, and liens.

6. Representations. Each Loan Party, represents and warrants to the Credit Parties that as of the date of this Amendment: (a) this Amendment has been duly authorized, executed, and delivered by each applicable Loan Party; (b) no action of, or filing with, any governmental authority is required to authorize, or is otherwise required in connection with, the execution, delivery, and performance by any Loan Party of this Amendment except for those which have been obtained; (c) the Loan Documents, as amended by this Amendment, are valid and binding upon each Loan Party and are enforceable against each Loan Party in accordance with their respective terms, except as limited by Debtor Relief Laws; (d) the execution, delivery, and performance by each applicable Loan Party of this Amendment does not require the consent of any other Person and do not and will not constitute a violation of any laws, agreements, or understandings to which any Loan Party is a party or by which any Loan Party is bound except for those which have been obtained; (e) all representations and warranties in the Loan Documents are true and correct in all material respects except to the extent that (i) any of them speak to a different specific date, in which case they shall be true and correct in all material respects on and as of such earlier date; *provided*, that for purposes of this Amendment, the representations and warranties contained in ***subsections (a)*** and ***(b)*** of ***Section 5.05*** of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to ***clauses (a)*** and ***(b)***, respectively, of ***Section 6.01*** of the Credit Agreement, or (ii) the facts on which any of them were based have been changed by transactions contemplated or permitted by the Credit Agreement; (f) the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects; and (g) no Default or Event of Default exists.

7. Continued Effect. Except to the extent amended hereby, all terms, provisions and conditions of the Credit Agreement and the other Loan Documents, and all documents executed in connection therewith, shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

8. Release. The Loan Parties hereby acknowledge that, as of the date hereof, the Obligations under the Credit Agreement and under the other Loan Documents are absolute and unconditional without any right of rescission, setoff, counterclaim, defense, offset, cross-complaint, claim or demand of any kind or nature from the Administrative Agent. Each Loan Party hereby voluntarily and knowingly releases and forever discharges each of the Credit Parties and its respective agents, employees, successors, and assigns (collectively, the "*Released Parties*") from all possible claims, demands, actions, causes of action, damages, costs, expenses, and liabilities whatsoever arising from or whether known or unknown, anticipated or unanticipated, suspected or unsuspected, fixed, contingent, or conditional, at law or in equity, originating in whole or in part on or before the date hereof which any Loan Party may now or hereafter have against the Released Parties, if any, and irrespective of whether any such claims arise out of contract, tort, violation of law or regulations, or otherwise, including, without limitation, any contracting for, charging, taking, reserving, collecting, or receiving interest in excess of the highest lawful rate applicable. Notwithstanding anything to the contrary contained herein, the foregoing release does not apply to any act or omission of any Released Party first occurring after the date hereof.

9. Electronic Signatures. This Amendment and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Amendment (each a "***Communication***"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each Loan Party agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Loan Party to the same extent as a manual signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Loan Party enforceable against such in accordance with the terms thereof to the same extent as if manually executed. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("***Electronic Copy***"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "***Electronic Record***" and "***Electronic Signature***" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10. Miscellaneous. Unless stated otherwise (a) the singular number includes the plural and *vice versa* and words of any gender include each other gender, in each case, as appropriate, (b) headings and captions may not be construed in interpreting provisions, (c) this Amendment must be construed --

and its performance enforced -- under New York law, (d) if any part of this Amendment is for any reason found to be unenforceable, all other portions of it nevertheless remain enforceable, and (e) this Amendment may be executed in any number of counterparts (originals or facsimile copies followed by originals) with the same effect as if all signatories had signed the same document, and all of those counterparts must be construed together to constitute the same document.

11. Entireties. The Credit Agreement as amended by this Amendment represents the final agreement between the parties about the subject matter of the Credit Agreement as amended by this Amendment and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

12. Parties. This Amendment binds and inures to each Loan Party and each Credit Party, and their respective successors and permitted assigns.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

EXECUTED as of the date first stated above.

BORROWER:

PEBBLEBROOK HOTEL, L.P., a Delaware limited partnership

By: **PEBBLEBROOK HOTEL TRUST**, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond Martz
Name: Raymond Martz
Title: Executive Vice President and Chief Financial Officer

PARENT REIT:

PEBBLEBROOK HOTEL TRUST, a Maryland Real Estate Investment Trust

By: /s/ Raymond Martz
Name: Raymond Martz
Title: Executive Vice President and Chief Financial Officer

GUARANTORS:

HUSKIES OWNER LLC, a Delaware limited liability company
BLUE DEVILS OWNER LLC, a Delaware limited liability company
PORTLAND HOTEL TRUST, a Maryland real estate investment trust

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Vice President and Secretary

BEARCATS HOTEL OWNER LP, a Delaware limited partnership
BEAVERS OWNER LLC, a Delaware limited liability company
BRUINS HOTEL OWNER LP, a Delaware limited partnership
CREEDENCE Hotel OWNER LP, a Delaware limited partnership
CRUSADERS HOTEL OWNER LP, a Delaware limited partnership
DONS HOTEL OWNER LP, a Delaware limited partnership
GOLDEN BEARS OWNER LLC, a Delaware limited liability company
GOLDEN EAGLES OWNER LLC, a Delaware limited liability company
HAZEL OWNER LLC, a Delaware limited liability company
HOYAS OWNER LLC, a Delaware limited liability company
JAYHAWK OWNER LLC, a Delaware limited liability company
MENUDO OWNER LLC, a Delaware limited liability company
MINERS HOTEL OWNER LP, a Delaware limited partnership
NKOTB OWNER LLC, a Delaware limited liability company
RAMBLERS HOTEL OWNER LP, a Delaware limited partnership
RAZORBACKS OWNER LLC, a Delaware limited liability company
RHCP HOTEL OWNER LP, a Delaware limited partnership
RUNNING REBELS OWNER LLC, a Delaware limited liability company
SOUTH 17TH STREET OWNERCO, L.P., a Delaware limited partnership
TERRAPINS OWNER LLC, a Delaware limited liability company
WILDCATS OWNER LLC, a Delaware limited liability company
WOLFPACK OWNER LLC, a Delaware limited liability company
WOLVERINES OWNER LLC, a Delaware limited liability company

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

CHAMBER MAID, LP, a Delaware limited partnership
FUN TO STAY, LP, a Delaware limited partnership
GEARY DARLING, LP, a Delaware limited partnership
GLASS HOUSES, a Maryland Real Estate Investment Trust
HARBORSIDE, LLC, a Florida limited liability company
LET IT FLHO, LP, a Delaware limited partnership
LHOBERGE, LP, a Delaware limited partnership
LHO BACKSTREETS, L.L.C., a Delaware limited liability company
LHO CHICAGO RIVER, L.L.C., a Delaware limited liability company
LHO GRAFTON HOTEL, L.P., a Delaware limited partnership
LHO HARBORSIDE HOTEL, L.L.C., a Delaware limited liability company
LHO HOLLYWOOD LM, L.P., a Delaware limited partnership
LHO LE PARC, L.P., a Delaware limited partnership
LHO MICHIGAN AVENUE FREEZEOUT, L.L.C., a Delaware limited liability company
LHO MISSION BAY HOTEL, L.P., a California limited partnership
LHO MISSION BAY ROSIE HOTEL, L.P., a Delaware limited partnership
LHO SAN DIEGO FINANCING, L.L.C., a Delaware limited liability company
LHO SAN DIEGO HOTEL ONE, L.P., a Delaware limited partnership
LHO SANTA CRUZ HOTEL ONE, L.P., a Delaware limited partnership
LHO TOM JOAD CIRCLE DC, L.L.C., a Delaware limited liability company
LHO WASHINGTON HOTEL FOUR, L.L.C., a Delaware limited liability company
LHO WASHINGTON HOTEL SIX, L.L.C., a Delaware limited liability company
LOOK FORWARD, LLC, a Delaware limited liability company
PDX PIONEER, LLC, a Delaware limited liability company
RW NEW YORK, LLC, a Delaware limited liability company
SEASIDE HOTEL, LP, a Delaware limited partnership
SERENITY NOW, LP, a Delaware limited partnership
SF TREAT, LP, a Delaware limited partnership
SOULDRIVER, L.P., a Delaware limited partnership
SUNSET CITY, LLC, a Delaware limited liability company
WESTBAN HOTEL INVESTORS, LLC, a Delaware limited liability company

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

DON'T LOOK BACK, LLC, a Delaware limited liability company

By: **LOOK FORWARD, LLC**, a Delaware limited liability company, its manager

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: President

LASALLE HOTEL OPERATING PARTNERSHIP, L.P., a Delaware limited partnership

By: **PING MERGER OP GP, LLC**, a Delaware limited liability company, its general partner

By: **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership, its sole member

By: **PEBBLEBROOK HOTEL TRUST**, a Maryland Real Estate Investment Trust, its general partner

By: /s/ Raymond D. Martz
Name: Raymond D. Martz
Title: Executive Vice President and Chief Financial Officer

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A., as the
Administrative Agent and a Lender

By: /s/ Roger C. Davis
Name: Roger C. Davis
Title: Senior Vice President

LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Anand J. Jobanputra
Name: Anand J. Jobanputra
Title: Managing Director

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Lori Y. Jenson
Name: Lori Y. Jenson
Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ William R. Lynch III
Name: William R. Lynch III
Title: Senior Vice President

BANK OF MONTREAL, as a Lender

By: /s/ Gwendolyn Gatz
Name: Gwendolyn Gatz
Title: Director

TRUIST BANK, as a Lender

By: /s/ Ryan Almond
Name: Ryan Almond
Title: Director

THE BANK OF NOVA SCOTIA, as a Lender

By: /s/ Ajit Goswami
Name: Ajit Goswami
Title: Managing Director & Industry Head

BBVA USA (f/k/a Compass Bank), as a Lender

By: /s/ Don Byerly
Name: Don Byerly
Title: Executive Vice President

SUMITOMO MITSUI BANKING CORPORATION, as a Lender

By: /s/ Eugene Nirenberg
Name: Eugene Nirenberg
Title: Executive Director

REGIONS BANK, as a Lender

By: /s/ Ghi S. Gavin
Name: Ghi S. Gavin
Title: Senior Vice President

CAPITAL ONE, NATIONAL ASSOCIATION, as a Lender

By: /s/ Jessica W. Phillips
Name: Jessica W. Phillips
Title: Authorized Signatory

TD BANK, N.A., as a Lender

By: /s/ Michael Duganich
Name: Michael Duganich
Title: Vice President

RAYMOND JAMES BANK, N.A., as a Lender

By: /s/ Matt Stein
Name: Matt Stein
Title: Senior Vice President

EXHIBIT A

CONFORMED CREDIT AGREEMENT

[See attached]

Published CUSIP Number: 70509WAR9

CREDIT AGREEMENT

Dated as of October 31, 2018

among
PEBBLEBROOK HOTEL, L.P.,
as the Borrower,

PEBBLEBROOK HOTEL TRUST,
as the Parent REIT and a Guarantor,

CERTAIN SUBSIDIARIES OF THE BORROWER,
as Guarantors,

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

and
The Other Lenders Party Hereto

U.S. BANK NATIONAL ASSOCIATION and **WELLS FARGO BANK, NATIONAL ASSOCIATION**,
as Co-Syndication Agents

PNC BANK, NATIONAL ASSOCIATION, **BANK OF MONTREAL**, **SUNTRUST BANK**,
THE BANK OF NOVA SCOTIA and **COMPASS BANK**,
as Co-Documentation Agents

CAPITAL ONE, NATIONAL ASSOCIATION, REGIONS BANK,
SUMITOMO MITSUI BANKING CORPORATION and **TD BANK, N.A.**,
as Senior Managing Agents

BOFA SECURITIES, INC., **U.S. BANK NATIONAL ASSOCIATION**,
WELLS FARGO SECURITIES, LLC,
PNC CAPITAL MARKETS LLC, **BMO CAPITAL MARKETS**,
SUNTRUST ROBINSON HUMPHREY, INC., **THE BANK OF NOVA SCOTIA**
and **COMPASS BANK**,
as Joint Lead Arrangers

BOFA SECURITIES, INC., **U.S. BANK NATIONAL ASSOCIATION**
and **WELLS FARGO SECURITIES, LLC**,
as Joint Bookrunners

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CREDIT AGREEMENT

This **CREDIT AGREEMENT** ("***Agreement***") is entered into as of October 31, 2018, among **PEBBLEBROOK HOTEL, L.P.**, a Delaware limited partnership (the "***Borrower***"), **PEBBLEBROOK HOTEL TRUST**, a Maryland real estate investment trust (the "***Parent REIT***"), the other Persons party hereto from time to time as Guarantors (as such term is defined herein), each lender from time to time party hereto (collectively, the "***Lenders***" and individually, a "***Lender***"), and **BANK OF AMERICA, N.A.**, as Administrative Agent.

The Administrative Agent and the Lenders desire to make available to the Borrower a $1,750,000,000 term loan facility on the terms and conditions contained herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. DEFINITIONS AND ACCOUNTING TERMS

1.01 **Defined Terms**. As used in this Agreement, the following terms shall have the meanings set forth below:

"***2020 Term Borrowing***" means a borrowing consisting of simultaneous 2020 Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the 2020 Term Lenders pursuant to ***Section 2.01***.

"***2020 Term Commitment***" means, as to each 2020 Term Lender, its obligation to make 2020 Term Loans to the Borrower pursuant to ***Section 2.01*** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such 2020 Term Lender's name on ***Schedule 2.01*** under the caption "*2020 Term Commitment*" or opposite such caption in the Assignment and Assumption pursuant to which such 2020 Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"***2020 Term Facility***" means (a) at any time during the Availability Period, the aggregate amount of the 2020 Term Commitments at such time, and (b) at any time thereafter, the Outstanding Amount of the 2020 Term Loans of all 2020 Term Lenders outstanding at such time.

"***2020 Term Lender***" means any Lender that holds 2020 Term Loans.

"***2020 Term Loan***" means an advance made by any 2020 Term Lender under the 2020 Term Facility.

"***2020 Term Note***" means a promissory note made by the Borrower in favor of a 2020 Term Lender evidencing the 2020 Term Loans made by such 2020 Term Lender, substantially in the form of ***Exhibit B-1***.

"***2020 Term Unused Fee***" has the meaning specified in ***Section 2.07(a)***.

"***2021 Term Borrowing***" means a borrowing consisting of simultaneous 2021 Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the 2021 Term Lenders pursuant to ***Section 2.01***.

"***2021 Term Commitment***" means, as to each 2021 Term Lender, its obligation to make 2021 Term Loans to the Borrower pursuant to ***Section 2.01*** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such 2021 Term Lender's name on ***Schedule 2.01*** under the caption "*2021 Term Commitment*" or opposite such caption in the Assignment and Assumption pursuant to which such 2021 Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"***2021 Term Facility***" means (a) at any time during the Availability Period, the aggregate amount of the 2021 Term Commitments at such time, and (b) at any time thereafter, the Outstanding Amount of the 2021 Term Loans of all 2021 Term Lenders outstanding at such time.

"***2021 Term Lender***" means any Lender that holds 2021 Term Loans.

"***2021 Term Loan***" means an advance made by any 2021 Term Lender under the 2021 Term Facility.

"***2021 Term Note***" means a promissory note made by the Borrower in favor of a 2021 Term Lender evidencing the 2021 Term Loans made by such 2021 Term Lender, substantially in the form of ***Exhibit B-2***.

"***2021 Term Unused Fee***" has the meaning specified in ***Section 2.07(b)***.

"***2022 Term Borrowing***" means a borrowing consisting of simultaneous 2022 Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the 2022 Term Lenders pursuant to ***Section 2.01***.

"***2022 Term Commitment***" means, as to each 2022 Term Lender, its obligation to make 2022 Term Loans to the Borrower pursuant to ***Section 2.01*** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such 2022 Term Lender's name on ***Schedule 2.01*** under the caption "*2022 Term Commitment*" or opposite such caption in the Assignment and Assumption pursuant to which such 2022 Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"***2022 Term Facility***" means (a) at any time during the Availability Period, the aggregate amount of the 2022 Term Commitments at such time, and (b) at any time thereafter, the Outstanding Amount of the 2022 Term Loans of all 2022 Term Lenders outstanding at such time.

"***2022 Term Lender***" means any Lender that holds 2022 Term Loans.

"***2022 Term Loan***" means an advance made by any 2022 Term Lender under the 2022 Term Facility.

"***2022 Term Note***" means a promissory note made by the Borrower in favor of a 2022 Term Lender evidencing the 2022 Term Loans made by such 2022 Term Lender, substantially in the form of ***Exhibit B-3***.

"***2022 Term Unused Fee***" has the meaning specified in ***Section 2.07(c)***.

"***2023 Term Borrowing***" means a borrowing consisting of simultaneous 2023 Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the 2023 Term Lenders pursuant to ***Section 2.01***.

"***2023 Term Commitment***" means, as to each 2023 Term Lender, its obligation to make 2023 Term Loans to the Borrower pursuant to ***Section 2.01*** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such 2023 Term Lender's name on ***Schedule 2.01*** under the caption "*2023 Term Commitment*" or opposite such caption in the Assignment and Assumption pursuant to which such 2023 Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"***2023 Term Facility***" means (a) at any time during the Availability Period, the aggregate amount of the 2023 Term Commitments at such time, and (b) at any time thereafter, the Outstanding Amount of the 2023 Term Loans of all 2023 Term Lenders outstanding at such time.

"***2023 Term Lender***" means any Lender that holds 2023 Term Loans.

"***2023 Term Loan***" means an advance made by any 2023 Term Lender under the 2023 Term Facility.

"***2023 Term Note***" means a promissory note made by the Borrower in favor of a 2023 Term Lender evidencing the 2023 Term Loans made by such 2023 Term Lender, substantially in the form of ***Exhibit B-4***.

"***2023 Term Unused Fee***" has the meaning specified in ***Section 2.07(d)***.

"***2024 Term Borrowing***" means a borrowing consisting of simultaneous 2024 Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the 2024 Term Lenders pursuant to ***Section 2.01***.

"***2024 Term Commitment***" means, as to each 2024 Term Lender, its obligation to make 2024 Term Loans to the Borrower pursuant to ***Section 2.01*** in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such 2024 Term Lender's name on ***Schedule 2.01*** under the caption "*2024 Term Commitment*" or opposite such caption in the Assignment and Assumption pursuant to which such 2024 Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"***2024 Term Facility***" means (a) at any time during the Availability Period, the aggregate amount of the 2024 Term Commitments at such time, and (b) at any time thereafter, the Outstanding Amount of the 2024 Term Loans of all 2024 Term Lenders outstanding at such time.

"***2024 Term Lender***" means any Lender that holds 2024 Term Loans.

"***2024 Term Loan***" means an advance made by any 2024 Term Lender under the 2024 Term Facility.

"***2024 Term Note***" means a promissory note made by the Borrower in favor of a 2024 Term Lender evidencing the 2024 Term Loans made by such 2024 Term Lender, substantially in the form of ***Exhibit B-5***.

"***2024 Term Unused Fee***" has the meaning specified in ***Section 2.07(e)***.

"***Acceleration***" has the meaning specified in ***Section 8.02***.

"***Adjusted NOI***" means, as of any date of calculation, the sum of Net Operating Incomes for all Real Properties for the most recently-ended Calculation Period (and, if specifically required, including adjustments for subsequent events or conditions on a Pro Forma Basis).

"***Adjusted Unrestricted Cash***" means, on any date, an amount, not less than zero ($0), equal to the Borrower's Unrestricted Cash *less* (a) with respect to the calculation of the Consolidated Leverage Ratio, $10,000,000, and (b) with respect to the calculation of the Unsecured Leverage Ratio, $100,000,000.

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

"***Administrative Agent's Office***" means the Administrative Agent's address and, as appropriate, account as set forth on ***Schedule 10.02***, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"***Administrative Questionnaire***" means an Administrative Questionnaire in substantially the form of ***Exhibit D-2*** or any other form approved 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.

"***Affiliated Debt***" has the meaning specified in ***Section 11.09***.

"***Aggregate Commitments***" means the Commitments of all the Lenders.

"***Agreement***" has the meaning specified in the introductory paragraph.

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

"***Applicable Margin***" means:

(a) Subject to ***clause (b)*** below, the applicable percentage per annum set forth below determined by reference to the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to ***Section 6.02(a)***:

Pricing Level	Consolidated Leverage Ratio	Eurodollar Rate Loans	Base Rate Loans
I	< 3.5x	1.40%	0.40%
II	≥3.5x and <4.0x	1.45%	0.45%
III	≥4.0x and <5.0x	1.55%	0.55%
IV	≥ 5.0x and < 5.5x	1.75%	0.75%
V	≥5.5x and <6.0x	1.85%	0.85%
VI	≥6.0x	2.20%	1.20%

Any increase or decrease in the Applicable Margin resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the last day of the fiscal quarter for which such Compliance Certificate has been timely delivered pursuant to ***Sections 4.02(c)*** or ***6.02(a)***; *provided, however*, that if a Compliance Certificate is not delivered when due in accordance with such Sections, then, upon the request of the Required Lenders, Pricing Level VI shall apply as of the first Business Day after the last day of the fiscal quarter for which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is actually delivered. The Applicable Margin in effect from the Closing Date until adjusted as set forth above shall be set at a Pricing Level IV.

Notwithstanding anything to the contrary contained in this ***clause (a)***, the determination of the Applicable Margin under this ***clause (a)*** for any period shall be subject to the provisions of ***Section 2.08(b)***.

(b) If the Parent REIT or the Borrower attains at least one public or private Investment Grade Rating from either Moody's or S&P, then the Borrower may, upon written notice to the Administrative Agent, make an irrevocable one time written election to exclusively use the below table based on the Debt Rating of the Parent REIT or the Borrower (setting forth the date for such election to be effective), and thereafter the Applicable Margin shall be determined based on the applicable rate per annum set forth in the below table notwithstanding any failure of the Parent REIT or the Borrower to maintain an Investment Grade Rating or any failure of the Parent REIT or the Borrower to maintain a Debt Rating:

Debt Rating	Eurodollar Rate Loans	Base Rate Loans
≥ A-/A3	0.900%	0.000%
BBB+/Baa1	0.950%	0.000%
BBB/Baa2	1.100%	0.100%
BBB-/Baa3	1.350%	0.350%
<BBB-/Baa3 or Unrated	1.750%	0.750%

If at any time the Parent REIT and/or the Borrower has two (2) Debt Ratings, and such Debt Ratings are split, then: (i) 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 Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used; and (ii) if the difference between such Debt Ratings is two (2) ratings categories (e.g., Baa1 by Moody's and BBB- by S&P), the Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the rating that is

one higher than the lower of the applicable Debt Ratings were used. If at any time the Parent REIT and/or the Borrower has three (3) Debt Ratings, and such Debt Ratings are split, then: (A) if the difference between the highest and the lowest of such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Ratings-Based Applicable Margin 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 (2) ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch) or more, the Ratings-Based Applicable Margin 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 Ratings-Based Applicable Margin shall be the rate per annum that would be applicable if the second highest Debt Rating of the three (3) were used. If the Borrower has elected to use the above table set forth in this ***clause (b)*** and the Parent REIT and/or the Borrower no longer has a private or public Debt Rating from either Moody's or S&P, then the Ratings-Based Applicable Margin shall be deemed to be < BBB-/Baa3 or Unrated. Each change in the Applicable Margin resulting from a change in a Debt Rating shall be effective, in the case of an upgrade, during the period commencing on the date of delivery by the Borrower to the Administrative Agent of notice thereof pursuant to ***Section 6.02(j)*** and ending on the date immediately preceding the effective date of the next such change and, in the case of a downgrade, during the period commencing on the date of the announcement thereof and ending on the date immediately preceding the effective date of the next such change.

(c) Notwithstanding the foregoing, for the period of time commencing on the first Business Day immediately following the Surge Date and ending on the earlier of (i) the last day of the fourth (4^{th}) fiscal quarter following the Surge Date and (ii) the first Business Day immediately following the last day of the fiscal quarter for which a Compliance Certificate has been timely delivered pursuant to ***Section 6.02(a)*** containing a written notice to the Administrative Agent terminating the Surge Period, the Applicable Margin (whether based on the Consolidated Leverage Ratio or the applicable Debt Rating) shall be increased by thirty-five basis points (0.35%).

(d) Notwithstanding the foregoing, (i) for the period of time commencing on the First Amendment Effective Date ~~through and including the last day of the Waiver Period~~up to, but excluding, the Third Amendment Effective Date, the Applicable Margin shall be a percentage per annum equal to (~~i~~A) two and one-fifth of one percent (2.20%) with respect to Eurodollar Rate Loans and (~~ii~~B) one and one-fifth of one percent (1.20%) with respect to Base Rate Loans; and (ii) for the period of time commencing on the Third Amendment Effective Date through and including the last day of the Waiver Period, the Applicable Margin shall be a percentage per annum equal to (A) two and thirty-five hundredths percent (2.35%) with respect to Eurodollar Rate Loans and (B) one and thirty-five hundredths percent (1.35%) with respect to Base Rate Loans.

"***Applicable Percentage***" means, (a) in respect of the 2020 Term Facility, with respect to any 2020 Term Lender, (i) at any time during the Availability Period, the percentage (carried out to the ninth decimal place) of the 2020 Term Facility represented by such 2020 Term Lender's 2020 Term Commitment at such time and (ii) at any time thereafter, the percentage (carried out to the ninth decimal place) of the 2020 Term Facility represented by the principal amount of such 2020 Term Lender's 2020 Term Loans at such time, (b) in respect of the 2021 Term Facility, with respect to any 2021 Term Lender, (i) at any time during the Availability Period, the percentage (carried out to the ninth decimal place) of the 2021 Term Facility represented by such 2021 Term Lender's 2021 Term Commitment at such time and (ii) at any time thereafter, the percentage (carried out to the ninth decimal place) of the 2021 Term Facility represented by the principal amount of such 2021 Term Lender's 2021 Term Loans at such time,

(c) in respect of the 2022 Term Facility, with respect to any 2022 Term Lender, (i) at any time during the Availability Period, the percentage (carried out to the ninth decimal place) of the 2022 Term Facility represented by such 2022 Term Lender's 2022 Term Commitment at such time and (ii) at any time thereafter, the percentage (carried out to the ninth decimal place) of the 2022 Term Facility represented by the principal amount of such 2022 Term Lender's 2022 Term Loans at such time, (d) in respect of the 2023 Term Facility, with respect to any 2023 Term Lender, (i) at any time during the Availability Period, the percentage (carried out to the ninth decimal place) of the 2023 Term Facility represented by such 2023 Term Lender's 2023 Term Commitment at such time and (ii) at any time thereafter, the percentage (carried out to the ninth decimal place) of the 2023 Term Facility represented by the principal amount of such 2023 Term Lender's 2023 Term Loans at such time, and (e) in respect of the 2024 Term Facility, with respect to any 2024 Term Lender, (i) at any time during the Availability Period, the percentage (carried out to the ninth decimal place) of the 2024 Term Facility represented by such 2024 Term Lender's 2024 Term Commitment at such time and (ii) at any time thereafter, the percentage (carried out to the ninth decimal place) of the 2024 Term Facility represented by the principal amount of such 2024 Term Lender's 2024 Term Loans at such time. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on ***Schedule 2.01*** or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"***Appropriate Lender***" means, at any time, with respect to each Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time.

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

"***Arrangers***" means, collectively, (a) BofA Securities, Inc., U.S. Bank National Association, Wells Fargo Securities, LLC, PNC Capital Markets LLC, BMO Capital Markets, SunTrust Robinson Humphrey, Inc., The Bank of Nova Scotia and Compass Bank, each in its capacity as a joint lead arranger, and (b) BofA Securities, Inc., U.S. Bank National Association and Wells Fargo Securities, LLC, each in its capacity as a joint bookrunner.

"***Assignment and Assumption***" means an assignment and assumption entered into by a Lender and an 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 D-1*** or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

"***Attributable Indebtedness***" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"***Audited Financial Statements***" means the audited consolidated balance sheet of the Consolidated Parties for the fiscal year ended December 31, 2017, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Consolidated Parties, including the notes thereto.

"***Availability Period***" means the period from and including the Closing Date to the earliest of (a) the End Date, (b) the Funding Date, (c) the date that the Merger Agreement has been terminated or expires, in each case in accordance with its terms and (d) the date of termination of the commitment of each Lender to make Loans pursuant to ***Section 2.04*** or ***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.

"***Bank of America Revolving Facility***" means the facility evidenced by that certain Fourth Amended and Restated Credit Agreement, dated as of October 13, 2017, among the Borrower, the Parent REIT, the guarantors from time to time party thereto, certain lenders party thereto, and Bank of America, N.A., as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Base Rate***" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus one-half of one percent (0.50%), (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 Eurodollar Rate plus one percent (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 the Base Rate is being used as an alternate rate of interest pursuant to ***Section 3.03*** hereof, then the Base Rate shall be the greater of ***clauses (a)*** and ***(b)*** above and shall be determined without reference to ***clause (c)*** above. For the avoidance of doubt, in no circumstance shall the Base Rate be less than one and one-quarter of one percent (1.25%) per annum.

"***Base Rate Loan***" means a Loan that bears interest based on the Base 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.

"***BHC Act Affiliate***" has the meaning specified in ***Section 10.22(b)***.

"***Borrower***" has the meaning specified in the introductory paragraph.

"***Borrower Materials***" has the meaning specified in ***Section 6.02***.

"***Borrowing***" means a 2020 Term Borrowing, a 2021 Term Borrowing, a 2022 Term Borrowing, a 2023 Term Borrowing, or a 2024 Term Borrowing, as the context may require.

"***Business Day***" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Applicable Laws of, or are in fact closed in, New York, New York, Charlotte, North Carolina or Dallas, Texas and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

"***Calculation Period***" means, as of any date of determination commencing with the delivery of the Required Financial Information for the fiscal quarter ending June 30, 2018, the most recent four (4) fiscal quarter period for which the Borrower has provided the Required Financial Information; *provided that*, for calculations made on a Pro Forma Basis, the amounts calculated for the applicable Calculation Period shall be adjusted as set forth in ***Section 1.03(c)***, but shall otherwise relate to the applicable Calculation Period (as defined above).

"***Capitalization Rate***" means (a) 7.25% for: (i) the LaPlaya Beach Resort & Club; (ii) Real Properties in the central business districts of New York, New York, San Diego, California, San Francisco, California, Washington, D.C., and Boston, Massachusetts; and (iii) Los Angeles, California urban Real Properties (including Real Properties located in Santa Monica, California); and (b) 7.75% for all other Real Properties.

"***Capital One Facility***" means the facility evidenced by that certain Credit Agreement, dated as of October 13, 2017, among the Borrower, the Parent REIT, the guarantors from time to time party thereto, certain lenders party thereto, and Capital One, National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Cash Equivalents***" means any of the following types of Investments, to the extent owned by any Consolidated Party:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i)(A) is a Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in ***clause (c)*** of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 180 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of any Consolidated Party, in money market investment programs registered under the Investment

Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in ***clauses (a)***, ***(b)*** and ***(c)*** of this definition.

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

"***Change of Control***" means an event or series of events by which:

(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 twenty-five percent (25%) or more of the equity securities of the Borrower or Parent REIT entitled to vote for members of the board of directors or equivalent governing body of the Borrower or Parent REIT 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);

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower or Parent REIT 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 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 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 passage of thirty (30) days from the date upon which any Person or two (2) or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower or Parent REIT, or control over the equity securities of the Borrower or Parent REIT entitled to vote for members of the board of directors or equivalent

governing body of the Borrower or Parent REIT 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) representing twenty-five percent (25%) or more of the combined voting power of such securities.

"***Closing Date***" means the first date all the conditions precedent in ***Section 4.01*** are satisfied or waived in accordance with ***Section 10.01***.

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

"***Collateral***" has the meaning specified in ***Section 6.17***.

"***Collateral Documents***" means, collectively, the Pledge Agreement and all other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Obligations, including all other security agreements, pledge agreements, deeds of trust, pledges, powers of attorney, consents, assignments, notices, financing statements and all other written matter whether heretofore, now, or hereafter executed by the Borrower or any of its Subsidiaries and delivered to the Administrative Agent to create, perfect or evidence Liens to secure the Obligations.

"***Collateral Period***" means any period after the First Amendment Effective Date commencing on the occurrence of a Collateral Trigger Date and ending on the Collateral Release Date.

"***Collateral Release***" has the meaning specified in ***Section 6.17***.

"***Collateral Release Certificate***" has the meaning specified in ***Section 6.17***.

"***Collateral Release Date***" means any date after the expiration of the Waiver Period on which (a) no Default or Event of Default is continuing, (b) the Borrower delivers a Collateral Release Certificate as required by ***Section 6.17***, and (c) the Consolidated Leverage Ratio is either (i) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (ii) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***.

"***Collateral Trigger Date***" means any date during the Waiver Period, on which (a) the Liquidity of the Consolidated Parties does not exceed $~~300,000,000~~400,000,000 after the Third Amendment Effective Date (the "***First Limited Collateral Trigger Event***"), (b) the Liquidity of the Consolidated Parties does not exceed $300,000,000 after the First Amendment Effective Date (the "***Second Limited Collateral Trigger Event***"), (c) the Liquidity of the Consolidated Parties does not exceed $250,000,000 after the First Amendment Effective Date, or (~~e~~d) the Total Revolving Credit Outstandings (under and as defined in the Bank of America Revolving Facility) exceed $400,000,000 at any time on or after the fourth (4th) Business Day following the First Amendment Effective Date.

"***Commitment***" means a 2020 Term Commitment, a 2021 Term Commitment, a 2022 Term Commitment, a 2023 Term Commitment, or a 2024 Term Commitment, as the context may require.

"***Committed Loan Notice***" means a notice of (a) a 2020 Term Borrowing, (b) a 2021 Term Borrowing, (c) a 2022 Term Borrowing, (d) a 2023 Term Borrowing, (e) a 2024 Term Borrowing, (f) a conversion of Loans from one Type to the other, or (g) a continuation of Eurodollar Rate Loans, pursuant to ***Section 2.02(a)***, which 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.

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

"***Company Material Adverse Effect***" has the meaning assigned to such term in the Merger Agreement.

"***Company Merger***" means the merger of the LaSalle Parent with the Merger Sub, with the Merger Sub being the surviving entity, pursuant to and in accordance with the terms of the Merger Agreement.

"***Compliance Certificate***" means a certificate substantially in the form of ***Exhibit C***.

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

"***Consolidated Adjusted EBITDA***" means, for any period, EBITDA less an annual replacement reserve equal to four percent (4.0%) of gross property revenues (excluding revenues with respect to third party space or retail leases).

"***Consolidated Fixed Charge Coverage Ratio***" means, as of any date of determination, the ratio of (a) Consolidated Adjusted EBITDA for the Calculation Period ending on such date *to* (b) Consolidated Fixed Charges for such period.

"***Consolidated Fixed Charges***" means, for any period, the sum of (a) Consolidated Interest Charges for such period, *plus* (b) current scheduled principal payments on Consolidated Funded Indebtedness for such period (including, for purposes hereof, current scheduled reductions in commitments, but excluding any payment of principal under the Loan Documents and any "balloon" payment or final payment at maturity that is significantly larger than the scheduled payments that preceded it), *plus* (c) dividends and distributions paid in cash on preferred stock by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, if any, for such period, in each case, determined in accordance with GAAP; *provided that*, to the extent the calculations under ***clauses (a)***, ***(b)*** and ***(c)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Consolidated Party).

"***Consolidated Funded Indebtedness***" means, as of any date of determination, without duplication, the sum of (a) the outstanding principal amount of all obligations of the Consolidated Parties on a consolidated basis, whether current or long-term, for borrowed money (including all obligations hereunder and under the other Loan Documents) and all obligations of the Consolidated Parties on a consolidated basis evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness of the Consolidated Parties on a consolidated basis, (c) all obligations of the Consolidated Parties on a consolidated basis arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations of the Consolidated Parties on a consolidated basis in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (e) Attributable Indebtedness of the Consolidated Parties on a consolidated basis in respect of capital leases and Synthetic Lease Obligations, (f) without duplication, all

Guarantees of the Consolidated Parties on a consolidated basis with respect to outstanding Indebtedness of the types specified in ***clauses (a)*** through ***(e)*** above of Persons other than the Parent REIT or any Subsidiary, (g) without duplication, all Indebtedness of the Consolidated Parties on a consolidated basis of the types referred to in ***clauses (a)*** through ***(f)*** above of any partnership or joint venture in which the Parent REIT or a Subsidiary is a general partner or joint venturer, and (h) without duplication, the aggregate amount of Unconsolidated Affiliate Funded Indebtedness for all Unconsolidated Affiliates. Notwithstanding the foregoing, Consolidated Funded Indebtedness shall exclude Excluded Capital Leases.

"***Consolidated Interest Charges***" means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates with respect to such period under capital leases (other than Excluded Capital Leases) that is treated as interest in accordance with GAAP; *provided that*, to the extent the calculations under ***clauses (a)*** and ***(b)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Consolidated Funded Indebtedness that is recourse to a Consolidated Party).

"***Consolidated Leverage Ratio***" means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness less Adjusted Unrestricted Cash as of such date *to* (b) EBITDA for the Calculation Period most recently ended.

"***Consolidated Net Income***" means, for any period, the sum of (a) the net income of the Consolidated Parties on a consolidated basis (excluding extraordinary gains, extraordinary losses and gains and losses from the sale of assets) for such period, calculated in accordance with GAAP, *plus* (b) without duplication, an amount equal to the aggregate of net income (excluding extraordinary gains and extraordinary losses) for such period, calculated in accordance with GAAP, of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"***Consolidated Parties***" means a collective reference to the Parent REIT and its consolidated Subsidiaries and "***Consolidated Party***" means any one of the Consolidated Parties.

"***Consolidated Recourse Secured Indebtedness***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt that is recourse to any Consolidated Party or any Unconsolidated Affiliate (except to the extent such recourse is limited to customary non-recourse carve-outs); *provided that*, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Consolidated Party).

"***Consolidated Secured Debt***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, all Secured Debt; *provided that*, to the extent the calculation of Secured Debt includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to

any Unconsolidated Affiliate Interests (or, if greater, amounts that are attributable to Secured Debt that is recourse to a Consolidated Party).

"***Consolidated Tangible Net Worth***" means, as of any date of determination, for the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates, Shareholders' Equity on that date, *minus* the amount of Intangible Assets, *plus* the amount of accumulated depreciation; *provided that* there shall be excluded from the calculation of "Consolidated Tangible Net Worth" any effects resulting from the application of FASB ASC No. 715: Compensation – Retirement Benefits; *provided*, further, that, to the extent the calculation of foregoing amounts includes amounts allocable to Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

"***Consolidated Total Asset Value***" means, without duplication, as of any date of determination, for the Consolidated Parties on a consolidated basis, the sum of: (a) the Operating Property Value of all Real Properties (other than Development/Redevelopment Properties); (b) the amount of all Unrestricted Cash; (c) the book value of all Development/Redevelopment Properties, mortgage or real estate-related loan assets and undeveloped or speculative land; (d) the contract purchase price for all assets under contract for purchase (to the extent included in Indebtedness); and (e) the Borrower's applicable Unconsolidated Affiliate Interests of the preceding items for its Unconsolidated Affiliates.

"***Consolidated Unsecured Interest Coverage Ratio***" means, as of any date of determination, the ratio of (a) Net Operating Income from the Unencumbered Borrowing Base Properties for the Calculation Period ending on such date *to* (b) Unsecured Interest Charges for such period; *provided that*, unless otherwise approved by the Required Lenders, there shall be excluded from ***clause (a)*** above for the calculation of Consolidated Unsecured Interest Coverage Ratio: (i) any excess above forty percent (40%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Major MSA and (ii) any excess above thirty-three percent (33%) of aggregate Net Operating Income from the Unencumbered Borrowing Base Properties from any one Other MSA.

"***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.

"***Copley Place Term Loan Facility***" means the facility evidenced by that certain Term Loan Agreement, dated as of July 20, 2015, among LHO Backstreets, L.L.C. (a Subsidiary of the LaSalle Parent), certain lenders party thereto, and Citibank, N.A., as administrative agent.

"***Covered Entity***" has the meaning specified in ***Section 10.22(b)***.

"***Credit Parties***" means, collectively, the Administrative Agent, the Lenders, the Hedge Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to ***Section 9.05***, and the other Persons to whom the Obligations are owing from time to time.

"***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.

"***Debt Rating***" means the current published or private long term unsecured senior, non-credit enhanced debt rating of the Parent REIT or the Borrower by S&P, Moody's or Fitch.

"***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 (a) the Base Rate *plus* (b) the Applicable Margin, if any, applicable to Base Rate Loans *plus* (c) two percent (2.0%) per annum; *provided, however*, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus two percent (2.0%) per annum.

"***Default Right***" has the meaning specified in ***Section 10.22(b)***.

"***Defaulting Lender***" means, subject to ***Section 2.13(b)***, any Lender that (a) has failed to (i) fund all or any portion of its Loans within three (3) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within three (3) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this ***clause (c)*** upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; *provided that* a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of ***clauses (a)*** through ***(d)*** above, 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 2.13(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.

"***Delayed Draw Term Loan Facility***" means the facility evidenced by that certain Credit Agreement, dated as of September 5, 2018, among the Borrower, the Parent REIT, the guarantors from time to time party thereto, certain lenders party thereto, and Bank of America, N.A., as administrative agent.

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

"***Development/Redevelopment Property***" means Real Property with respect to which development activities are being undertaken by the applicable owner thereof. A Real Property shall cease to be a Development/Redevelopment Property on the last day of the sixth (6th) full fiscal quarter after opening or reopening (or such earlier date as elected by the Borrower by written notice to the Administrative Agent).

"***Disposition***" or "***Dispose***" means the sale, transfer, license, lease (excluding the lease of any Unencumbered Borrowing Base Property and personal property assets related thereto to any TRS pursuant to a form of Lease approved by the Administrative Agent, in its reasonable discretion) or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale leaseback transaction), 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. For the avoidance of doubt, leases of personal or Real Property (other than sale and leaseback transactions) entered into in the ordinary course of business shall not be deemed to be Dispositions.

"***Dividing Person***" has the meaning assigned to it in the definition of "*Division.*"

"***Division***" means the division of the assets, liabilities and/or obligations of a Person (the "***Dividing Person***") among two or more Persons (whether pursuant to a "*plan of division*" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"***Dollar***" and "***$***" mean lawful money of the United States.

"***EBITDA***" means, for any period, the sum of (a) an amount equal to Consolidated Net Income for such period *plus* (b) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by the Consolidated Parties and Unconsolidated Affiliates for such period, (iii) depreciation and amortization expense of the Consolidated Parties and Unconsolidated Affiliates, (iv) other non-recurring expenses of the Consolidated Parties and Unconsolidated Affiliates reducing such Consolidated Net Income which do not represent a cash item in such period or any future period, (v) without duplication of any of the foregoing, amounts deducted from net income as a result of fees or expenses incurred in connection with acquisitions permitted under the Loan Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, (vi) all non-cash items with respect to straight-lining of rents materially decreasing Consolidated Net Income for such period, and (vii) all other non-cash items decreasing Consolidated Net Income (including non-cash expenses or losses with respect to Excluded Capital Leases), *minus* (c) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits of the Consolidated Parties and Unconsolidated Affiliates for such period, (ii) all non-cash items with respect to straight-lining of rents materially increasing Consolidated Net Income

for such period, and (iii) all other non-cash items increasing Consolidated Net Income for such period (including non-cash revenues or gains with respect to Excluded Capital Leases); *provided that*, to the extent the calculations under ***clauses (a)***, ***(b)*** and ***(c)*** above include amounts allocable to Unconsolidated Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests.

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

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

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

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

"***Eligible Ground Lease***" means a ground or similar building lease with respect to an Unencumbered Borrowing Base Property executed by the Borrower or a Subsidiary of the Borrower, as lessee, (a) that has a remaining lease term (including extension or renewal rights) of at least thirty-five (35) years, calculated as of the date such property becomes an Unencumbered Borrowing Base Property, (b) that is in full force and effect, (c) that may be transferred and/or assigned without the consent of the lessor (or as to which (i) such lease may be transferred and/or assigned with the consent of the lessor and (ii) such consent shall not be unreasonably withheld or delayed or is subject to certain customary and reasonable requirements), and (d) pursuant to which (i) no default or terminating event exists thereunder, and (ii) no event has occurred which but for the passage of time, or notice, or both would constitute a default or terminating event thereunder.

"***End Date***" means March 6, 2019.

"***Environmental Laws***" means any and all applicable Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or Governmental Authority 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, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Laws, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract,

agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Equity Interests***" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; *provided* that neither Permitted Convertible Notes (prior to conversion thereof) nor Permitted Convertible Notes Swap Contracts shall constitute Equity Interests of the Parent REIT.

"***Equity Issuance***" means the issuance or sale by any Person of any of its Equity Interests or any capital contribution to such Person by any holder of its Equity Interests.

"***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 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) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to *Section 4063* of ERISA during a plan year in which such entity 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 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 a Pension Plan or the treatment of a Pension Plan amendment as a termination under *Section 4041* or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any 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; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of *Sections 430*, 431 and 432 of the Code or *Sections 303*, *304* and *305* of ERISA; or (h) 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 or any ERISA Affiliate.

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

"***Eurodollar Rate***" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) ("***LIBOR***") or a comparable or successor rate, which rate is approved by the Administrative Agent (in consultation with the Borrower), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately

11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

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

provided that (i) 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, (ii) 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) for the avoidance of doubt, in no circumstance shall the Eurodollar Rate be less than one-quarter of one percent (0.25%) per annum for each Eurodollar Rate Loan that has not been identified by the Borrower in writing as being subject to a Swap Contract.

"***Eurodollar Rate Loan***" means a Loan that bears interest at a rate based on ***clause (a)*** of the definition of Eurodollar Rate.

"***Event of Default***" has the meaning specified in ***Section 8.01***.

"***Excess Un-Reinvested Proceeds***" has the meaning specified in the definition of Excluded Net Proceeds.

"***Excluded Capital Lease***" means any long-term ground lease or building lease that is treated as a capital lease in accordance with GAAP.

"***Excluded Net Proceeds***" means (a) Net Cash Proceeds from the issuance of any common Equity Interests of the Parent REIT after the First Amendment Effective Date in an aggregate amount of up to ~~$300,000,000~~500,000,000 to be used to acquire one or more Unencumbered Borrowing Base Properties, (b) Net Cash Proceeds of Dispositions after the First Amendment Effective Date in the aggregate amount of up to ~~$200,000,000~~500,000,000 that the Borrower has designated in writing as being held for reinvestment in one or more new Unencumbered Borrowing Base Properties; *provided* that, if any such Net Cash Proceeds in excess of $200,000,000 are not reinvested in one or more new Unencumbered Borrowing Base Properties on or before March 31, 2022 (the "***Excess Un-Reinvested Proceeds***"), then such Excess Un-Reinvested Proceeds shall no longer be qualified as Excluded Net Proceeds and shall be used to make a mandatory prepayment required hereunder in accordance with ***Section 2.03(b)***, and (c) Net Cash Proceeds from Permitted Preferred Issuances which are contemporaneously (or not later than thirty (30) days after the issuance thereof) being used to redeem existing preferred Equity Interests of the Parent REIT.

"***Excluded Swap Obligations***" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to ***Section 11.08*** and any other "keepwell, support or other agreement" for the benefit of such Guarantor and any and all Guarantees of such Guarantor's Swap

Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, then such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

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

"***Existing 2021 Term Loan Maturity Date***" means November 1, 2021.

"***Extended 2021 Term Loan***" means the 2021 Term Loan of a 2021 Term Lender that matures on the Extended 2021 Term Loan Maturity Date.

"***Extended 2021 Term Loan Maturity Date***" means November 1, 2022.

"***Extending 2021 Term Lender***" means those 2021 Term Lenders with a 2021 Term Loan that matures on the Extended 2021 Term Loan Maturity Date. On the ~~First~~Third Amendment Effective Date, the Extending 2021 Term Lenders are identified as such on ***Schedule 2.01***.

"***Facilities***" means, collectively, the 2020 Term Facility, the 2021 Term Facility, the 2022 Term Facility, the 2023 Term Facility, and the 2024 Term Facility, and "***Facility***" means any one of the Facilities, as context may require.

"***FAS 141R Changes***" means those changes made to a buyer's accounting practices by the Financial Accounting Standards Board's Statement of Financial Accounting Standard No. 141R, *Business Combinations*, which is effective for annual reporting periods that begin in calendar year 2009.

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

"***FATCA***" means *Sections 1471* through *1474* of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to *Section 1471(b)(1)* of the Code.

"***Federal Funds Rate***" means, for any day, the rate per annum equal to the greater of (a) zero percent (0%) and (b) the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that* (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) 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 one one-hundredth of one percent (1/100 of 1%)) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"***Fee Letters***" mean, collectively, (a) the letter agreement, dated September 21, 2018, among the Parent REIT, the Borrower, the Administrative Agent and BofA Securities, Inc., (b) each other letter agreement entered into with an Arranger and dated on or before the Closing Date in connection with the Facilities, and (c) any other fee letter among the Borrower, the Parent REIT, the Administrative Agent and BofA Securities, Inc.

"***FFO Distribution Allowance***" means, for any fiscal year of the Consolidated Parties, an amount equal to ninety-five percent (95%) of Funds From Operations for such fiscal year.

"***First Amendment Effective Date***" means June 29, 2020.

"***First Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.

"***Fitch***" means Fitch, Inc. and any successor thereto.

"***Foreign Lender***" means any Lender that is organized under the Applicable Laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"***FRB***" means the Board of Governors of the Federal Reserve System of the United States.

"***Fully Satisfied***" means, with respect to the Obligations as of any date, that, as of such date, (a) all principal of and interest accrued to such date which constitute Obligations shall have been irrevocably paid in full in cash, (b) all fees, expenses and other amounts then due and payable which constitute Obligations shall have been irrevocably paid in cash and (c) the Aggregate Commitments shall have expired or been terminated in full (in each case, other than inchoate indemnification liabilities arising under the Loan Documents).

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

"***Funding Date***" means the first date in which all of the conditions precedent in ***Section 4.02*** are satisfied or waived in accordance with ***Section 10.01***.

"***Funds From Operations***" means, for any period, Consolidated Net Income, plus depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures as hereafter provided; *provided that*, to the extent such calculations include amounts allocable to Unconsolidated

Affiliates, such calculations shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests. Without limiting the foregoing, notwithstanding contrary treatment under GAAP, for purposes hereof, (a) "Funds From Operations" shall include, and be adjusted to take into account, (i) the Parent REIT's interests in unconsolidated partnerships and joint ventures, on the same basis as consolidated partnerships and subsidiaries, as provided in the "white paper" issued in April 2002 by the National Association of Real Estate Investment Trusts, as may be amended from time to time, and (ii) amounts deducted from net income as a result of pre-funded fees or expenses incurred in connection with acquisitions permitted under the Loan Documents that can no longer be capitalized due to FAS 141R Changes and charges relating to the under-accrual of earn outs due to the FAS 141R Changes, and (b) net income (or loss) of the Consolidated Parties on a consolidated basis shall not include gains (or, if applicable, losses) resulting from or in connection with (i) restructuring of indebtedness, (ii) sales of property, (iii) sales or redemptions of preferred stock, (iv) non-cash asset impairment charges or (v) other non-cash items including items with respect to Excluded Capital Leases.

"***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.

"***Glass Houses***" means Glass Houses, a Maryland real estate investment trust.

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

"***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 obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (iv) to guaranty to any Person rental income levels (or shortfalls) or retenanting costs (including tenant improvements, moving expenses, lease commissions and any other costs associated with procuring new tenants); *provided that* such obligations shall be determined to be equal to the maximum potential amount of the payments due from the Person guaranteeing the applicable rental income levels over the term of the applicable lease or (v) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part); or (b) any lien on any assets of such Person securing any Indebtedness or other obligation of any primary obligor, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related

primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith; *provided that*, to the extent any Guarantee is limited by its terms, then the amount of such Guarantee shall be deemed to be the stated or determinable amount of such Guarantee. The term "***Guarantee***" as a verb has a corresponding meaning.

"***Guarantors***" means, collectively, the Parent REIT, all Subsidiaries of the Borrower as of the Closing Date and as identified on the signature pages hereto as a "Guarantor" as of the Closing Date (excluding all Non-Guarantor Subsidiaries as of the Closing Date), each Person that is required to be a Guarantor pursuant to ***Section 6.12*** (including any Subsidiary that owns an Unencumbered Borrowing Base Property), unless such subsidiary is a Non-Guarantor Subsidiary or has otherwise been released from its obligations pursuant to ***Section 6.13***, and, with respect to the payment and performance by each Specified Loan Party of its obligations under ***Section 11*** with respect to all Swap Obligations, the Borrower, in each case together with their successors and permitted assigns.

"***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 Laws.

"***Hedge Bank***" means any Lender or Affiliate of a Lender, in its capacity as a party to a Swap Contract that is not otherwise prohibited under ***Section 6*** or ***7***.

"***Immaterial Subsidiary***" means any Subsidiary whose assets constitute less than one percent (1%) of Consolidated Total Asset Value; *provided that* if at any time the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" exceeds ten percent (10%) of all Consolidated Total Asset Value, then the Borrower shall designate certain "*Immaterial Subsidiaries*" as Guarantors such that the aggregate Consolidated Total Asset Value of the "*Immaterial Subsidiaries*" which are not Guarantors does not exceed ten percent (10%) of all Consolidated Total Asset Value.

"***Impacted Loans***" has the meaning specified in ***Section 3.03(a)***.

"***Increase Effective Date***" has the meaning given to such term in ***Section 2.12(d)***.

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

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

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

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

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable incurred in the ordinary course of business and, in each case, not overdue by more than ninety (90) days after such trade account payable was created, except to the extent that any such trade payables are being disputed in good faith);

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

(f) capital leases (other than Excluded Capital 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 or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; and

(h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include, without duplication, the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any capital lease (other than an Excluded Capital Lease) or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

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

"***Indemnitees***" has the meaning specified in ***Section 10.04(b)***.

"***Information***" has the meaning specified in ***Section 10.07***.

"***Initial Compliance Date***" means (a) if the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of Waiver Period, ~~June 30, 2021~~(i) March 31, 2022 with respect to the financial covenants set forth in ***Sections 7.11(d)***, ***7.11(e)*** and ***7.11(j)(iii)*** and (ii) June 30, 2022 with respect to the financial covenants set forth in ***Section 7.11*** (other than the covenants set forth in ***clauses (d)***, ***(e)*** and ***(j)(iii)*** thereof) or (b) if the Waiver Period ends on the date occurring under ***clause (b)*** of the definition of Waiver Period, the last day of the applicable fiscal quarter set forth in the Compliance Certificate delivered pursuant to such ***clause (b)***.

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

"***Intercreditor Agreement***" means that certain Intercreditor Agreement, dated as of the First Amendment Effective Date, by and among the Borrower, the Parent REIT, certain grantors and guarantors party thereto, the Administrative Agent, U.S. Bank National Association, Capital One, National Association, Truist Bank, and each additional pari passu collateral agent from time to time party thereto.

"***Interest Payment Date***" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided, however*, that if any Interest Period for a Eurodollar Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date.

"***Interest Period***" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one (1) week thereafter (to the extent each of the Lenders are able to provide same), one (1), two (2), three (3) or six (6) months thereafter, or, upon consent of all of the Lenders, such other period that is twelve (12) months or less (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 Maturity Date.

"***Intermediate REIT***" means (a) Glass Houses and (b) any Subsidiary of the Borrower that is formed as a real estate investment trust under its jurisdiction of formation, which Subsidiary does not own any assets (other than any Equity Interests in any Subsidiary that owns any Real Property assets); *provided that* such Subsidiary (i) shall not incur or guarantee any other Indebtedness, and (ii) may receive Restricted Payments paid in cash from its Subsidiaries so long as such Restricted Payments are immediately distributed upon receipt to the Borrower.

"***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.

"***Investment Grade Rating***" means a Debt Rating for the Parent REIT or the Borrower of BBB- or better from S&P, Baa3 or better from Moody's or BBB- or better from Fitch.

"***IP Rights***" has the meaning specified in ***Section 5.18***.

"***Joinder Agreement***" means a Joinder Agreement substantially in the form of ***Exhibit E***, executed and delivered by a new Guarantor in accordance with the provisions of ***Section 6.12***.

"***LaSalle Hotel Lessee***" means LaSalle Hotel Lessee, Inc., an Illinois corporation, and its permitted successors.

"***LaSalle Operating Partnership***" means LaSalle Hotel Operating Partnership, L.P., a Delaware limited partnership.

"***LaSalle Parent***" means LaSalle Hotel Properties, a Maryland real estate investment trust.

"***LaSalle Parties***" means, collectively, the LaSalle Parent, the LaSalle Operating Partnership, and each of their respective Subsidiaries.

"***LaSalle Revolving and Term Loan Facility***" means the facility evidenced by that certain Second Amended & Restated Senior Unsecured Credit Agreement, dated as of January 10, 2017, among the LaSalle Parent, the LaSalle Operating Partnership, the guarantors from time to time party thereto, certain lenders party thereto, and Citibank, N.A., as administrative agent.

"***LaSalle Term Loan Facility***" means the facility evidenced by that certain Amended & Restated Senior Unsecured Term Loan Agreement, dated as of January 10, 2017, among the LaSalle Parent, the LaSalle Operating Partnership, the guarantors from time to time party thereto, certain lenders party thereto, and Citibank, N.A., as administrative agent.

"***Lease***" means a lease, sublease, license, concession agreement or other agreement providing for the use or occupancy of any portion of any Real Property (and any personal property related thereto that is covered by such lease, sublease, license, concession agreement or other agreement) owned or ground leased by any Loan Party, including all amendments, supplements, restatements, assignments and other modifications thereto.

"***Lender***" has the meaning specified in the introductory paragraph.

"***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, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

"***LIBOR***" has the meaning specified in the definition of Eurodollar Rate.

"***LIBOR Screen Rate***" means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

"***LIBOR Successor Rate***" has the meaning specified in ***Section 3.04***.

"***LIBOR Successor Rate Conforming Changes***" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the 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 LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines in consultation with the Borrower).

"***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).

~~"***Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.~~

"***Liquidity***" means, as of any date of determination, the sum of (a) cash and Cash Equivalents not subject to any Liens, Negative Pledges or other restrictions *plus* (b) undrawn availability under this Agreement or under any other credit facilities of the Consolidated Parties (to the extent available to be drawn at the date of determination in accordance with this Agreement or the other applicable credit facility).

"***Liquidity Compliance Certificate***" means a certificate substantially in the form of ***Exhibit H*** or in such other form as may be agreed by the Borrower and the Administrative Agent.

"***Loans***" means, collectively, the 2020 Term Loan, the 2021 Term Loan, the 2022 Term Loan, the 2023 Term Loan, and the 2024 Term Loan, and "***Loan***" means any one of the Loans.

"***Loan Documents***" means this Agreement, each Note, the Intercreditor Agreement, each Collateral Document, and the Fee Letters.

"***Loan Parties***" means, collectively, the Borrower and each Guarantor.

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

"***Major MSA***" means the metropolitan statistical area of any of the following: (a) New York City, New York; (b) Chicago, Illinois; (c) Washington, DC; (d) Los Angeles, California (excluding Santa Monica, California); (e) Boston, Massachusetts; (f) San Diego, California; and (g) San Francisco, California.

"***Material Acquisition***" means the acquisition by any Consolidated Party, in a single transaction or in a series of related transactions, of one or more Real Properties or Persons owning Real Properties in which the total investment with respect to such acquisition is equal to or greater than ten percent (10%) of Consolidated Total Asset Value at such time.

"***Material Adverse Effect***" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Parent REIT, the Borrower and their Subsidiaries taken as a whole; (b) a material impairment of the ability of the Borrower and the other Loan Parties taken as a whole to perform their respective obligations under any Loan Document; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"***Material Lease***" means as to any Unencumbered Borrowing Base Property (a) any Lease of such Unencumbered Borrowing Base Property (and any personal property assets related thereto) between the applicable Loan Party that owns such Unencumbered Borrowing Base Property and any TRS, (b) any Lease which, individually or when aggregated with all other Leases at such Unencumbered Borrowing Base Property with the same tenant or any of its Affiliates, accounts for ten percent (10%) or more of such Unencumbered Borrowing Base Property's revenue, or (c) any Lease which contains any option, offer, right of first refusal or other similar entitlement to acquire all or any portion of the Unencumbered Borrowing Base Property.

"***Maturity Date***" means (a) with respect to the 2020 Term Facility, December 31, 2020, (b) with respect to the 2021 Term Facility, (i) for Non-Extending 2021 Term Lenders, the Existing 2021 Term Loan Maturity Date and (ii) for Extending 2021 Term Lenders, the Extended 2021 Term Loan Maturity Date, (c) with respect to the 2022 Term Facility, November 1, 2022, (d) with respect to the 2023 Term Facility, November 1, 2023, and (e) with respect to the 2024 Term Facility, January 31, 2024; *provided, however*, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"***Merger Agreement***" means that certain Agreement and Plan of Merger dated September 6, 2018, by and among, the Parent REIT, the Borrower, the Merger Sub, the Merger OP, the LaSalle Parent and the LaSalle Operating Partnership (together with all exhibits, annexes, schedules and other disclosure letters thereto, collectively, as modified, amended, supplemented, consented to or waived).

"***Merger OP***" means Ping Merger OP, LP, a Delaware limited partnership.

"***Mergers***" means, collectively, the Company Merger and the Partnership Merger.

"***Merger Sub***" means Ping Merger Sub, LLC, a Maryland limited liability company.

"***Moody's***" means Moody's Investors Service, Inc. and any successor thereto.

"***Multiemployer Plan***" means any employee benefit plan of the type described in *Section 4001(a)(3)* of ERISA that is subject to Title IV of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five (5) plan years, has made or been obligated to make contributions.

"***Multiple Employer Plan***" means any employee benefit plan which has two (2) or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two (2) of whom are not under common control, as such a plan is described in *Section 4064* of ERISA.

"***Negative Pledge***" means a provision of any agreement (other than this Agreement or any other Loan Document) that prohibits the creation of any Lien on any assets of a Person; *provided, however*, that neither (a) an agreement that establishes a maximum ratio of unsecured debt to unencumbered assets, or of secured debt to total assets, or that otherwise conditions a Person's ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person's ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets nor (b) any requirement for the grant in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations, shall constitute a "*Negative Pledge*" for purposes of this Agreement.

"***Net Cash Proceeds***" means:

(a) with respect to any Disposition by any Consolidated Party, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction, including any accrued interest, repayment fees or charges due in connection with such repayment (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket expenses incurred by such Consolidated Party in connection with such transaction and (C) income taxes reasonably estimated to be actually payable within two (2) years of the date of the relevant transaction as a result of any gain recognized in connection therewith; *provided that*, if the amount of any estimated taxes pursuant to ***subclause (C)*** exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds;

(b) with respect to the sale or issuance of any Equity Interest by any Consolidated Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by such Consolidated Party in connection therewith; and

(c) with respect to the incurrence or issuance of any Indebtedness by any Consolidated Party, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the sum of (A) the principal amount of any Indebtedness that is refinanced, replaced and/or repaid with the proceeds of such Indebtedness, including any accrued interest, repayment fees or charges due in connection with such refinancing, replacement and/or repayment (other than Indebtedness under the Loan Documents) and (B) the reasonable and customary out-of-pocket expenses incurred by such Consolidated Party in connection therewith.

"***Net Operating Income***" means, with respect to any Real Property and for the most recently ended Calculation Period, an amount equal to (a) the aggregate gross revenues from the operations of such Real Property during the applicable Calculation Period, *minus* (b) the sum of (i) all expenses and other proper charges incurred in connection with the operation of such Real Property during such period pro-rated as appropriate (including real estate taxes, but excluding any management fees, debt service charges, income taxes, depreciation, amortization and other non-cash expenses), and (ii) actual management fees paid during such period, and (iii) an annual replacement reserve equal to four percent (4.0%) of the aggregate revenues from the operations of such Real Property (excluding revenues with respect to third party space or retail leases).

"***Net Proceeds***" means, with respect to any Equity Issuance by any Consolidated Party, the amount of cash received by such Consolidated Party in connection with any such transaction after deducting therefrom the aggregate, without duplication, of the following amounts to the extent properly attributable to such transaction and such amounts are usual, customary, and reasonable: (a) brokerage commissions; (b) attorneys' fees; (c) finder's fees; (d) financial advisory fees; (e) accounting fees; (f) underwriting fees; (g) investment banking fees; and (h) other commissions, costs, fees, expenses and disbursements related to such Equity Issuance, in each case to the extent paid or payable by such Consolidated Party.

"***New Property***" means each Real Property acquired by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) from the date of acquisition for a period of six (6) full fiscal quarters after the acquisition thereof; *provided, however*, that, upon the Seasoned Date for any New Property (or any earlier date selected by Borrower), such New Property shall be converted to a Seasoned Property and shall cease to be a New Property.

"***Non-Consenting Lender***" means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of ***Section 10.01*** and (b) has been approved by the Required Lenders.

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

"***Non-Extended 2021 Term Loan***" means the 2021 Term Loan of a 2021 Term Lender that matures on the Existing 2021 Term Loan Maturity Date.

"***Non-Extending 2021 Term Lender***" means those 2021 Term Lenders with a 2021 Term Loan that matures on the Existing 2021 Term Loan Maturity Date. On the ~~First~~Third Amendment Effective Date, the Non-Extending 2021 Term Lenders are identified as such on ***Schedule 2.01***.

"***Non-Guarantor Subsidiary***" means any Subsidiary (whether direct or indirect) of the Borrower, other than any Subsidiary which owns an Unencumbered Borrowing Base Property, which (a) is a TRS; (b) is an Intermediate REIT; (c) is (i) formed for or converted to the specific purpose of holding title to Real Property assets which are collateral for Indebtedness owing or to be owed by such Subsidiary, *provided that* such Indebtedness must be incurred or assumed within ninety (90) days (or such longer period as the Administrative Agent may agree in writing) of such formation or conversion or such Subsidiary shall cease to qualify as a NonGuarantor Subsidiary, and (ii) expressly prohibited in writing from guaranteeing Indebtedness of any other person or entity pursuant to (A) a provision in any document, instrument or agreement evidencing such Indebtedness of such Subsidiary or (B) a provision of such Subsidiary's Organization Documents, in each case, which provision was included in such Organization Document or such other document, instrument or agreement at the request of the applicable third party creditor and as an express condition to the extension or assumption of such Indebtedness; *provided that* a Subsidiary meeting the requirements set forth in this ***clause (c)*** shall only remain a "Non-Guarantor Subsidiary" for so long as (1) each of the foregoing requirements set forth in this ***clause (c)*** are satisfied, (2) such Subsidiary does not guarantee any other Indebtedness and (3) the Indebtedness with respect to which the restrictions noted in ***clause (c)*** (ii) are imposed remains outstanding; *provided further that* in no event shall any party to a Permitted Intercompany Mortgage encumbering an Unencumbered Borrowing Base Property be a Non-Guarantor Subsidiary; (d)(i) becomes a Subsidiary following the Closing Date, (ii) is not a Wholly Owned Subsidiary of the Borrower, and (iii) with respect to which the Borrower and its Affiliates, as applicable, do not have sufficient voting power to cause such Subsidiary to become a Guarantor hereunder; or (e) is an Immaterial Subsidiary.

"***Note***" means a 2020 Term Note, a 2021 Term Note, a 2022 Term Note, a 2023 Term Note, or a 2024 Term Note, as the context may require.

"***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 any Swap Contract entered into by any Loan Party with any Lender or its Affiliate as a counterparty with respect to the Loans, 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 the "Obligations" with respect to a Guarantor shall exclude any Excluded Swap Obligations of such Guarantor.

"***OFAC***" means the Office of Foreign Assets Control of the United States Department of the Treasury.

"***Operating Property Value***" means, at any date of determination, (a) for each Seasoned Property, (i) the Adjusted NOI for such Real Property divided by (ii) the applicable Capitalization Rate, and (b) for each New Property, the GAAP book value for such New Property (until the Seasoned Date or such earlier date as elected by the Borrower by written notice to the Administrative Agent).

"***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 MSA***" means any metropolitan statistical area other than a Major MSA. For the avoidance of doubt, Santa Monica, California shall constitute an Other MSA.

"***Other Taxes***" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to ***Section 3.07***).

"***Outstanding Amount***" means, with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

"***Parent REIT***" has the meaning specified in the introductory paragraph.

"***Pari Passu Obligations***" has the meaning specified in the Intercreditor Agreement.

"***Participant***" has the meaning specified in ***Section 10.06(d)***.

"***Partnership Merger***" means the merger of the LaSalle Operating Partnership with the Merger OP, with the LaSalle Operating Partnership being the surviving entity, pursuant to and in accordance with the terms of the Merger Agreement.

"***PBGC***" means the Pension Benefit Guaranty Corporation.

"***Pebblebrook Hotel Lessee***" means Pebblebrook Hotel Lessee, Inc., a Delaware corporation, and its permitted successors.

"***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 or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a Multiple Employer Plan, has made contributions at any time during the immediately preceding five (5) plan years.

"***Permitted Convertible Notes***" means senior convertible debt securities of the Parent REIT (a) that are unsecured, (b) that do not have the benefit of any Guarantee of any Subsidiary, (c) that are otherwise permitted under ***Section 7.03*** and, if applicable, ***Section 7.20***, (d) the Net Cash Proceeds of which are applied during the Waiver Period, if applicable, in accordance with this Agreement and the Intercreditor Agreement, (e) that are not subject to any sinking fund or any prepayment, redemption or repurchase requirements, whether scheduled, triggered by specified events or at the option of the holders thereof (it being understood that none of (i) a customary "change in control" or "fundamental change" put, (ii) a right to convert such securities into common shares of the Parent REIT, cash or a combination thereof as the Parent REIT may elect or (iii) an acceleration upon an event of default will be deemed to constitute such a sinking fund or prepayment, redemption or repurchase requirement), and (f) that have the benefit of covenants and events of default customary for comparable convertible securities (as determined by the Parent REIT in good faith).

"***Permitted Convertible Notes Swap Contract***" means a Swap Contract entered into by the Parent REIT in connection with, and prior to or concurrently with, the issuance of any Permitted Convertible Notes pursuant to which the Parent REIT acquires a call or a capped call option requiring the counterparty thereto to deliver to the Parent REIT common shares of the Parent REIT, the cash value of such shares or a combination of such shares and cash from time to time upon exercise of such option; provided that the terms, conditions and covenants of each such Swap Contract shall be such as are typical and customary for Swap Contracts of such type (as determined by the Parent REIT in good faith).

"***Permitted Intercompany Mortgage***" means a loan by a Loan Party to another Loan Party secured by a Lien in Real Property so long as such loan is subordinated to the Obligations pursuant to ***Section 11.09*** or otherwise on terms acceptable to the Administrative Agent; *provided that* in no event shall there be more than five (5) Permitted Intercompany Mortgages at any time.

"***Permitted Liens***" has the meaning specified in ***Section 7.01***.

"***Permitted Preferred Issuances***" means the issuance after the First Amendment Effective Date by the Parent REIT of preferred Equity Interests that (a) are not subject to mandatory redemption or are otherwise not treated as Indebtedness pursuant to GAAP and (b) to the extent used to purchase or redeem existing preferred Equity Interests, have a yield to maturity yield (including any voluntary or involuntary liquidation preference and any accrued and unpaid dividends) not greater than any preferred Equity Interest purchased or redeemed with the proceeds thereof.

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

"***Plan***" means any "*employee benefit plan*" (as such term is defined in *Section 3(3)* of ERISA) other than a Multiemployer Plan established by the Borrower 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***.

"***Pledge Agreement***" means any pledge or security agreement entered into, after the First Amendment Effective Date between the Borrower, certain Subsidiaries of the Borrower party thereto, and the Administrative Agent, for the benefit of the Administrative Agent and the other Credit Parties (as required by this Agreement or any other Loan Document), substantially in the form of ***Exhibit I***.

"***Pledged Subsidiary***" has the meaning specified in the Pledge Agreement.

"***PNC Facility***" means the facility evidenced by that certain Amended and Restated Credit Agreement, dated as of October 13, 2017, among the Borrower, the Parent REIT, the guarantors from time to time party thereto, certain lenders party thereto, and PNC Bank, National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***Pro Forma Basis***" means, for purposes of calculating (utilizing the principles set forth in ***Section 1.03(c)***) compliance with each of the financial covenants set forth in ***Section 7.11*** in respect of a proposed transaction, that such transaction shall be deemed to have occurred as of the first day of the four (4) fiscal-quarter period ending as of the most recent fiscal quarter end preceding the date of such transaction with respect to which the Administrative Agent has received the Required Financial Information. As used herein, "***transaction***" shall mean (a) any Borrowing, (b) any incurrence or assumption of Indebtedness as referred to in ***Section 7.03(f)***, (c) any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to ***Section 7.05(a)*** or ***(b)*** or any other Disposition as referred to in ***Section 7.05***, or (d) any acquisition of any Person (whether by merger or otherwise) or other property. In connection with any calculation relating to the financial covenants set forth in ***Section 7.11*** upon giving effect to a transaction on a Pro Forma Basis:

(i) for purposes of any such calculation in respect of any incurrence or assumption of Indebtedness as referred to in ***Section 7.03(f)***, any Indebtedness which is retired in connection with such incurrence or assumption shall be excluded and deemed to have been retired as of the first day of the applicable period;

(ii) for purposes of any such calculation in respect of any removal of an Unencumbered Borrowing Base Property from qualification as such pursuant to ***Section 7.05*** or any other Disposition as referred to in ***Section 7.05***, (A) income statement items (whether positive or negative) attributable to the Person or property disposed of shall be excluded, (B) any Indebtedness which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the first day of the applicable period, and (C) pro forma adjustments shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the reasonable judgment of the Administrative Agent); and

(iii) for purposes of any such calculation in respect of any acquisition of any Person (whether by merger or otherwise) or other property, (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall be deemed to be included as of the first day of the applicable period, and (B) pro forma adjustments (with the calculated amounts annualized to the extent the period from the date of such acquisition through the most-recently ended fiscal quarter is not at least twelve (12) months or four (4) fiscal quarters, in the case of any applicable period that is based on twelve months or four (4) fiscal quarters) shall be included to the extent that such adjustments would give effect to events that are (1) directly attributable to such transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the reasonable judgment of the Administrative Agent).

"***Public Lender***" has the meaning specified in ***Section 6.02***.

"***QFC***" has the meaning specified in ***Section 10.22(b)***.

"***QRS***" means a Person qualifying for treatment either as a "qualified REIT subsidiary" under *Section 856(i)* of the Code, or as an entity disregarded as an entity separate from its owner under Treasury Regulations under *Section 7701* of the Code.

"***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.

"***Real Properties***" means, at any time, a collective reference to each of the facilities and real properties owned or leased by the Borrower or any other Subsidiary or in which any such Person has an interest at such time; and "***Real Property***" means any one of such Real Properties.

"***Recipient***" means 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.

"***Refinancing***" has the meaning given to such term in ***Section 4.02(h)***.

"***Register***" has the meaning specified in ***Section 10.06(c)***.

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

"***Related Parties***" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, 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.

"***Required 2020 Term Lenders***" means, as of any date of determination, 2020 Term Lenders holding at least fifty-one percent (51%) of the 2020 Term Facility on such date. The portion of the 2020 Term Facility held by any Defaulting Lender shall be disregarded in determining Required 2020 Term Lenders at any time.

"***Required 2021 Term Lenders***" means, as of any date of determination, 2021 Term Lenders holding at least fifty-one percent (51%) of the 2021 Term Facility on such date. The portion of the 2021 Term Facility held by any Defaulting Lender shall be disregarded in determining Required 2021 Term Lenders at any time.

"***Required 2022 Term Lenders***" means, as of any date of determination, 2022 Term Lenders holding at least fifty-one percent (51%) of the 2022 Term Facility on such date. The portion of the 2022 Term Facility held by any Defaulting Lender shall be disregarded in determining Required 2022 Term Lenders at any time.

"***Required 2023 Term Lenders***" means, as of any date of determination, 2023 Term Lenders holding at least fifty-one percent (51%) of the 2023 Term Facility on such date. The portion of the 2023 Term Facility held by any Defaulting Lender shall be disregarded in determining Required 2023 Term Lenders at any time.

"***Required 2024 Term Lenders***" means, as of any date of determination, 2024 Term Lenders holding at least fifty-one percent (51%) of the 2024 Term Facility on such date. The portion of the 2024 Term Facility held by any Defaulting Lender shall be disregarded in determining Required 2024 Term Lenders at any time.

"***Required Financial Information***" means, with respect to each fiscal period or quarter of the Borrower, (a) the financial statements required to be delivered pursuant to ***Section 6.01(a)*** or ***(b)*** for such fiscal period or quarter of the Parent REIT, and (b) the Compliance Certificate required by ***Section 6.02(a)*** to be delivered with the financial statements described in ***clause (a)*** above.

"***Required Lenders***" means, at any time, Lenders having Total Credit Exposures representing at least fifty-one percent (51%) of the Total Credit Exposures of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"***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, vice president of finance, treasurer, or controller of a 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 and, solely for purposes of notices given pursuant to ***Section 2***, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Parent REIT or any Subsidiary or any Unconsolidated Affiliate, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Parent REIT's shareholders, partners or members (or the equivalent Person thereof); *provided that*, to the extent the calculation of the amount of any dividend or other distribution for purposes of this definition of "Restricted Payment" includes amounts allocable to

Unconsolidated Affiliates, such calculation shall be without duplication and shall only include such amounts to the extent attributable to any Unconsolidated Affiliate Interests; *provided*, further, that payments for, in respect of or in connection with Permitted Convertible Notes Swap Contracts shall not constitute Restricted Payments.

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

"***Sale and Leaseback Transaction***" means any arrangement pursuant to which any Consolidated Party, directly or indirectly, becomes liable as lessee, guarantor or other surety with respect to any lease, whether an operating lease or a capital lease, of any property (a) which such Consolidated Party has sold or transferred (or is to sell or transfer) to a Person which is not a Consolidated Party or (b) which such Consolidated Party intends to use for substantially the same purpose as any other property which has been sold or transferred (or is to be sold or transferred) by such Consolidated Party to another Person which is not a Consolidated Party in connection with such lease.

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

"***Scheduled Unavailability Date***" has the meaning specified in ***Section 3.04***.

"***Seasoned Date***" means the first day on which an acquired Real Property has been owned for six (6) full fiscal quarters following the date of acquisition of such Real Property.

"***Seasoned Property***" means (a) each Real Property (other than a New Property) owned by the Consolidated Parties on a consolidated basis and all Unconsolidated Affiliates (as the case may be) and (b) upon the occurrence of the Seasoned Date of any New Property, such Real Property.

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

"***Second Limited Collateral Trigger Event***" has the meaning specified in the definition of Collateral Trigger Date.

"***Secured Debt***" means, for any given calculation date, without duplication, the total aggregate principal amount of any Indebtedness of the Consolidated Parties on a consolidated basis that is secured in any manner by any Lien (other than Permitted Liens of the types described in ***Sections 7.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)***, ***(g)***, ***(h)*** and ***(j)***); *provided that* (a) Indebtedness in respect of obligations under any capitalized lease shall not be deemed to be "Secured Debt" and (b) Secured Debt shall exclude Excluded Capital Leases and any Indebtedness in respect of the Pari Passu Obligations.

"***Secured Non-Recourse Debt***" means Secured Debt that is not recourse to the Parent REIT or any of its Subsidiaries (except to the extent such recourse is limited to customary non-recourse carve-outs).

"***Senior Notes***" means the Borrower's 4.70% Senior Notes Series A Due December 1, 2023 and 4.93% Senior Notes Series B Due December 1, 2025 evidenced by that certain Note Purchase and Guarantee Agreement dated November 12, 2015 (as the same may be amended, restated, modified or supplemented from time to time).

"***Shareholders' Equity***" means, as of any date of determination, the sum of (a) consolidated shareholders' equity of the Consolidated Parties as of that date determined in accordance with GAAP *plus* (b) without duplication, an amount equal to the aggregate shareholders' equity of each Unconsolidated Affiliate multiplied by the respective Unconsolidated Affiliate Interest in each such entity.

"***Solvent***" and "***Solvency***" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"***Specified Debt***" means the Senior Notes, the Bank of America Revolving Facility, the Capital One Facility, the US Bank Facility, the US Bank Lessee Line of Credit, and any other agreement creating or evidencing Indebtedness for borrowed money (excluding any Secured Non-Recourse Debt) entered into on or after the Closing Date by any Consolidated Party, or in respect of which any Consolidated Party is an obligor or otherwise provides a Guarantee or other credit support (other than customary non-recourse carve outs), which is either (a) incurred pursuant to ***Section 7.20(c)(iii)*** or (b) in a principal amount outstanding or available for borrowing equal to or greater than $25,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency).

"***Specified Loan Party***" means any Loan Party that is not an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to ***Section 11.08***).

"***Specified Merger Agreement Representations***" means the representations and warranties made by or with respect to the LaSalle Parties in the Merger Agreement that are material to the interests of the Lenders, but only to the extent that the Parent REIT has (or any Subsidiary of the Parent REIT has) the right (taking into account any applicable grace or cure provisions) to terminate its respective obligations under the Merger Agreement, or to decline to consummate the Mergers pursuant to the Merger Agreement (in each case, in accordance with the terms thereof), as a result of a breach of such representations in the Merger Agreement.

"***Specified Representations***" means the representations and warranties of the Parent REIT and its Subsidiaries set forth in ***Sections 5.01(a)***, ***5.01(b)(ii)***, ***5.02(a)***, ***5.02(b)(i)***, ***5.04***, ***5.14***, ***5.19***, ***5.24***, and ***5.25***.

"***Subsidiary***" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "***Subsidiary***" or to "***Subsidiaries***" shall refer to a Subsidiary or Subsidiaries of the Parent REIT.

"***Surge Date***" has the meaning specified in ***Section 7.11(a)***.

"***Surge Period***" has the meaning specified in ***Section 7.11(a)***.

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

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

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

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

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

"***Third Amendment Effective Date***" means February 18, 2021.

"***Threshold Amount***" means $25,000,000.

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

"***Total Outstandings***" means the aggregate Outstanding Amount of all Loans.

"***TRS***" means each of (a) Pebblebrook Hotel Lessee, (b) LaSalle Hotel Lessee, and (c) each other taxable REIT subsidiary that is a Wholly Owned Subsidiary of Pebblebrook Hotel Lessee or LaSalle Hotel Lessee.

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

"***UCC***" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"***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 Kington 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.

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

"***Unconsolidated Affiliate Funded Indebtedness***" means, as of any date of determination for any Unconsolidated Affiliate, the product of (a) the sum of (i) the outstanding principal amount of all obligations of such Unconsolidated Affiliate, whether current or long-term, for borrowed money and all obligations of such Unconsolidated Affiliate evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (ii) all purchase money Indebtedness of such Unconsolidated Affiliate, (iii) all obligations of such Unconsolidated Affiliate arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments, (iv) all obligations of such Unconsolidated Affiliate in respect of forward purchase agreements or the deferred purchase price of any property or services (other than trade accounts payable in the ordinary course of business), (v) Attributable Indebtedness of such Unconsolidated Affiliate in respect of capital leases and Synthetic Lease Obligations, (vi) without duplication, all Guarantees of such Unconsolidated Affiliate with respect to outstanding Indebtedness of the types specified in ***clauses (i)*** through ***(v)*** above of Persons other than such Unconsolidated Affiliate, and (vii) all Indebtedness of such Unconsolidated Affiliate of the types referred to in ***clauses (i)*** through ***(vi)*** above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Unconsolidated Affiliate is a general partner or joint venturer, multiplied by (b) the respective Unconsolidated Affiliate Interest of each Consolidated Party in such Unconsolidated Affiliate.

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

"***Unencumbered Asset Value***" means, as of any date of determination, the Operating Property Value of all Unencumbered Borrowing Base Properties (other than Development/Redevelopment Properties).

"***Unencumbered Borrowing Base Entity***" means, as of any date of determination, any Person that owns (or leases as ground lessee pursuant to an Eligible Ground Lease) an Unencumbered Borrowing Base Property.

"***Unencumbered Borrowing Base Properties***" means, as of any date, a collective reference to each Real Property listed in the most recent Compliance Certificate delivered by the Borrower hereunder that meets the following criteria:

(i) such Real Property is, or is expected to be, a "luxury", "upper upscale", or "upscale" full or select service hotel located in the United States;

(ii) such Real Property is wholly-owned, directly or indirectly, by the Borrower or a Subsidiary of the Borrower in fee simple or ground leased pursuant to an Eligible Ground Lease (and such Real Property, whether owned in fee simple by the Borrower or a Subsidiary of the Borrower or ground leased pursuant to an Eligible Ground Lease, is leased to the applicable TRS);

(iii) if such Real Property is owned or ground leased pursuant to an Eligible Ground Lease by a Subsidiary of the Borrower, then (A) such Subsidiary is a Guarantor (unless such Subsidiary has been released as, or is not required to be, a Guarantor pursuant to the terms of ***Section 6.13***), (B) the Borrower directly or indirectly owns at least ninety percent (90%) of the issued and outstanding Equity Interests of such Subsidiary, and (C) such Subsidiary is controlled exclusively by the Borrower and/or one or more Wholly Owned Subsidiaries of the Borrower (including control over operating activities of such Subsidiary and the ability of such Subsidiary to dispose of, grant Liens in, or otherwise encumber assets, incur, repay and prepay Indebtedness, provide Guarantees and make Restricted Payments, in each case without any requirement for the consent of any other Person);

(iv) such Real Property is free of any Liens (other than Permitted Liens of the types described in ***Sections 7.01(a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)***, ***(g)***, ***(h)*** and ***(j)***) or Negative Pledges;

(v) such Real Property is free of all material title defects;

(vi) if such Real Property is subject to an Eligible Ground Lease, then there is no default by the lessee under the Eligible Ground Lease and such Eligible Ground Lease is in full force and effect;

(vii) such Real Property is free of all material structural defects;

(viii) such Real Property complies in all material respects with all applicable Environmental Laws and is not subject to any material Environmental Liabilities;

(ix) neither all nor any material portion of such Real Property is subject to any proceeding for the condemnation, seizure or appropriation thereof, nor the subject of negotiations for sale in lieu thereof;

(x) such Real Property has not otherwise been removed as an "Unencumbered Borrowing Base Property" pursuant to the provisions of this Agreement; and

(xi) the Borrower has executed and delivered to the Administrative Agent all documents and taken all actions reasonably required by the Administrative Agent to confirm the rights created or intended to be created under the Loan Documents and the Administrative Agent has received all other evidence and information that it may reasonably require;

provided that, if any Real Property does not meet all of the foregoing criteria, then, upon the request of the Borrower, such Real Property may be included as an "Unencumbered Borrowing Base Property" with the written consent of the Required Lenders.

"***United States***" and "***U.S.***" mean the United States of America.

"***Unrestricted Cash***" means as of any date of determination, all cash of the Borrower on such date that (a) does not appear (or would not be required to appear) as "restricted" on a balance sheet of the Borrower, (b) is not subject to a Lien in favor of any Person other than Liens securing the Pari Passu Obligations on an equal and ratable basis and statutory Liens in favor of any depositary bank where such cash is maintained, (c) does not consist of or constitute "deposits" or sums legally held by the Borrower in trust for another Person, (d) is not subject to any contractual restriction or obligation regarding the payment thereof for a particular purpose (including insurance proceeds that are required to be used in connection with the repair, restoration or replacement of any property of the Borrower), and (e) is otherwise generally available for use by the Borrower.

"***Unsecured Indebtedness***" means all Indebtedness which is not Secured Debt.

"***Unsecured Interest Charges***" means, as of any date of determination, Consolidated Interest Charges on the Unsecured Indebtedness for the most recently ended Calculation Period.

"***Unsecured Leverage Increase Period***" has the meaning specified in ***Section 7.11(g)***.

"***US Bank Facility***" means the facility evidenced by that certain Amended and Restated Credit Agreement, dated as of October 13, 2017, among the Borrower, the Parent REIT, the guarantors from time to time party thereto, certain lenders party thereto, and U.S. Bank National Association, as administrative agent (as the same may be amended, restated, modified or supplemented from time to time).

"***US Bank LaSalle Lessee Line of Credit***" means the facility evidenced by that certain Fourth Amended and Restated Revolving Credit Note, dated as of January 10, 2017, by and between LaSalle Hotel Lessee, as borrower, and U.S. Bank National Association, as lender (as the same may be amended, restated, modified or supplemented from time to time).

"***US Bank Lessee Line of Credit***" means the facility evidenced by that certain ~~Third~~Fourth Amended and Restated Revolving Credit Note, dated as of the ~~First~~Third Amendment Effective Date, among Pebblebrook Hotel Lessee, as maker, and U.S. Bank National Association, as payee (as the same may be amended, restated, modified or supplemented from time to time).

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

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

"***Waiver Period***" means the period commencing on the First Amendment Effective Date and ending on the earlier to occur of (a) the date the Borrower is required to deliver a duly completed Compliance Certificate for the fiscal quarter ending June 30, ~~2021~~2022 pursuant to ***Section 6.02(a)*** (or, if earlier, the date on which the Borrower delivers such Compliance Certificate pursuant to ***Section 6.02(a)*** evidencing, to the Administrative Agent's reasonable satisfaction, the Borrower's compliance with the financial covenants contained in ***Section 7.11*** as of June 30, ~~2021~~2022) and (b) the date the Borrower delivers a Compliance Certificate in accordance with ***Section 6.02(a)*** with respect to any fiscal quarter ending after the First Amendment Effective Date but prior to June 30, ~~2021~~2022 evidencing, to the Administrative Agent's reasonable satisfaction, the Borrower's compliance with the financial covenants contained in ***Section 7.11*** as of the last day of such fiscal quarter as if such covenants had applied for such quarter, together with a written notice to the Administrative Agent irrevocably electing to terminate the Waiver Period concurrently with such delivery.

"***Wholly Owned Subsidiary***" means, with respect to any direct or indirect Subsidiary of any Person, that one hundred percent (100%) of the Equity Interests with ordinary voting power issued by such Subsidiary (other than directors' qualifying shares and investments by foreign nationals mandated by Applicable Laws) is beneficially owned, directly or indirectly, by such Person.

"***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, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Sections, Exhibits and Schedules shall be construed to refer to Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law

and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

(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).

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 and its Subsidiaries shall be deemed to be carried at one hundred percent (100%) of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(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); *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 and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made,

without giving effect to any change to GAAP occurring after the Closing Date as a result of the adoption of any proposals set forth in the Proposed Accounting Standards Update, Leases (Topic 840), issued by the Financial Accounting Standards Board on August 17, 2010, or any other proposals issued by the Financial Accounting Standards Board in connection therewith, in each case if such change would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) was not required to be so treated under GAAP as in effect on the Closing Date.

(c) **Financial Covenant Calculation Conventions**. Notwithstanding the above, the parties hereto acknowledge and agree that, for purposes of all calculations made under the financial covenants set forth in ***Section 7.11*** (including without limitation for purposes of the definitions of "Pro Forma Basis" set forth in ***Section 1.01***), (i) after consummation of any Disposition or removal of an Unencumbered Borrowing Base Property pursuant to ***Section 1.06*** (A) income statement items (whether income or expense) and capital expenditures attributable to the property disposed of or removed shall, to the extent not otherwise excluded in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in ***Section 1.01***, be excluded as of the first day of the applicable period and (B) Indebtedness which is retired shall be excluded and deemed to have been retired as of the first day of the applicable period and (ii) after consummation of any acquisition (A) income statement items (whether positive or negative) and capital expenditures attributable to the Person or property acquired shall, to the extent not otherwise included in such income statement items for the Consolidated Parties in accordance with GAAP or in accordance with any defined terms set forth in ***Section 1.01***, be included to the extent relating to any period applicable in such calculations, (B) to the extent not retired in connection with such acquisition, Indebtedness of the Person or property acquired shall be deemed to have been incurred as of the first day of the applicable period, (iii) in connection with any incurrence of Indebtedness, any Indebtedness which is retired in connection with such incurrence shall be excluded and deemed to have been retired as of the first day of the applicable period and (iv) pro forma adjustments may be included to the extent that such adjustments would give effect to items that are (1) directly attributable to the relevant transaction, (2) expected to have a continuing impact on the Consolidated Parties and (3) factually supportable (in the opinion of the Administrative Agent).

(d) **Consolidation of Variable Interest Entities**. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

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

1.05 **Times of Day; Rates**. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). The Administrative Agent does not warrant, nor accept responsibility, 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 "***Eurodollar***

Rate" or with respect to any rate that is an alternative or replacement for or successor to any such rate (including, without limitation, any LIBOR Successor Rate) or the effect of any of the foregoing.

1.06 **Addition/Removal of Unencumbered Borrowing Base Properties.**

(a) The Unencumbered Borrowing Base Properties and the Eligible Ground Leases as of the Closing Date are listed on ***Schedule 5.23***.

(b) The Borrower may from time to time add an additional Real Property as an Unencumbered Borrowing Base Property in a Compliance Certificate delivered to the Administrative Agent in accordance with the terms of ***Section 6.03(e)***; *provided that* no Real Property shall be included as an Unencumbered Borrowing Base Property in any Compliance Certificate delivered to the Administrative Agent or in any calculation of any of the components of the financial covenants set forth in ***Section 7.11*** that refer to "Unencumbered Borrowing Base Properties" unless such Real Property satisfies the eligibility criteria set forth in the definition of "Unencumbered Borrowing Base Property."

(c) Notwithstanding anything contained herein to the contrary, to the extent any property previously-qualifying as an Unencumbered Borrowing Base Property ceases to meet the criteria for qualification as such, such property shall be immediately removed from all financial covenant related calculations contained herein. Any such property shall immediately cease to be an "Unencumbered Borrowing Base Property" hereunder and the Borrower shall provide a Compliance Certificate to the Administrative Agent in accordance with the terms of ***Section 6.03(e)*** removing such Real Property from the list of Unencumbered Borrowing Base Properties.

(d) The Loan Parties may voluntarily remove any Unencumbered Borrowing Base Property from qualification as such (but only in connection with a proposed financing, sale or other Disposition otherwise permitted hereunder) by deleting such Unencumbered Borrowing Base Property in a Compliance Certificate delivered to the Administrative Agent in accordance with the terms of ***Section 6.03(e)***, if, and to the extent: (i) the Loan Parties shall, immediately following such removal, be in compliance (on a Pro Forma Basis) with all of the covenants contained in ***Section 7*** of this Agreement and (ii) no Default exists or would result therefrom. So long as no Default exists or would result therefrom, the Administrative Agent shall release any Subsidiary that owns any Unencumbered Borrowing Base Property that is being removed pursuant to this ***clause (d)*** from its obligations (accrued or unaccrued) under ***Section 11*** and the Administrative Agent shall promptly, and in any event within five (5) Business Days, execute a Release of Guarantor in the form of ***Exhibit G*** attached hereto if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal.

2. **THE COMMITMENTS AND BORROWINGS**

2.01 **The Loans**

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(a) **The 2020 Term Borrowings**. Subject to the terms and conditions set forth herein, each 2020 Term Lender severally agrees to make a single loan to the Borrower on the Funding Date in an amount not to exceed such 2020 Term Lender's 2020 Term Commitment; *provided* that such loan shall be made on a Business Day prior to the expiration of the

Availability Period. The 2020 Term Borrowings shall consist of 2020 Term Loans made simultaneously by the 2020 Term Lenders in accordance with their respective 2020 Term Commitment. Amounts borrowed under this ***Section 2.01(a)*** and repaid or prepaid may not be reborrowed. 2020 Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) **The 2021 Term Borrowings**. Subject to the terms and conditions set forth herein, each 2021 Term Lender severally agrees to make a single loan to the Borrower on the Funding Date in an amount not to exceed such 2021 Term Lender's 2021 Term Commitment; *provided* that such loan shall be made on a Business Day prior to the expiration of the Availability Period. The 2021 Term Borrowings shall consist of 2021 Term Loans made simultaneously by the 2021 Term Lenders in accordance with their respective 2021 Term Commitment. Amounts borrowed under this ***Section 2.01(b)*** and repaid or prepaid may not be reborrowed. 2021 Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(c) **The 2022 Term Borrowings**. Subject to the terms and conditions set forth herein, each 2022 Term Lender severally agrees to make a single loan to the Borrower on the Funding Date in an amount not to exceed such 2022 Term Lender's 2022 Term Commitment; *provided* that such loan shall be made on a Business Day prior to the expiration of the Availability Period. The 2022 Term Borrowings shall consist of 2022 Term Loans made simultaneously by the 2022 Term Lenders in accordance with their respective 2022 Term Commitment. Amounts borrowed under this ***Section 2.01(c)*** and repaid or prepaid may not be reborrowed. 2022 Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(d) **The 2023 Term Borrowings**. Subject to the terms and conditions set forth herein, each 2023 Term Lender severally agrees to make a single loan to the Borrower on the Funding Date in an amount not to exceed such 2023 Term Lender's 2023 Term Commitment; *provided* that such loan shall be made on a Business Day prior to the expiration of the Availability Period. The 2023 Term Borrowings shall consist of 2023 Term Loans made simultaneously by the 2023 Term Lenders in accordance with their respective 2023 Term Commitment. Amounts borrowed under this ***Section 2.01(d)*** and repaid or prepaid may not be reborrowed. 2023 Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(e) **The 2024 Term Borrowings**. Subject to the terms and conditions set forth herein, each 2024 Term Lender severally agrees to make a single loan to the Borrower on the Funding Date in an amount not to exceed such 2024 Term Lender's 2024 Term Commitment; *provided* that such loan shall be made on a Business Day prior to the expiration of the Availability Period. The 2024 Term Borrowings shall consist of 2024 Term Loans made simultaneously by the 2024 Term Lenders in accordance with their respective 2024 Term Commitment. Amounts borrowed under this ***Section 2.01(e)*** and repaid or prepaid may not be reborrowed. 2024 Term Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

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

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (x) telephone or (y) 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 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans; *provided, however*, that if the Borrower wishes to request Eurodollar Rate Loans having an Interest Period other than one (1) week or one (1), two (2), three (3) or six (6) months in duration as provided in the definition of "*Interest Period*," the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four (4) Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three (3) Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing 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, Eurodollar Rate Loans having an Interest Period of one (1) month. Any such automatic conversion to Eurodollar Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar 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.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and 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 Eurodollar Rate Loans described in the preceding subsection. In the case of a Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in ***Section 4***, 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 Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default or an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the 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 Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than eight (8) Interest Periods in effect in the aggregate with respect to the 2020 Term Facility, the 2021 Term Facility, the 2022 Term Facility, the 2023 Term Facility, and the 2024 Term Facility.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or a 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.

2.03 **Prepayments.**

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided that* (a) such notice must be in a form reasonably acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (i) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (ii) on the date of prepayment of Base Rate Loans; (b) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; and (c) 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) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage). 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. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to ***Section 3.06***. Subject to ***Section 2.13***, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(b) During the Waiver Period, and subject to the terms of the Intercreditor Agreement, if any Consolidated Party makes any Disposition (other than Dispositions permitted by ***Section 7.05(b)(i)***, ***(ii)***, ***(iii)*** and ***(iv)***), issues any Equity Interests, or incurs any Indebtedness, the Borrower shall, within three (3) Business Days of (i) receipt by such Consolidated Party of the proceeds thereof or (ii) the date any Excess Un-Reinvested Proceeds no longer qualify as Excluded Net Proceeds, make a mandatory repayment of the Pari Passu Obligations in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds received in connection with such Disposition, such issuance of Equity Interests, or such Indebtedness, other than Excluded Net Proceeds.

(c) Each mandatory repayment of the Pari Passu Obligations required under ***clause (b)*** above shall be applied to such Pari Passu Obligations (including the Obligations) as set forth in the Intercreditor Agreement. The portion of such mandatory repayments to be applied to the Facilities in accordance with the Intercreditor Agreement shall be applied as follows: (i) *first*, to the payment of the Outstanding Amount of the 2021 Term Loans and the 2022 Term Loans ratably among the 2021 Term Lenders and the 2022 Term Lenders in accordance with their Applicable Percentages, (ii) *second*, to the payment of the Outstanding Amount of the 2023 Term Loans ratably among the 2023 Term Lenders in accordance with their Applicable Percentages, and (iii) *third*, to the payment of the Outstanding Amount of the 2024 Term Loans ratably among the 2024 Term Lenders in accordance with their Applicable Percentages.

2.04 **Termination or Reduction of Commitments.**

(a) **Optional**. During the Availability Period, the Borrower may, upon notice to the Administrative Agent, terminate the 2020 Term Commitments, the 2021 Term Commitments, the 2022 Term Commitments, the 2023 Term Commitments, or the 2024 Term Commitments, or from time to time permanently reduce the 2020 Term Commitments, 2021 Term Commitments, 2022 Term Commitments, the 2023 Term Commitments, or the 2024 Term Commitments; *provided* that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. 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 $10,000,000 or any whole multiple of $1,000,000 in excess thereof.

(b) **Mandatory**. The Aggregate Commitments shall be automatically and permanently reduced to zero (0) on the last day of the Availability Period.

(c) **Application of Commitment Reductions; Payment of Fees**. Administrative Agent will promptly notify the Lenders of any termination or reduction of the 2020 Term Commitments, the 2021 Term Commitments, the 2022 Term Commitments, the 2023 Term Commitments, or the 2024 Term Commitments under this ***Section 2.04***. Upon any reduction of the 2020 Term Commitments, the 2020 Term Commitment of each 2020 Term Lender shall be reduced by such 2020 Term Lender's Applicable Percentage in respect of the 2020 Term Commitments of such reduction amount. Upon any reduction of the 2021 Term Commitments, the 2021 Term Commitment of each 2021 Term Lender shall be reduced by such 2021 Term Lender's Applicable Percentage in respect of the 2021 Term Commitments of such reduction amount. Upon any reduction of the 2022 Term Commitments, the 2022 Term Commitment of each 2022 Term Lender shall be reduced by such 2022 Term Lender's Applicable Percentage in

respect of the 2022 Term Commitments of such reduction amount. Upon any reduction of the 2023 Term Commitments, the 2023 Term Commitment of each 2023 Term Lender shall be reduced by such 2023 Term Lender's Applicable Percentage in respect of the 2023 Term Commitments of such reduction amount. Upon any reduction of the 2024 Term Commitments, the 2024 Term Commitment of each 2024 Term Lender shall be reduced by such 2024 Term Lender's Applicable Percentage in respect of the 2024 Term Commitments of such reduction amount. All fees in respect of the 2020 Term Commitments, the 2021 Term Commitments, the 2022 Term Commitments, the 2023 Term Commitments, or the 2024 Term Commitments accrued until the effective date of any termination of such Commitments shall be paid on the effective date of such termination.

2.05 **Repayment of Loans.**

(a) The Borrower shall repay to the 2020 Term Lenders on the Maturity Date with respect to the 2020 Term Facility the aggregate principal amount of all 2020 Term Loans outstanding on such date.

(b) The Borrower shall repay to the 2021 Term Lenders on the Maturity Date with respect to the 2021 Term Facility the aggregate principal amount of all 2021 Term Loans outstanding on such date.

(c) The Borrower shall repay to the 2022 Term Lenders on the Maturity Date with respect to the 2022 Term Facility the aggregate principal amount of all 2022 Term Loans outstanding on such date.

(d) The Borrower shall repay to the 2023 Term Lenders on the Maturity Date with respect to the 2023 Term Facility the aggregate principal amount of all 2023 Term Loans outstanding on such date.

(e) The Borrower shall repay to the 2024 Term Lenders on the Maturity Date with respect to the 2024 Term Facility the aggregate principal amount of all 2024 Term Loans outstanding on such date.

2.06 **Interest.**

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

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

(ii) If any amount (other than principal of any Loan) payable by the 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, 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.

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

(c) 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.

2.07 **Fees**

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(a) **2020 Term Unused Fee**. The Borrower shall, from the date that is ninety (90) days after the Closing Date and for each day thereafter during the Availability Period at which there exists any undrawn 2020 Term Commitments, pay to the Administrative Agent for the account of each 2020 Term Lender (in accordance with such 2020 Term Lender's Applicable Percentage thereof), an unused fee (the "***2020 Term Unused Fee***") equal to twenty five basis points (0.25%) per annum *times* the actual daily amount of the undrawn 2020 Term Commitments of each 2020 Term Lender as of such date, subject to adjustment as provided in ***Section 2.13***. The 2020 Term Unused Fee shall accrue from the date that is ninety (90) days after the Closing Date and at all times thereafter during the Availability Period at which there exists any undrawn 2020 Term Commitments, including at any time during which one or more of the conditions in ***Section 4*** is not met, and shall be due and payable on the last day of the Availability Period.

(b) **2021 Term Unused Fee**. The Borrower shall, from the date that is ninety (90) days after the Closing Date and for each day thereafter during the Availability Period at which there exists any undrawn 2021 Term Commitments, pay to the Administrative Agent for the account of each 2021 Term Lender (in accordance with such 2021 Term Lender's Applicable Percentage thereof), an unused fee (the "***2021 Term Unused Fee***") equal to twenty five basis points (0.25%) per annum *times* the actual daily amount of the undrawn 2021 Term Commitments of each 2021 Term Lender as of such date, subject to adjustment as provided in ***Section 2.13***. The 2021 Term Unused Fee shall accrue from the date that is ninety (90) days after the Closing Date and at all times thereafter during the Availability Period at which there exists any undrawn 2021 Term Commitments, including at any time during which one or more of the

conditions in ***Section 4*** is not met, and shall be due and payable on the last day of the Availability Period.

(c) **2022 Term Unused Fee**. The Borrower shall, from the date that is ninety (90) days after the Closing Date and for each day thereafter during the Availability Period at which there exists any undrawn 2022 Term Commitments, pay to the Administrative Agent for the account of each 2022 Term Lender (in accordance with such 2022 Term Lender's Applicable Percentage thereof), an unused fee (the "***2022 Term Unused Fee***") equal to twenty five basis points (0.25%) per annum *times* the actual daily amount of the undrawn 2022 Term Commitments of each 2022 Term Lender as of such date, subject to adjustment as provided in ***Section 2.13***. The 2022 Term Unused Fee shall accrue from the date that is ninety (90) days after the Closing Date and at all times thereafter during the Availability Period at which there exists any undrawn 2022 Term Commitments, including at any time during which one or more of the conditions in ***Section 4*** is not met, and shall be due and payable on the last day of the Availability Period.

(d) **2023 Term Unused Fee**. The Borrower shall, from the date that is ninety (90) days after the Closing Date and for each day thereafter during the Availability Period at which there exists any undrawn 2023 Term Commitments, pay to the Administrative Agent for the account of each 2023 Term Lender (in accordance with such 2023 Term Lender's Applicable Percentage thereof), an unused fee (the "***2023 Term Unused Fee***") equal to twenty five basis points (0.25%) per annum *times* the actual daily amount of the undrawn 2023 Term Commitments of each 2023 Term Lender as of such date, subject to adjustment as provided in ***Section 2.13***. The 2023 Term Unused Fee shall accrue from the date that is ninety (90) days after the Closing Date and at all times thereafter during the Availability Period at which there exists any undrawn 2023 Term Commitments, including at any time during which one or more of the conditions in ***Section 4*** is not met, and shall be due and payable on the last day of the Availability Period.

(e) **2024 Term Unused Fee**. The Borrower shall, from the date that is ninety (90) days after the Closing Date and for each day thereafter during the Availability Period at which there exists any undrawn 2024 Term Commitments, pay to the Administrative Agent for the account of each 2024 Term Lender (in accordance with such 2024 Term Lender's Applicable Percentage thereof), an unused fee (the "***2024 Term Unused Fee***") equal to twenty five basis points (0.25%) per annum *times* the actual daily amount of the undrawn 2024 Term Commitments of each 2024 Term Lender as of such date, subject to adjustment as provided in ***Section 2.13***. The 2024 Term Unused Fee shall accrue from the date that is ninety (90) days after the Closing Date and at all times thereafter during the Availability Period at which there exists any undrawn 2024 Term Commitments, including at any time during which one or more of the conditions in ***Section 4*** is not met, and shall be due and payable on the last day of the Availability Period.

(f) **Other Fees**.

(i) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Administrative Agent, for the account of the Lenders, such fees (if any) in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.08 **Computation of Interest and Fees; Retroactive Adjustments of Applicable Margin.**

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which such Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which such 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 2.10(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.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders promptly on 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 of the United States, automatically and without further action by the Administrative Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent or any Lender, as the case may be, under ***Section 2.06(b)*** or under ***Section 8***. The Borrower's obligations under this paragraph shall survive until the date that is one (1) year after the date of the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.09 **Evidence of Debt.** The Loans 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 Loans 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 and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.10 **Payments Generally; Administrative Agent's Clawback.**

(a) **General**. All payments to be made by the Borrower shall be made free and clear of and 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 immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (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, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) **Clawback**.

(i) **Funding by Lenders; Presumption by Administrative Agent**. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with ***Section 2.02*** (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by ***Section 2.02***) and may, in reliance upon such assumption, make available to the 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 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, 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 Base Rate Loans. 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. 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 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 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 Appropriate Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Appropriate Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

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

(c) **Failure to Satisfy Conditions Precedent**. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this ***Section 2***, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in ***Section 4*** 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, with interest earned thereon at the Federal Funds Rate until returned.

(d) **Obligations of Lenders Several**. The obligations of the Lenders hereunder to make 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.

2.11 **Sharing of Payments by Lenders**. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations in respect of any of the Facilities due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations in respect of the Facilities due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations in respect of any of the Facilities owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on

account of the Obligations in respect of the Facilities owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations in respect of the Facilities then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, *provided that*:

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

(ii) the provisions of this ***Section*** 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) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this ***Section*** shall apply).

2.12 **Increase in Total Credit Exposure.**

(a) **Request for Increase**. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may, from time to time, request an increase in the Total Credit Exposure of one or more Lenders (which increase may take the form of an increase to any Facility or one or more additional term loan tranches) by an amount (for all such requests) not exceeding $250,000,000; *provided that* (i) any such request for an increase shall be in a minimum amount of $10,000,000 and, if greater than $10,000,000, in whole increments of $1,000,000 in excess thereof, unless the Administrative Agent and the Borrower agree otherwise, (ii) after giving effect to such increase, the Total Credit Exposure of all Lenders shall not exceed $2,000,000,000 less the amount of any prepayments of the Outstanding Amount of any Facility, and (iii) if the increase takes the form of an increase to the 2021 Term Facility, the additional 2021 Term Loans of an existing 2021 Term Lender and each new 2021 Term Loan from a new 2021 Term Lender shall mature on the Extended 2021 Term Loan Maturity Date. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders).

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

(c) **Notification by Administrative Agent; Additional Lenders**. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent (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.

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

(e) **Conditions to Effectiveness of Increase**. As a condition precedent to such increase (and related funding of such increased amount), (i) the representations and warranties contained in ***Section 5*** and the other Loan Documents shall be true and correct in all material respects on and as of the Increase Effective Date and the date of the funding of such increased amount, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this ***Section 2.12***, 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***, (ii) no Default shall exist, (iii) the Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof, (iv) the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date signed by a Responsible Officer of such Loan Party certifying that the conditions set forth in ***clauses (i)*** and ***(ii)*** above have been satisfied, and (v)(A) upon the reasonable request of any Lender made at least ten (10) days prior to the Increase Effective Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested 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 three (3) days prior to the Increase Effective Date and (B) at least three (3) days prior to the Increase Effective Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party. To the extent that the increase of the Commitments shall take the form of a new term loan tranche, this Agreement shall be amended, in form and substance satisfactory to the Administrative Agent, to include such terms as are customary for a term loan commitment. Each Loan Party shall execute and deliver such documents or instruments as the Administrative Agent may require to evidence such increase in the Total Credit Exposure of any Lender and to ratify each such Loan Party's continuing obligations hereunder and under the other Loan Documents.

(f) **Conflicting Provisions**. This ***Section*** shall supersede any provisions in ***Section 2.11*** or ***10.01*** to the contrary.

2.13 **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 Laws:

(i) **Waivers and Amendments**. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definitions of "*Required Lenders*", "*Required 2020 Term Lenders*", "*Required 2021 Term Lenders*", "*Required 2022 Term Lenders*", "*Required 2023 Term Lenders*", and "*Required 2024 Term Lenders*" and ***Section 10.01***.

(ii) **Defaulting Lender Waterfall**. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to ***Section 8*** or otherwise) or received by the Administrative Agent from a 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 such Defaulting Lender to the Administrative Agent hereunder; *second*, as the Borrower may request (so long as no 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 deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the 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 such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no 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 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 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 all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments hereunder. 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees**. No Defaulting Lender shall be entitled to receive any fee payable under ***Section 2.07*** for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(b) **Defaulting Lender Cure**. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages, whereupon such Lender will cease to be a Defaulting Lender; *provided that* no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided*, *further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.14 **Conversion of Non-Extended 2021 Term Loans by 2021 Term Lenders**. Each 2021 Term Lender may, at its option and with the consent of the Borrower and the Parent REIT, elect to convert some or all its Non-Extended 2021 Term Loans to Extended 2021 Term Loans; *provided that* (a) the applicable 2021 Term Lender shall give written notice to the Administrative Agent of (i) its election to convert its Non-Extended 2021 Term Loans not less than fifteen (15) days prior to the Existing 2021 Term Loan Maturity Date and (ii) the aggregate principal amount of such 2021 Term Lender's Non-Extended 2021 Term Loans to be converted to Extended 2021 Term Loans, and (b)(i) in the case of conversion of the entire remaining amount of such 2021 Term Lender's Non-Extended 2021 Term Loans, no minimum amount need be converted and (ii) in any case not described in ***clause (b)(i)*** above, the principal outstanding balance of the 2021 Term Loans of such 2021 Term Lender subject to each such conversion, shall not be less than $5,000,000 (and in increments of $1,000,000 in excess thereof) unless each of the Administrative Agent, the Borrower, and the Parent REIT otherwise consents.

3. TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) **Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes**.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to ***subsection (e)*** below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code 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 ***subsection (e)*** below, (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, 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 applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any Applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Applicable Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to ***subsection (e)*** below, (B) such Loan Party or the Administrative Agent, to the extent required by such Applicable Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified 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 applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) **Payment of Other Taxes by the Borrower**. Without limiting the provisions of ***subsection (a)*** above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) **Tax Indemnifications**.

(i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this ***Section 3.01***) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. The Borrower shall, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to ***Section 3.01(c)(ii)*** below.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative

Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (y) the Administrative Agent and the Borrower, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of ***Section 10.06(d)*** relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Borrower, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by the Administrative Agent or the Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this ***clause (ii)***.

(d) **Evidence of Payments**. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this ***Section 3.01***, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Applicable Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) **Status of Lenders; Tax Documentation**.

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

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

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender

becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

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

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

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

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

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in *Section 1471(b)* or *1472(b)* of the 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 (D)***, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this ***Section 3.01*** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the 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 any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this ***Section 3.01***, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this ***Section 3.01*** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this ***subsection***, in no event will the applicable Recipient be required to pay any amount to the Borrower pursuant to this ***subsection*** the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This ***subsection*** shall not be construed to

require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

(g) **Survival**. Each party's obligations under this ***Section 3.01*** shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

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

3.03 **Inability to Determine Rates**

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(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan and such circumstances are likely to be temporary (in each case with respect to this ***clause (i)***, "***Impacted Loans***"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason

the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, 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, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in ***clause (i)*** of ***Section 3.03(a)***, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under ***clause (i)*** of the first sentence of ***Section 3.03(a)***, (ii) the Administrative Agent or 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 (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

3.04 **LIBOR 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 the Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or the Required Lenders (as applicable) have determined, that:

(a) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(b) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for

determining the interest rate of loans (such specific date, the "***Scheduled Unavailability Date***"); or

(c) syndicated loans currently being executed, or that include language similar to that contained in this ***Section***, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;

then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may mutually agree upon the LIBOR Successor Rate, and the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. Dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a "***LIBOR Successor Rate***"), together with any proposed LIBOR Successor Rate Conforming Changes and any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth (5th) 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 do not accept such amendment.

If no LIBOR Successor Rate has been determined and the circumstances under ***clause (a)*** above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods) and (ii) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing ***clause (ii)***) in the amount specified therein.

Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero (0) for purposes of this Agreement.

3.05 **Increased Costs; Reserves on Eurodollar 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, any Lender (except any reserve requirement contemplated by ***Section 3.05(e)***);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in ***clauses (b)*** through ***(d)*** of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender 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 requirements or liquidity ratios or requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by 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), 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.

(c) **Certificates for Reimbursement**. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in ***subsection (a)*** or ***(b)*** of this ***Section 3.05*** and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests**. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this ***Section 3.05*** shall not constitute a waiver of such Lender's right to demand such compensation, *provided that* the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this ***Section 3.05*** for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of 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 nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) **Reserves on Eurodollar Rate Loans**. The Borrower shall pay to each Lender, 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 Eurodollar Rate 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), which 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 from such Lender. If a Lender fails to give notice ten (10) days prior to

the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

3.06 **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 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; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to ***Section 10.13***;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this ***Section 3.06***, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.07 **Mitigation Obligations; Replacement of Lenders.**

(a) **Designation of a Different Lending Office**. Each Lender may make any Loan to the Borrower through any Lending Office; *provided that* the exercise of this option shall not affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement. If any Lender requests compensation under ***Section 3.05***, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to ***Section 3.01***, or if any Lender gives a notice pursuant to ***Section 3.02***, then, at the request of Borrower, 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 ***3.05***, 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 3.05***, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to ***Section 3.01***

and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with ***Section 3.07(a)***, the Borrower may replace such Lender in accordance with ***Section 10.13***.

3.08 **Survival**. All of the Borrower's obligations under this ***Section 3*** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

4. CONDITIONS PRECEDENT

4.01 **Conditions to Closing Date**. The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) copies of the Organization Documents of each Loan Party certified to be true and complete as of a recent date by the appropriate Governmental Authority of the state or other jurisdiction of its incorporation or organization, where applicable, and certified by a secretary or assistant secretary of such Borrower to be true and correct as of the Closing Date and such other documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of the Loan Parties is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;

(v) a favorable opinion of Honigman Miller Schwartz and Cohn LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may request;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and such consents, licenses and

approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in ***Sections 4.01(d)*** and ***(e)*** have been satisfied, (B) that no party to the Merger Agreement has asserted that there has been, since the date of the Merger Agreement, a Company Material Adverse Effect, and (C) a calculation of the Consolidated Leverage Ratio as of the last day of the fiscal quarter of the Borrower ended on June 30, 2018;

(viii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of the Borrower ended on June 30, 2018, signed by a Responsible Officer of the Borrower;

(ix) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(x) a certificate executed by a Responsible Officer of the Borrower as of the Closing Date, in form and substance satisfactory to the Administrative Agent, regarding the Solvency of (A) the Borrower, (B) each of the other Loan Parties, and (C) the Consolidated Parties on a consolidated basis; and

(xi) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders reasonably may require.

(b) Any fees required to be paid hereunder or under the Fee Letters on or before the Closing Date shall have been paid (provided such fees may be paid from the proceeds of any Loan on the Closing Date).

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute 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).

(d) The representations and warranties of the Borrower and each other Loan Party contained in ***Section 5*** or any other Loan Document (other than the representation contained in ***Section 5.05(c)***), or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the Closing Date.

(e) No Default shall exist, or would result from, any Borrowing on the Closing Date or from the application of the proceeds thereof.

(f) There shall not have occurred any event or circumstance since the date of the Merger Agreement that has had or could be reasonably expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(g) The absence of any condition, circumstance, action, suit, investigation or proceeding pending or, to the knowledge of the Borrower and/or Guarantors, threatened in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(h) Upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, the Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Act, in each case at least five (5) days prior to the Closing Date.

(i) At least five (5) days prior to the Closing Date, if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the Borrower shall deliver a Beneficial Ownership Certification in relation to the Borrower.

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, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 **Conditions to all Borrowings**

. The obligation of each Lender to advance the Borrowings of its Loans (other than in connection with a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) On and as of the Funding Date (i) the Specified Merger Agreement Representations are true and correct as required by the terms of the definition thereof and (ii) the Specified Representations are true and correct in all material respects.

(b) No Default shall exist, or would result from such proposed Borrowing or from the application of the proceeds thereof.

(c) Immediately before and immediately after giving pro forma effect to the Mergers, (i) the Borrower shall be in compliance (on a Pro Forma Basis taking into account the applicable Loan and the Mergers) with the financial covenants set forth in ***Section 7.11***, and the Administrative Agent shall have received a completed Compliance Certificate, signed by a Responsible Officer of the Borrower, in form and substance satisfactory to the Administrative Agent, demonstrating such compliance (such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to ***Section 6.01*** (for the avoidance of doubt, such financial information shall be with respect to the fiscal quarter of the Borrower ended on September 30, 2018) as though such Mergers had been consummated as of the first day of the fiscal period covered thereby), and (ii) the Parent REIT and each of its Subsidiaries shall be Solvent, and the Administrative Agent shall have received a completed certificate executed by a Responsible Officer of the Parent REIT, in form and substance reasonably satisfactory to the Administrative Agent, regarding such Solvency.

(d) The Administrative Agent shall have received all governmental, shareholder and third party consents (including Hart-Scott-Rodino clearance) and approvals necessary or, in the commercially reasonable opinion of the Administrative Agent, desirable in connection with the Mergers and the other transactions contemplated hereby and expiration of all applicable waiting periods without any action being taken by any authority that could reasonably be expected to restrain, prevent or impose any material adverse conditions on the Borrower and its Subsidiaries or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation shall be applicable which in the reasonable judgment of the Administrative Agent could have such effect.

(e) The Administrative Agent shall have received (i) the audited consolidated balance sheets of the Consolidated Parties and the LaSalle Parties for the fiscal years ended December 31, 2015, December 31, 2016, and December 31, 2017, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal years of the Consolidated Parties and the LaSalle Parties, including the notes thereto, and (ii) interim financial statements of the Consolidated Parties and the LaSalle Parties, in each case dated the end of the most recent fiscal quarter for which financial statements are available as of the Funding Date.

(f) Any fees required to be paid hereunder or under the Fee Letters on or before the Funding Date shall have been paid (provided such fees may be paid from the proceeds of any Loan on the Funding Date).

(g) There shall not have occurred any event or circumstance since the date of the Merger Agreement that has had or could be reasonably expected to have, either individually or in the aggregate, a Company Material Adverse Effect.

(h) Prior to or substantially simultaneously with such Borrowing of Loans, (i) each of the Delayed Draw Term Loan Facility, the LaSalle Revolving and Term Loan Facility, the LaSalle Term Loan Facility, the US Bank LaSalle Lessee Line of Credit, and the Copley Place Term Loan Facility, shall have been terminated in full and all amounts then outstanding thereunder shall have been repaid in full (with customary accommodations satisfactory to the Administrative Agent, such as cash collateral or other credit support, made in respect of letters of credit issued under the LaSalle Revolving and Term Loan Facility) (collectively, the "***Refinancing***"), and (ii) the Mergers shall be consummated, in all material respects, in accordance with the Merger Agreement and the Merger Agreement shall not have been amended or modified, and no condition shall have been waived or consent granted, in each case in any respect that is materially adverse to the Lenders or BofA Securities, Inc. (in its capacity as an Arranger) without BofA Securities, Inc.'s prior written consent (such consent not to be unreasonably withheld, conditioned or delayed), it being understood and agreed that any modification, consent, waiver or amendment to the definition of "Company Material Adverse Effect" in the Merger Agreement without the prior written consent of BofA Securities, Inc. shall be deemed to be materially adverse to the Lenders.

(i) With respect to any LaSalle Party that is required to become a Guarantor hereunder, such LaSalle Party shall, substantially simultaneously with such Borrowing of Loans, (i) become a Guarantor by executing and delivering to the Administrative Agent a counterpart of this Agreement, a Joinder Agreement or such other document as the Administrative Agent shall deem appropriate for such purpose, and (ii) the Parent REIT, in its capacity as the owner of such

LaSalle Party, shall deliver to the Administrative Agent documents with respect to such LaSalle Party of the types referred to in ***Section 4.01(a)(iii)***, ***4.01(a)(iv)***, ***4.01(a)(vi)*** and ***4.01(a)(vii)***, together with a favorable opinion of Honigman Miller Schwartz and Cohn LLP, as counsel of such LaSalle Party, all such documentation and opinion to be in form, content and scope reasonably satisfactory to the Administrative Agent.

(j) The Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof.

(k) The Administrative Agent shall have received a certificate signed by a Responsible Officer of the Borrower certifying that (i) the conditions specified in ***Sections 4.02(a)(ii)***, ***(b)***, and ***(h)*** have been satisfied, (ii) no party to the Merger Agreement has asserted that there has been, since the date of the Merger Agreement, a Company Material Adverse Effect, and (iii) on and as of the Funding Date, the Parent REIT has not asserted that any Specified Merger Agreement Representation is not true and correct as required by the terms of the definition thereof.

(l) All of the conditions precedent set forth in ***Section 4.01*** shall have been satisfied on or prior to date of such requested Borrowing.

Each Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in ***Sections 4.02(a)***, ***(b)***, and ***(c)*** have been satisfied on and as of the date of the applicable Borrowing.

5. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 **Existence, Qualification and Power**. Each Consolidated Party (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Applicable Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Applicable 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 (b)(i)*** or ***(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 such Person is party, (a) have been duly authorized by all necessary corporate or other organizational action, and (b) do not and will not (i) contravene the terms of any of such Person's Organization Documents; (ii) 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 (A) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries, except in each case, to the extent such violation, breach, Lien or payment could not reasonably be expected to have a Material Adverse Effect, or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Applicable Laws.

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.

5.04 **Binding Effect**. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.05 **Financial Statements; No Material Adverse Effect.**

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Consolidated Parties, on a consolidated basis, 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 indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of the date thereof, including liabilities for taxes, commitments and Indebtedness, that in each case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Consolidated Parties.

(b) The unaudited consolidated balance sheets of the Consolidated Parties dated June 30, 2018, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Consolidated Parties 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. Except as otherwise set forth on ***Schedule 5.05***, such financial statements set forth all indebtedness and other liabilities, direct or contingent, of the Consolidated Parties as of June 30, 2018, including liabilities for taxes, commitments and Indebtedness, that in each case is material in relation to the business, operations, properties, assets or condition (financial or otherwise) of the Consolidated Parties.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 **Litigation**. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Responsible Officer of any Consolidated Party after due and diligent investigation, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against any Consolidated Party or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as specifically disclosed in ***Schedule 5.06***, if determined adversely, could (either individually or in

the aggregate) reasonably be expected to have a Material Adverse Effect, and there has been no material adverse change in the status of, or the financial effect on, any Consolidated Party with respect to the matters described on ***Schedule 5.06***.

5.07 **No Default**. No Consolidated Party is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default exists or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 **Ownership of Property; Liens; Investments.**

(a) Each Loan Party has good record and marketable title in fee simple to, or valid leasehold interests in, each of the Unencumbered Borrowing Base Properties and/or all other real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party is subject to no Liens, other than Liens set forth on ***Schedule 5.08(b)*** and Liens permitted by ***Section 7.01***.

(c) ***Schedule 5.08(c)*** sets forth a complete and accurate list of all Investments held by any Consolidated Party on the Closing Date, showing as of the Closing Date the amount, obligor or issuer and maturity, if any, thereof.

5.09 **Environmental Compliance.**

(a) The Consolidated Parties conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Laws on their respective businesses, operations and Real Properties, and as a result thereof the Consolidated Parties have reasonably concluded that, except as specifically disclosed in ***Schedule 5.09***, such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in ***Schedule 5.09*** and except as would not reasonably be expected to have a Material Adverse Effect, (i) none of the real properties currently or to the knowledge of any Responsible Officer of any Consolidated Party, formerly owned or operated by any Consolidated Party, is listed or, to the knowledge of any Responsible Officer of any Consolidated Party, proposed for listing on the United States Environmental Protection Agency's (EPA) National Priorities List or on the EPA Comprehensive Environmental Response, Compensation, and Liability Information Sharing database or any analogous state or local list, nor to the knowledge of any Responsible Officer of any Consolidated Party is any adjacent property on such list, (ii) no Consolidated Party has operated and, to the knowledge of any Responsible Officer of any Consolidated Party, there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been transported, treated, stored or disposed on any Real Property currently owned or operated by any Consolidated Party or, to the knowledge of any Responsible Officer of any Consolidated Party, on any real property formerly owned or operated by any Consolidated Party, (iii) or to the knowledge of any Responsible Officer of any Consolidated Party, there is no friable asbestos or asbestos-containing material on any Real Property currently owned or operated by any Consolidated Party, and (iv) Hazardous Materials

have not been transported, released, discharged or disposed of on any real property currently or formerly owned or operated by any Consolidated Party.

(c) Except as otherwise set forth on ***Schedule 5.09***, no Consolidated Party is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Laws; and to the knowledge of the Responsible Officers of the Consolidated Parties all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any real property currently or formerly owned or operated by any Consolidated Party have been disposed of in a manner not reasonably expected to result in a Material Adverse Effect.

(d) Except as otherwise set forth on ***Schedule 5.09***, each of the Unencumbered Borrowing Base Properties and, to the knowledge of the Responsible Officers of the Loan Parties, all operations at such Unencumbered Borrowing Base Properties are in compliance with all Environmental Laws in all material respects, there is no material violation of any Environmental Laws with respect to such Unencumbered Borrowing Base Properties or, to the knowledge of any Responsible Officer of any Loan Party, the businesses operated thereon, and there are no conditions relating to such Unencumbered Borrowing Base Properties or the businesses that could reasonably be expected to result in a Material Adverse Effect.

(e) Except as otherwise set forth on ***Schedule 5.09***, none of the Unencumbered Borrowing Base Properties contains, or to the knowledge of any Responsible Officer of any Loan Party has previously contained, any Hazardous Materials at, on or under such Unencumbered Borrowing Base Properties in amounts or concentrations that constitute or constituted a violation of Environmental Laws that could have a Material Adverse Effect.

(f) Except as otherwise set forth on ***Schedule 5.09***, no Loan Party has received any written or verbal notice of, or inquiry from any Governmental Authority regarding, any violation, alleged violation, non-compliance, liability or potential liability regarding Hazardous Materials or compliance with Environmental Laws with regard to any of its Unencumbered Borrowing Base Properties or the businesses located thereon, nor does any Responsible Officer of any Loan Party have knowledge or reason to believe that any such notice will be received or is being threatened.

(g) No Consolidated Party is subject to any judicial proceeding or governmental or administrative action and, to the knowledge of the Responsible Officers of the Consolidated Parties, no such proceeding or action is threatened in writing, under any Environmental Laws that could reasonably be expected to give rise to a Material Adverse Effect, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Laws with respect to the Consolidated Parties, the Unencumbered Borrowing Base Properties or, to the knowledge of any Responsible Officer of any Consolidated Party, the businesses located thereon that could be reasonably expected to give rise to a Material Adverse Effect.

5.10 **Insurance**. The properties of the Consolidated Parties are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and

owning similar properties in localities where the applicable Consolidated Party operates. The insurance coverage of the Consolidated Parties with respect to the Unencumbered Borrowing Base Properties as of the Closing Date is outlined as to carrier, policy number, expiration date, type and amount on ***Schedule 5.10***.

5.11 **Taxes**. The Consolidated Parties have filed all Federal and state income and other material tax returns and reports required to be filed, and have paid all Federal and state income and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against any Consolidated Party that would, if made, have a Material Adverse Effect. No Consolidated Party nor any Subsidiary thereof is party to any tax sharing agreement; *provided, however*, that any tax protection agreement entered into with a contributor of property to a Consolidated Party (but only to the extent the indemnity or other obligation to such contributor under such tax protection agreement is limited to any capital gains tax that would be due upon a sale or other Disposition of such contributed property and either (i) is limited to an amount that does not exceed one percent (1%) of the total assets of such Consolidated Party or (ii) exceeds one percent (1%) but less than five percent (5%) of the total assets of such Consolidated Party but which indemnity is only triggered by a sale or other Disposition of such contributed property) shall not be considered a tax sharing agreement.

5.12 **ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws, except to the extent that the failure to so comply would result in, or could reasonably be expected to result in, a Material Adverse Effect. Each Pension Plan that is intended to be a qualified plan under *Section 401(a)* of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under *Section 401(a)* of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under *Section 501(a)* of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Consolidated Party, nothing has occurred that would prevent or cause the loss of the tax-qualified status of any such Pension Plan.

(b) There are no pending or, to the best knowledge of each Consolidated 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, and neither the Consolidated Parties nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) there has been no failure to satisfy the minimum funding standard applicable to a Pension Plan under *Section 412* of the Code and *Section 302* of ERISA for any plan year, and no waiver of the minimum funding standards applicable to a Pension Plan under *Section 412* of the Code and *Section 302* of ERISA for any plan year has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in *Section 430(d)(2)* of the

Code) is sixty percent (60%) or higher and neither the Consolidated Parties nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such Pension Plan to drop below sixty percent (60%) as of the most recent valuation date; (iv) neither the Consolidated Parties nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Consolidated Parties nor any ERISA Affiliate has engaged in a transaction that could be subject to *Section 4069* or *Section 4212(c)* of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) Neither the Consolidated Parties nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than those listed on ***Schedule 5.12(d)*** hereto.

(e) Neither the Borrower nor any of its Subsidiaries is (i) an employee benefit plan subject to Title I of ERISA, (ii) a plan or account subject to *Section 4975* of the Code, (iii) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (iv) a "governmental plan" within the meaning of ERISA.

5.13 **Subsidiaries; Equity Interests**. The corporate capital and ownership structure of the Consolidated Parties is as described in ***Schedule 5.13(a)*** (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof). Set forth on ***Schedule 5.13(b)*** is a complete and accurate list (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof) with respect to each Consolidated Party of (i) jurisdiction of organization, (ii) number of ownership interests (if expressed in units or shares) of each class of Equity Interests outstanding, (iii) number and percentage of outstanding ownership interests (if expressed in units or shares) of each class owned (directly or indirectly) by the Parent REIT, the Borrower and their Subsidiaries, (iv) all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto and (v) an identification of which such Consolidated Parties are Guarantors hereunder and which Unencumbered Borrowing Base Properties are owned by each such Loan Party. The outstanding Equity Interests of the Consolidated Parties are, to the extent applicable depending on the organizational nature of such Person, validly issued, fully paid and nonassessable and are owned by the Parent REIT, the Borrower or a Subsidiary thereof (as applicable), directly or indirectly, in the manner set forth on ***Schedule 5.13(b)***, free and clear of all Liens (other than Permitted Liens or, in the case of the Equity Interests of the Loan Parties, statutory Liens or Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement). Other than as set forth in ***Schedule 5.13(b)*** (as of the most recent update of such schedule in accordance with ***Section 6.02(h)*** hereof), no Consolidated Party (other than the Parent REIT) has outstanding any securities convertible into or exchangeable for its Equity Interests nor does any such Consolidated Party have outstanding any rights to subscribe for or to purchase or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to its Equity Interests. The copy of the Organization Documents of each Loan Party provided pursuant to ***Section 4.01(a)(iv)*** is a true and correct copy of each such document as of the Closing Date, each of which is valid and in full force and effect.

5.14 **Margin Regulations; Investment Company Act.**

(a) The Consolidated Parties are not engaged and will not engage, principally or as one of their 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) None of the Consolidated Parties nor any Person Controlling such Consolidated Parties is required to be registered as an "*investment company*" under the Investment Company Act of 1940.

5.15 **Disclosure**. The Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any other Consolidated Party is subject, and all other matters known to any Responsible Officer of any Consolidated Party (other than matters of a general economic nature), that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Consolidated Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided that*, with respect to projected financial information, the Consolidated Parties represent only that such information was prepared in good faith based upon assumptions believed by the Consolidated Parties to be reasonable at the time (it being recognized by the Lenders that projections as to future events are not to be viewed as facts and that actual results may differ).

5.16 **Compliance with Laws**. Each Consolidated Party thereof is in compliance in all material respects with the requirements of all Applicable 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 Applicable Laws or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 **Taxpayer Identification Number**

. The Borrower's true and correct U.S. taxpayer identification number is set forth on ***Schedule 10.02***.

5.18 **Intellectual Property; Licenses, Etc**. The Borrower and the other Consolidated Parties 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. To the knowledge of any Responsible Officer of any Consolidated 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 or any other Consolidated Party infringes upon any rights held by any other Person, except for such infringements that would not have a Material Adverse Effect. Except as specifically disclosed in ***Schedule 5.18***, no claim or litigation regarding any of the foregoing is pending or, to the knowledge of any Responsible Officer of any Consolidated Party,

threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.19 **Solvency**. (a) As of the Closing Date and immediately prior to the initial Borrowing, the Borrower is Solvent, each other Loan Party is Solvent, and the Consolidated Parties, on a consolidated basis, are Solvent, (b) as of the date and immediately prior to each Subsidiary becoming a Guarantor pursuant to ***Section 6.12***, such Subsidiary is Solvent, and (c) following the initial Borrowing, the Borrower is Solvent, each other Loan Party is Solvent, and the Consolidated Parties, on a consolidated basis, are Solvent if the contribution rights that each such party will have against such other parties and the subrogation rights that each such party may have, if any, against the Borrower are taken into account.

5.20 **Casualty, Etc**. None of the Unencumbered Borrowing Base Properties have been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.21 **Labor Matters**. As of the Closing Date, there are no collective bargaining agreements or Multiemployer Plans covering the employees of any Consolidated Party or any of their Subsidiaries. No Consolidated Party or any of their Subsidiaries has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last year, which could (either individually or in the aggregate) reasonably be expected to have a Material Adverse Effect.

5.22 **REIT Status**. The Parent REIT is qualified as a REIT and the Borrower is qualified as a REIT, a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS, and each of their Subsidiaries that is a corporation is either a TRS or a QRS. As of the Closing Date, the Subsidiaries of the Parent REIT and the Borrower that are taxable REIT subsidiaries, as such term is used in the Code, are identified on ***Schedule 5.22***.

5.23 **Unencumbered Borrowing Base Properties**. Each Unencumbered Borrowing Base Property listed in each Compliance Certificate delivered by the Borrower to the Administrative Agent in accordance with the terms of this Agreement fully qualifies as an Unencumbered Borrowing Base Property as of the date of such Compliance Certificate.

5.24 **OFAC**. Neither the Parent REIT, nor any of its Subsidiaries, nor, to the knowledge of the Parent REIT and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (a) currently the subject or target of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (c) located, organized or resident in a Designated Jurisdiction.

5.25 **Anti-Corruption Laws**. The Parent REIT and its Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anticorruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.26 **Affected Financial Institutions**. Neither the Parent REIT, nor any of its Subsidiaries, is an Affected Financial Institution.

5.27 **Beneficial Ownership**. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.28 **Merger Agreement**. As of the Closing Date and as of the Funding Date, the Borrower has delivered to the Administrative Agent complete copies of the Merger Agreement and related documents (including all exhibits, schedules and disclosure letters referred to therein or delivered pursuant thereto, if any) and all amendments thereto, waivers relating thereto and other side letters or agreements affecting the terms thereof. None of such documents and agreements has been amended or supplemented, nor have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to the Administrative Agent.

5.29 **Covered Entities**. No Loan Party is a Covered Entity.

6. AFFIRMATIVE COVENANTS

. So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall not be Fully Satisfied, the Borrower shall, and shall cause each Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable) to:

6.01 **Financial Statements**. Deliver to the Administrative Agent, for distribution to the Lenders:

(a) as soon as available, but in any event within ninety (90) days after the end of each fiscal year of the Parent REIT (commencing with the fiscal year ended December 31, 2018), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal year, and the related consolidated statements of income or operations, changes in 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 (i) certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties in accordance with GAAP, and (ii) audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and 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; and

(b) as soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of the Parent REIT (commencing with the fiscal quarter ended September 30, 2018), a consolidated balance sheet of the Consolidated Parties as at the end of such fiscal quarter, the related consolidated statements of income or operations for such fiscal quarter and for the portion of the Borrower's fiscal year then ended, and

the related consolidated of changes in shareholders' equity, and cash flows for the portion of the Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Borrower as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Consolidated Parties 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(c)***, 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)*** or ***(b)*** above at the times specified therein.

6.02 **Certificates; Other Information**. Deliver to the Administrative Agent (for distribution of the same to each Lender):

(a) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, (i) a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), and (ii) a profit and loss summary showing the operating condition for each of the Unencumbered Borrowing Base Properties (in form and with such detail as is reasonably satisfactory to the Administrative Agent);

(b) if a Default exists, promptly after any request by the Administrative Agent, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Consolidated Party by independent accountants in connection with the accounts or books of any Consolidated Party, or any audit of any of them, subject to applicable professional guidelines;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other report or communication sent to the shareholders of the Parent REIT, and copies of all annual, regular, periodic and special reports and registration statements which the Borrower or the Parent REIT 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;

(d) promptly after the furnishing thereof, copies of any report furnished to any holder of debt securities of any Loan Party (or any Subsidiary thereof if such debt securities are recourse (other than customary non-recourse carve outs) to such Loan Party) pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to ***Section 6.01*** or any other clause of this ***Section 6.02***;

(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 or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(f) not later than five (5) Business Days after receipt thereof by any Loan Party, copies of all notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any instrument, indenture, loan or credit or similar agreement regarding or related to any breach or default by any party thereto or any other event that could materially impair the value of the interests or the rights of any Loan Party or otherwise have a Material Adverse Effect and, from time to time upon request by the Administrative Agent, such information and reports regarding such instruments, indentures and loan and credit and similar agreements as the Administrative Agent may request;

(g) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party with respect to an Unencumbered Borrowing Base Property with any Environmental Laws that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any Unencumbered Borrowing Base Property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Laws;

(h) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, an update to ***Schedules 5.06***, ***5.09***, ***5.12(d)*** or ***5.13(a)*** or ***(b)*** to the extent the information provided by any such schedules has changed since the most recent update thereto; *provided that* the Borrower shall, promptly upon the Administrative Agent's written request therefor, provide any information or materials requested by the Administrative Agent to confirm or evidence the matters reflected in such updated schedules;

(i) concurrently with the delivery of the financial statements referred to in ***Sections 6.01(a)*** and ***(b)***, copies of Smith Travel Research (STR Global) summary STAR Reports for each Unencumbered Borrowing Base Property for the fiscal quarter to which such financial statements relate;

(j) promptly, of any change in any public or private Debt Rating;

(k) annually, on or before December 31, written evidence of the current Debt Ratings by any of Moody's, S&P and/or Fitch, if such rating agency has provided to the Parent REIT or the Borrower a private debt rating, which evidence shall be reasonably acceptable to the Administrative Agent;

(l) promptly following any request therefor, provide 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;

(m) not later than seven (7) Business Days after the last Business Day of each month during the Waiver Period, a Liquidity Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Parent REIT (which delivery may, unless the Administrative Agent requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), together with documentation reasonably satisfactory to the Administrative Agent to verify the calculations set forth in such certificate; and

(n) promptly, such additional information regarding the business, financial or corporate affairs of the Loan Parties or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to ***Section 6.01(a)*** or ***(b)*** or ***Section 6.02(c)*** (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 posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on ***Schedule 10.02***; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided that*: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent upon its request (either in its discretion or at the direction of the Required Lenders) to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and 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 of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "***Borrower Materials***") by posting Borrower Materials on IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "***Platform***") and (b) certain of the Lenders (each, a "***Public Lender***") may have personnel who do not wish to receive material non-public information with respect to the Borrower 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 hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower 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 with respect to the Borrower 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 Side Information;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform that is not designated "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

6.03 **Notices**. Promptly notify the Administrative Agent (who shall promptly notify each Lender):

(a) of the occurrence of any Default;

(b) of (i)(A) any breach or non-performance of, or any default under, a material Contractual Obligation of any Loan Party; (B) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party, including pursuant to any Environmental Laws; or (C) any other matter, which, in the case of any of ***clause (A)***, ***(B)*** or ***(C)***, individually or in the aggregate, has resulted in or could reasonably be expected to result in a Material Adverse Effect; and (ii) any material written dispute or any material litigation, investigation, proceeding or suspension between the Borrower or any Loan Party and any Governmental Authority;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by any Loan Party, including any determination by the Borrower referred to in ***Section 2.08(b)***;

(e) of any voluntary addition or removal of an Unencumbered Borrowing Base Property or other event or circumstance that results in a Real Property previously qualifying as an Unencumbered Borrowing Base Property ceasing to qualify as such; *provided that* such notification shall be accompanied by an updated Compliance Certificate with calculations showing the effect of such addition or removal on the financial covenants contained herein; and

(f) of any adverse changes to any insurance policy obtained by any Loan Party with respect to or in connection with any Unencumbered Borrowing Base Property in accordance with ***Section 6.15***, including, without limitation, any reduction in the amount or scope of coverage or any increase in any deductible or other self-retention amount thereunder.

Each notice pursuant to this ***Section 6.03*** shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein (including, in the case of any notice pursuant to ***Section 6.03(a)***, a description of any and all provisions of this Agreement and any other Loan Document that the Responsible Officers of the Borrower believe have been breached) and stating what action the Borrower has taken and proposes to take with respect thereto.

6.04 **Payment of Obligations**. Pay and discharge as the same shall become due and payable, all of its material obligations and liabilities, including (a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Consolidated Parties; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, unless the same are being contested in good faith by appropriate proceedings diligently conducted (the commencement and continuation of which proceedings shall suspend the collection of any such contested amount from such Consolidated Party, and suspend the enforcement thereof against, the applicable property), and adequate reserves in accordance with GAAP are being maintained by such Consolidated Party and, as to any Loan Party, such claims are bonded (to the extent requested by the Administrative Agent).

6.05 **Preservation of Existence, Etc**. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Applicable Laws of the jurisdiction of its organization except in a transaction permitted by ***Section 7.04*** or ***7.05***; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and

service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 **Maintenance of Properties**. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty (as to which insurance satisfying the criteria hereunder was maintained at the time of such casualty) excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07 **Maintenance of Insurance**. Maintain with financially sound and reputable insurance companies not Affiliates of any Consolidated Party, insurance with respect to the properties and business of the Consolidated Parties against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and, in the case of insurance maintained by the Loan Parties, providing for not less than thirty (30) days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance.

6.08 **Compliance with Laws and Contractual Obligations**. Comply in all material respects with the requirements of all Applicable Laws, all Contractual Obligations 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 Applicable Laws, Contractual Obligation 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 each Consolidated Party.

6.10 **Inspection Rights**. Permit representatives of the Administrative Agent to visit and inspect any property of any Loan Party, 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 may, if it so chooses, be present at or may participate in any such discussions), at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to such Loan Party with the costs and expenses of the Administrative Agent being for its own account if no Event of Default then exists; *provided, however*, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11 **Use of Proceeds**. Use the proceeds of the Loans for (a) payment of a portion of (i) the aggregate consideration specified in the Merger Agreement and (ii) fees and expenses incurred in connection with the Mergers, (b) the consummation of the Refinancing, and (c) working capital, capital expenditures and other general corporate purposes (including, without limitation, property acquisitions and Restricted Payments not prohibited under ***Section 7.06***), in each case not in contravention of any Applicable Laws or of any Loan Document.

6.12 **Additional Guarantors**. Unless such Subsidiary is not required to become a Guarantor pursuant to ***Section 6.13***, notify the Administrative Agent at the time that any Person becomes a Subsidiary of the Borrower, another Loan Party or any Intermediate REIT (other than, in each case, a Non-Guarantor Subsidiary), and promptly thereafter (and in any event on the earlier to occur of (a) the date on which such Person Guarantees any other Specified Debt or (b) concurrently with the delivery of each Compliance Certificate pursuant to ***Section 6.02(a)***, or such later date as the Administrative Agent may agree in writing), cause such Person to (i) become a Guarantor by executing and delivering to the Administrative Agent a counterpart of this Agreement, a Joinder Agreement, a Guarantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), a Grantor Joinder Agreement (as defined in the Intercreditor Agreement) (if applicable), or such other document as the Administrative Agent shall deem appropriate for such purpose, and (ii) deliver to the Administrative Agent documents of the types referred to in ***Section 4.01(a)(iii)***, ***4.01(a)(iv)*** and ***4.01(a)(vi)***, together with (A) a certificate signed by a Responsible Officer of the Borrower certifying that (x) the representations and warranties of the Borrower and each other Loan Party contained in ***Section 5*** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Joinder Agreement, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this ***Section 6.12***, the representations and warranties contained in ***subsections (a)*** and ***(b)*** of ***Section 5.05*** shall be deemed to refer to the most recent statements furnished pursuant to ***clauses (a)*** and ***(b)***, respectively, of ***Section 6.01*** and (y) no Default shall exist, or would result from such proposed Joinder Agreement and (B) a favorable opinion of counsel of such Person, all such documentation and opinion to be in form, content and scope reasonably satisfactory to the Administrative Agent.

6.13 **Release of Guarantors**. At any time after the later of (a) the expiration of the Waiver Period or (b) the Collateral Release Date, if applicable, if the Parent REIT achieves at least two (2) Investment Grade Ratings, then, at the written request of the Borrower, the Guarantors (other than the Parent REIT) shall be released and discharged from all obligations (accrued or unaccrued) hereunder (other than those that expressly survive termination hereof), *provided that* any Subsidiary of the Borrower, another Loan Party or any Intermediate REIT (other than, in each case, a Non-Guarantor Subsidiary) that (a) owns or ground leases any Real Property that qualifies as an Unencumbered Borrowing Base Property and (b) is liable for any recourse Indebtedness (whether secured or unsecured, and including any guarantee obligations in respect of indentures or otherwise) shall nonetheless be required to be a Guarantor hereunder in order for each Real Property owned or ground leased by such Subsidiary to be treated as an Unencumbered Borrowing Base Property.

6.14 **Further Assurances**. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution or acknowledgment thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

6.15 **Additional Insurance Requirements for Unencumbered Borrowing Base Properties.**

(a) Obtain and maintain, with respect to each Unencumbered Borrowing Base Property (or cause the applicable TRS that is party to any Lease regarding each such

Unencumbered Borrowing Base Property to obtain and maintain), at its (or their) sole expense the following:

(i) property insurance with respect to all insurable property located at or on or constituting a part of such Unencumbered Borrowing Base Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in "Special Form" (also known as "all-risk") coverage and against any and all acts of terrorism (to the extent commercially available) and such other insurable hazards as the Administrative Agent may require, in an amount not less than one hundred percent (100%) of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent the applicable Loan Parties and the Administrative Agent from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non reporting) form during and with respect to any construction on or with respect to such Unencumbered Borrowing Base Property;

(ii) if and to the extent any portion of any of the improvements are, under the Flood Disaster Protection Act of 1973 ("***FDPA***"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by the Administrative Agent, but in no event less than the amount sufficient to meet the requirements of Applicable Laws and the FDPA, as such requirements may from time to time be in effect;

(iii) general liability insurance, on an "occurrence" basis, against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of the applicable Loan Party as named insured and the Administrative Agent as additional insured;

(iv) statutory workers' compensation insurance with respect to any work on or about such Unencumbered Borrowing Base Property (including employer's liability insurance, if required by the Administrative Agent), covering all employees of the applicable Loan Party and/or its applicable Subsidiaries and any contractor;

(v) if there is a general contractor, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in ***clause (iv)*** above, for the benefit of the general contractor as named insured and the applicable Loan Party and the Administrative Agent as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the premises (including employer's liability insurance, if required by the Administrative Agent), covering all employees of the general contractor and any contractor; and

(vi) such other insurance (and related endorsements) as may from time to time be required by the Administrative Agent (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, earthquake insurance (if then customarily carried by owners of premises similarly situated), wind insurance, sinkhole coverage, and/or permit to occupy endorsement) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated,

due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements.

(b) All insurance policies obtained by any Loan Party with respect to or in connection with any Unencumbered Borrowing Base Property shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to the Administrative Agent, and shall require not less than thirty (30) days' prior written notice to the Administrative Agent of any cancellation of coverage.

(c) All insurance companies providing coverage pursuant to ***clause (a)*** of this ***Section 6.15*** or any other general coverage required pursuant to any Loan Documents must be licensed to do business in the state in which the applicable Unencumbered Borrowing Base Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better.

(d) All insurance policies maintained, or caused to be maintained, by any Loan Party or its applicable Subsidiaries with respect to any Unencumbered Borrowing Base Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by such Loan Party or its applicable Subsidiaries or the Administrative Agent and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(e) If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this ***Section 6.15*** or any other provision of any Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any debtor relief law, or if in Administrative Agent's opinion the financial responsibility of such insurer is or becomes inadequate, such Loan Party shall, in each instance promptly upon its discovery thereof or upon the request of the Administrative Agent therefor, and at the Loan Party's expense, promptly obtain and deliver (or cause to be obtained and delivered) to the Administrative Agent a like policy (or, if and to the extent permitted by the Administrative Agent, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this ***Section 6.15*** or any other provision of any Loan Document, as the case may be.

(f) A copy of the original policy and such evidence of insurance as may be acceptable to the Administrative Agent shall be delivered to the Administrative Agent with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to the Administrative Agent, with all premiums fully paid current, at least ten (10) Business Days before the termination of the policy it renews or replaces. The applicable Loan Party shall pay (or cause to be paid) all premiums on policies required hereunder as they become due and payable and promptly deliver to the Administrative Agent evidence satisfactory to the Administrative Agent of the timely payment thereof.

(g) If any loss occurs at any time when the applicable Loan Party has failed to perform the covenants and agreements set forth in this ***Section 6.15*** with respect to any insurance payable because of loss sustained to any part of the premises whether or not such insurance is required by the Administrative Agent, then the Administrative Agent shall nevertheless be

entitled to the benefit of all insurance covering the loss and held by or for the applicable Loan Party, to the same extent as if it had been made payable to the Administrative Agent.

(h) Each Loan Party shall at all times comply (and shall cause each applicable TRS to comply) in all material respects with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting any Unencumbered Borrowing Base Property.

6.16 **Anti-Corruption Laws**

. Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, and maintain policies and procedures designed to promote and achieve compliance with such laws.

6.17 **Collateral**

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(a) During any Collateral Period, on or prior to the times specified below (or such later date as the Administrative Agent shall reasonably determine), the Borrower will cause, subject to ***clause (f)*** below, all of the issued and outstanding Equity Interests of each Guarantor (other than the Parent REIT) (collectively, the "***Collateral***"), to be, subject to the terms of the Intercreditor Agreement, subject to a perfected Lien in favor of the Administrative Agent to secure the Obligations in accordance with the terms and conditions of the Collateral Documents:

(i) within thirty (30) days of the Collateral Trigger Date; and

(ii) contemporaneously with the occurrence of any date any Subsidiary shall be required to become a Guarantor pursuant to ***Section 6.12*** hereof.

(b) During a Collateral Period, and without limiting the foregoing, the Borrower will, and will cause each Loan Party that owns any Collateral to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements), which may be required by applicable Law and which the Administrative Agent may, from time to time during a Collateral Period, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all at the reasonable expense of the Borrower; *provided*, *however*, that no Pledged Subsidiary shall be permitted to certificate its Equity Interests or make an election under *Article 8* of the UCC unless such certificates are promptly delivered to the Administrative Agent, together with an endorsement in blank. Without limiting the foregoing, the Borrower shall cause each Loan Party that owns any Collateral to execute and deliver to the Administrative Agent a Grantor Joinder Agreement (as defined in the Intercreditor Agreement).

(c) During a Collateral Period, without limiting the release provisions set forth in ***clause (d)*** below, the Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release, the Equity Interests in any Pledged Subsidiary from the Pledge Agreement with respect to any Unencumbered

Borrowing Base Property that is being removed pursuant to ***Section 1.06(d)*** if such Subsidiary becomes a Non-Guarantor Subsidiary in connection with such removal or will become a Non-Guarantor Subsidiary within ten (10) Business Days of such removal, so long as no Default or Event of Default exists or would result therefrom. The Administrative Agent agrees to furnish to the Borrower, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, after the Borrower's request and at the Borrower's reasonable expense, any release, termination, or other agreement or document evidencing the foregoing release as may be reasonably requested by the Borrower.

(d) The Borrower may deliver to the Administrative Agent, on or prior to the date that is five (5) Business Days (or such shorter period of time as agreed to by the Administrative Agent) before the date on which the Collateral Release is to be effected, written notice that it is requesting the Collateral Release, which notice shall identify the Collateral to be released and the proposed effective date for the Collateral Release, together with a certificate signed by a Responsible Officer of the Borrower (such certificate, a "***Collateral Release Certificate***"), certifying that:

(i) the Consolidated Leverage Ratio is either (A) less than or equal to 6.75 to 1.00 as of the last day of any two (2) consecutive fiscal quarters, or (B) less than or equal to 6.25 to 1.00 as of the last day of any fiscal quarter, in each case as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***; and

(ii) at the time of the delivery of notice requesting such release, on the proposed effective date of the Collateral Release and immediately before and immediately after giving effect to the Collateral Release, (A) no Default or Event of Default has occurred and is continuing or would result therefrom and (B) the representations and warranties contained in ***Section 5*** and the other Loan Documents are true and correct in all material respects on and as of the effective date of the Collateral Release, 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 as of such earlier date, and except that for purposes of this ***Section 6.17***, 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***.

(e) On or after any Collateral Release Date, the Administrative Agent shall, subject to the satisfaction of the requirements of ***clause (d)*** above, promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, release all of the Liens granted to the Administrative Agent pursuant to the requirements of this ***Section 6.17***. and the Collateral Documents (the "***Collateral Release***"). Upon the release of any Collateral pursuant to this ***Section 6.17***, the Administrative Agent shall (to the extent applicable) promptly, and in any event use commercially reasonable efforts to within five (5) Business Days, deliver to the Borrower, upon the Borrower's request and at the Borrower's reasonable expense, such documentation as may be reasonably satisfactory to the Administrative Agent and otherwise necessary or advisable to evidence the release of such Collateral from the Loan Documents.

(f) Notwithstanding the foregoing, (i) if a Collateral Trigger Date occurs in connection with a First Limited Collateral Trigger Event only, the Collateral required to be

delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals fifty percent (50%) of the amount of the aggregate amount of ~~Unsecured Indebtedness~~the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the First Limited Collateral Trigger Event and (ii) if a Collateral Trigger Date occurs in connection with a Second Limited Collateral Trigger Event only, the Collateral required to be delivered hereunder shall be limited to a pledge of the issued and outstanding Equity Interests of the Guarantors owning Unencumbered Borrowing Base Properties that have an aggregate Unencumbered Asset Value (calculated as of December 31, 2019) that equals the amount of the aggregate amount of the Pari Passu Obligations (including the amount of any unfunded commitments thereunder) as of the date of the Second Limited Collateral Trigger Event.

7. **NEGATIVE COVENANTS**. So long as any Lender shall have any Commitment hereunder or any Loan or other Obligation hereunder shall not be Fully Satisfied, the Loan Parties shall not, nor shall they permit any other Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable), directly or indirectly, to:

7.01 **Liens**. Create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, other than the following (collectively, the "***Permitted Liens***"):

(a) Liens that secure the Obligations;

(b) Liens that secure Indebtedness of the Consolidated Parties on a pari passu basis with the Lien described in ***Section 7.01(a)***;

(c) Liens existing on the date hereof and listed on ***Schedule 5.08(b)*** and any renewals or extensions thereof, *provided that* (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by ***Section 7.03(b)***, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by ***Section 7.03(b)***;

(d) Liens for taxes not yet due or which are being contested in good faith by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(e) 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 are maintained on the books of the applicable Person;

(f) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(g) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) easements, rights-of-way, restrictions and other similar encumbrances affecting any Real Property owned by any Loan Party 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 and which, with respect to Unencumbered Borrowing Base Properties, have been reviewed and approved by the Administrative Agent (such approval to be in the reasonable judgment of the Administrative Agent);

(i) Liens securing judgments for the payment of money not constituting an Event of Default under ***Section 8.01(h)***;

(j) (i) the interests of any ground lessor under an Eligible Ground Lease and the interests of any TRS under a lease of any Unencumbered Borrowing Base Property and (ii) Liens in connection with Permitted Intercompany Mortgages;

(k) Liens on any assets (other than any Unencumbered Borrowing Base Property and related assets) securing Indebtedness permitted by ***Section 7.03(f)***, including Liens on such Real Property existing at the time such Real Property is acquired by the applicable Loan Party or any Non-Guarantor Subsidiary;

(l) Liens on the Equity Interests of any Non-Guarantor Subsidiary; *provided*, no such Liens shall be permitted with respect to the Equity Interests of Pebblebrook Hotel Lessee, LaSalle Hotel Lessee, any entity which is the lessee with respect to an Unencumbered Borrowing Base Property or the direct or indirect parent thereof;

(m) other Liens on assets (other than Unencumbered Borrowing Base Properties) securing claims or other obligations of the Loan Parties and their Subsidiaries (other than Indebtedness) in amounts not exceeding $5,000,000 in the aggregate;

(n) any interest of title of a lessor under, and Liens arising from or evidenced by protective UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to, operating leases permitted hereunder; and

(o) Liens, if any, arising under the Bank of America Facility, in favor of the letter of credit issuer and/or the swing line lender thereunder to cash collateralize or otherwise secure the obligations of a defaulting lender to fund risk participations thereunder.

Notwithstanding anything contained in this ***Section 7.01***, each of the Parent REIT and the Borrower shall not, and shall not permit any other Consolidated Party to, secure any Indebtedness outstanding under or pursuant to any Specified Debt unless and until the Obligations (including any Guarantee in connection therewith) shall concurrently be secured equally and ratably with such Indebtedness pursuant to documentation reasonably acceptable to the Administrative Agent in substance and in form including an intercreditor agreement and opinions of counsel to the Parent REIT, the Borrower and/or any other Consolidated Party, as the case may be, from counsel and in a form that is reasonably acceptable to the Administrative Agent.

7.02 **Investments**. Make any Investments, except:

(a) Investments by the Consolidated Parties (other than by the Parent REIT) in (i) Unencumbered Borrowing Base Properties, and (ii) other real properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels, and which real properties shall, upon the making of such Investments, be wholly owned by such Consolidated Party;

(b) Investments held by the Borrower or such Loan Party or other Subsidiary in the form of cash or Cash Equivalents;

(c) Investments existing as of the Closing Date and set forth in ***Schedule 5.08(c)***;

(d) Advances to officers, directors and employees of the Borrower, the Loan Parties and other Subsidiaries in aggregate amounts not to exceed (i) $500,000 at any time outstanding for employee relocation purposes, and (ii) $100,000 at any time outstanding for travel, entertainment, and analogous ordinary business purposes;

(e) Investments of (i) the Borrower in any Guarantor (including (A) Investments by the Borrower in any private REIT, so long as Borrower owns one hundred percent (100%) of the "common" Equity Interests in such private REIT and (B) Investments by the Borrower in a Guarantor in the form of an intercompany loan), (ii) any Guarantor in the Borrower or in another Guarantor (including Investments by a Guarantor in the Borrower or in another Guarantor in the form of an intercompany loan), and (iii) the Borrower, any Guarantor or any Non-Guarantor Subsidiary in Non-Guarantor Subsidiaries (including Investments by the Borrower, any Guarantor or any Non-Guarantor Subsidiary in a Non-Guarantor Subsidiary in the form of an intercompany loan) that own, directly or indirectly, and operate Real Properties that are fully-developed, open and operating income-producing "luxury," "upper upscale" or "upscale" full or select service hotels, with all material approvals from each Governmental Authority required in connection with the lawful operation of such hotels; *provided*, notwithstanding the foregoing or any other provision herein or in any other Loan Document to the contrary, the Parent REIT shall not own any Equity Interests in any Person other than the Borrower;

(f) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(g) Guarantees permitted by ***Section 7.03***;

(h) Other Investments of the Borrower and its Subsidiaries in:

(i) Real properties consisting of undeveloped or speculative land (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than five percent (5%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary;

(ii) Incoming-producing real properties (other than hotels or similar hospitality properties) (valued at cost for purposes of this ***clause (h)***) with an aggregate

value not greater than ten percent (10%) of Consolidated Total Asset Value and which real properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary;

(iii) Development/Redevelopment Properties (valued at cost for purposes of this ***clause (h)***; *provided that* all costs and expenses associated with all existing development activities with respect to such Development/Redevelopment Properties (budget to completion) shall be included in determining the aggregate Investment of the Borrower or such Subsidiary with respect to such activities) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value and which Development/Redevelopment Properties shall, upon the making of such Investments, be wholly owned by the Borrower or such Subsidiary and;

(iv) Unconsolidated Affiliates (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than twenty percent (20%) of Consolidated Total Asset Value;

(v) mortgage or real estate-related loan assets (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value; and

(vi) Equity Interests (including preferred Equity Interests) in any Person (other than any Affiliate of the Borrower) (valued at cost for purposes of this ***clause (h)***) with an aggregate value not greater than fifteen percent (15%) of Consolidated Total Asset Value;

provided, however, that the collective aggregate value of the Investments owned pursuant to ***items (i)*** through ***(vi)*** of this ***clause (h)*** above shall not at any time exceed thirty-five percent (35%) of Consolidated Total Asset Value;

(vii) Investments in fixed or capital assets to the extent not prohibited under ***Section 7.12***; and

(i) Investments in any Person as a result of any merger or consolidation completed in compliance with ***Section 7.04***.

7.03 **Indebtedness**. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on ***Schedule 7.03*** and any refinancings, refundings, renewals or extensions thereof; *provided that* the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder;

(c) Guarantees of (i) the Borrower or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrower or any other Guarantor, (ii) the Parent REIT or the Borrower, in respect of Indebtedness otherwise permitted hereunder of any Non-Guarantor

Subsidiary if, in the case of any Guarantee pursuant to this ***clause (ii)***, (x) no Default shall exist immediately before or immediately after the making of such Guarantee, and (y) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the making of such Guarantee, and (iii) Non-Guarantor Subsidiaries made in the ordinary course of business;

(d) obligations (contingent or otherwise) of the Borrower or any Subsidiary existing or arising under any Swap Contract, *provided that* (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a "market view;" and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) unsecured Indebtedness in the form of trade payables incurred in the ordinary course of business;

(f) Indebtedness of any Loan Party or Non-Guarantor Subsidiary incurred or assumed after the date hereof that is either unsecured or is secured by Liens on any assets of such Loan Party (other than any Unencumbered Borrowing Base Property) or of such Non-Guarantor Subsidiary; *provided*, such Indebtedness shall be permitted under this ***Section 7.03(f)*** only if: (i) no Default shall exist immediately before or immediately after the incurrence or assumption of such Indebtedness, and (ii) there exists no violation of the financial covenants hereunder on a Pro Forma Basis after the incurrence or assumption of such Indebtedness; and

(g) Indebtedness consisting of intercompany loans permitted under ***Section 7.02(e)***.

7.04 **Fundamental Changes**. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (including, in each case, pursuant to a Division), except for Dispositions permitted under ***Section 7.05*** (other than under ***Section 7.05(e)***) or except that, so long as no Default exists or would result therefrom:

(a) any Guarantor may merge with the Borrower or any other Guarantor, *provided that* when any Guarantor is merging with the Borrower, the Borrower shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Loan Party; and

(c) (i) any Non-Guarantor Subsidiary may merge with any other Person or Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to any other Person; *provided* such merger or Disposition shall be permitted under this ***Section 7.04(c)(i)*** only if there exists no violation of the financial covenants hereunder on a Pro Forma Basis after such merger or Disposition, and (ii) any Non-Guarantor Subsidiary may merge with a Loan Party; *provided that* the Loan Party shall be the continuing or surviving Person.

7.05 **Dispositions**. Make any Disposition of any assets or property, except:

(a) Dispositions in the ordinary course of business (other than those Dispositions permitted under ***clause (b)*** of this ***Section 7.05***), so long as (i) no Default shall exist immediately before or immediately after such Disposition, and (ii) the Consolidated Parties will be in compliance, on a Pro Forma Basis following such Disposition, with (x) the covenants set forth in ***Sections 7.01***, ***7.02***, ***7.03***, and ***7.11*** of this Agreement, (y) all restrictions on Outstanding Amounts contained herein, and (z) the requirements of ***Section 1.06*** (in the case of any Disposition with respect to an Unencumbered Borrowing Base Property), in each case as demonstrated by a Compliance Certificate with supporting calculations delivered to the Administrative Agent on or prior to the date of such Disposition showing the effect of such Disposition;

(b) Any of the following:

(i) Dispositions of obsolete, surplus or worn out property or other property not necessary for operations, whether now owned or hereafter acquired, in the ordinary course of business and for no less than fair market value;

(ii) Dispositions of equipment or real property to the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property, in each case in the ordinary course of business and for no less than fair market value;

(iii) Dispositions of inventory and Investments of the type described in ***Section 7.02(b)*** and ***(c)*** in the ordinary course of business;

(iv) leases of Real Property (other than any Unencumbered Borrowing Base Property) and personal property assets related thereto to any TRS; and

(v) in order to resolve disputes that occur in the ordinary course of business, the Borrower and any Subsidiary of Borrower may discount or otherwise compromise, for less than the face value thereof, notes or accounts receivable;

(c) Dispositions of property by any Loan Party to the Borrower or to another Loan Party;

(d) Dispositions permitted by ***Section 7.04***; and

(e) Any other Disposition approved in writing by the Administrative Agent and the Required Lenders.

Notwithstanding the foregoing provisions of this ***Section 7.05***, no Loan Party shall sell or make any other Disposition of assets or property that will have the effect of causing such Loan Party (or any other Loan Party) to become liable under any tax protection or tax sharing agreement if the amount of such liability would exceed an amount equal to one percent (1%) of the total assets of such Loan Party without the prior written consent of the Administrative Agent.

7.06 **Restricted Payments.**

(a) Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except:

(i) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, each Subsidiary may make Restricted Payments to the Borrower, the Guarantors and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(ii) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(iii) so long as no Event of Default shall exist at the time of such Restricted Payment or would result therefrom, the Borrower and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests; and

(iv) so long as no Acceleration shall have occurred, each TRS may make Restricted Payments to its TRS parent entity to the extent necessary to pay any tax liabilities then due (after taking into account any losses, offsets and credits, as applicable); *provided that* any such Restricted Payments by a TRS shall only be made after it has paid all of its operating expenses currently due or anticipated within the current month and next following month;

(b) Notwithstanding the foregoing, the Loan Parties shall be permitted to make Restricted Payments of the type and to the extent permitted pursuant to ***Section 7.11(h)*** of this Agreement.

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 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, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, *provided that* the foregoing restriction shall not apply to transactions between or among the Borrower and any Guarantor or between and among any Guarantors, or between and among any Loan Party and the TRS or any manager engaged to manage one or more Unencumbered Borrowing Base Properties (if applicable).

7.09 **Burdensome Agreements**. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a)(i) limits the ability of any Subsidiary to make Restricted Payments to the Borrower or any Guarantor or to otherwise transfer property to the Borrower or any Guarantor, (ii) limits the ability of any Subsidiary to Guarantee the Indebtedness of the Borrower other than (A) any requirement for the grant of a Guarantee in favor of the holders of any Unsecured Indebtedness that is equal and ratable to the Guarantee set forth in ***Section 11*** or (B) in connection with a property-specific financing involving a Non-Guarantor Subsidiary as the borrower or (iii) constitutes a Negative Pledge; *provided, however*, that ***clauses (ii)*** and ***(iii)*** shall not prohibit any Negative Pledge

incurred or provided in favor of any holder of Indebtedness in respect of (A) capital leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets permitted hereunder, or (B) a property-specific financing involving only a Non-Guarantor Subsidiary as the borrower, in each case solely to the extent any such Negative Pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person other than any requirement for the grant of a Lien in favor of the holders of any Unsecured Indebtedness of an equal and ratable Lien in connection with a pledge of any property or asset to secure the Obligations.

7.10 **Use of Proceeds**. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 **Financial Covenants**.

(a) **Consolidated Leverage Ratio**. Permit the Consolidated Leverage Ratio to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of the Initial Compliance Date ~~and the last day of the first fiscal quarter ending after the Initial Compliance Date~~, exceed 8.50 to 1.00; (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed 8.00 to 1.00; (iii) as of the last day of the ~~fourth~~third fiscal quarter ending after the Initial Compliance Date, exceed 7.50 to 1.00; and (iv) as of the last day of any fiscal quarter thereafter, exceed 6.75 to 1.00; *provided that*, notwithstanding the foregoing, once during the term of this Agreement, the Borrower may deliver a written notice to the Administrative Agent in a Compliance Certificate timely delivered pursuant to ***Section 6.02(a)*** that the Consolidated Leverage Ratio as of the last day of the fiscal quarter (the "***Surge Date***") for which such Compliance Certificate was delivered and the next three (3) consecutive fiscal quarters (such period, the "***Surge Period***") may exceed 6.75 to 1.00 but not exceed 7.00 to 1.00 so long as (A) no Default has occurred and is continuing, (B) the Applicable Margin shall be increased as set forth in ***clause (c)*** of the definition thereof and (C) the Borrower has not delivered a written notice to the Administrative Agent terminating the Surge Period.

(b) **Consolidated Recourse Secured Indebtedness Limitation**. Permit Consolidated Recourse Secured Indebtedness to, at any time on or after the Initial Compliance Date, exceed an amount equal to five percent (5%) of Consolidated Total Asset Value; *provided that*, notwithstanding the foregoing, once during the term of this Agreement, so long as no Default has occurred and is continuing, for up to four (4) consecutive quarters, Consolidated Recourse Secured Indebtedness may exceed five percent (5%) but not exceed ten percent (10%) of Consolidated Total Asset Value.

(c) **Consolidated Secured Debt Limitation**. Permit Consolidated Secured Debt to, at any time on or after the Initial Compliance Date, exceed an amount equal to forty-five percent (45%) of Consolidated Total Asset Value.

(d) **Consolidated Fixed Charge Coverage Ratio**. Permit the Consolidated Fixed Charge Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date, 1.05 to 1.00, (ii) as of the

last day of the first fiscal quarter ending after the Initial Compliance Date, 1.25 to 1.00, and (iii) as of the last day of any fiscal quarter thereafter, 1.50 to 1.00.

(e) **Consolidated Unsecured Interest Coverage Ratio**. Permit the Consolidated Unsecured Interest Coverage Ratio, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than (i) as of the Initial Compliance Date ~~and~~, 1.25 to 1.00, (ii) as of the last day of the first fiscal quarter ending after the Initial Compliance Date, 1.50 to 1.00, (iii) as of the last day of the ~~first~~second fiscal quarter ending after the Initial Compliance Date, 1.75 to 1.00, and (~~ii~~iv) as of the last day of any fiscal quarter thereafter, 2.00 to 1.00.

(f) **Consolidated Tangible Net Worth**. Permit Consolidated Tangible Net Worth, as of the last day of any fiscal quarter commencing with the Initial Compliance Date, to be less than the sum of (i) $1,479,422,000 (which amount is seventy-five percent (75%) of Consolidated Tangible Net Worth as of June 30, 2018), *plus* (ii) seventy-five percent (75%) of the Net Proceeds of all Equity Issuances by the Consolidated Parties after June 30, 2018, *plus* (iii) from and after the Funding Date, seventy-five percent (75%) of the increase in Consolidated Tangible Net Worth as a result of the Mergers.

(g) **Unsecured Leverage Ratio**. Permit the Unsecured Indebtedness (less Adjusted Unrestricted Cash as of such date) to, as of the last day of any fiscal quarter commencing with the Initial Compliance Date: (i) as of the Initial Compliance Date ~~and the last day of the first fiscal quarter ending after the Initial Compliance Date~~, exceed sixty-seven and one-half of one percent (67.5%); (ii) as of the last day of the first and second ~~and third~~ fiscal quarters ending after the Initial Compliance Date, exceed sixty five percent (65%); and (iii) as of the last day of any fiscal quarter thereafter, exceed sixty percent (60%) of Unencumbered Asset Value; *provided that*, notwithstanding the foregoing, so long as no Default has occurred and is continuing, as of the last day of the fiscal quarter in which any Material Acquisition occurs and the last day of the two (2) consecutive quarters thereafter, such ratio may exceed sixty percent (60%) but not exceed sixty five percent (65%) (such period being an "***Unsecured Leverage Increase Period***"); *provided further that* (A) the Borrower may not elect more than three (3) Unsecured Leverage Increase Periods during the term of this Agreement and (B) any such Unsecured Leverage Increase Periods shall be non-consecutive.

(h) **Restricted Payments**. Permit, for any fiscal year of the Consolidated Parties, the amount of Restricted Payments (excluding Restricted Payments payable solely in the common stock or other common Equity Interests of the Parent REIT or the Borrower) made by the Consolidated Parties to the holders of their Equity Interests (excluding any such holders of Equity Interests which are Loan Parties) during such period to exceed the FFO Distribution Allowance for such period; *provided that*, to the extent no Event of Default then exists or will result from such Restricted Payments (or if an Event of Default then exists or will result from such Restricted Payments, then so long as no Acceleration shall have occurred), each Loan Party and each other Subsidiary (including Pebblebrook Hotel Lessee and LaSalle Hotel Lessee) shall be permitted to make Restricted Payments to the Borrower and the Borrower shall be permitted to make Restricted Payments to Parent REIT, in each case to permit the Parent REIT to make Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain Parent REIT's status as a REIT and as necessary to pay any special or extraordinary tax liabilities then due (after taking into account any losses, offsets and credits, as applicable) on capital gains attributable to Parent REIT. In addition, so long as no Acceleration shall have occurred, each TRS may make Restricted Payments to its parent entity to the extent necessary to

pay any Tax then due in respect of the income of such TRS. Notwithstanding the foregoing, during the Waiver Period and at any time thereafter until the Consolidated Leverage Ratio is less than 6.75 to 1.00 as of the last day of any fiscal quarter, as reflected on the most recently delivered Compliance Certificate delivered pursuant to ***Section 6.02(a)***, the Parent REIT shall not purchase, redeem, retire, or defease any of its Equity Interests except as expressly permitted in ***Section 7.20(e)***.

(i) **Minimum Liquidity**. At any time during the Waiver Period, permit Liquidity to be less than $~~150,000,000~~200,000,000.

(j) **Waiver Period Financial Covenants; Adjustments**.

(i) During the ~~Waiver Period~~period of time commencing on the First Amendment Effective Date up to, but excluding, the Initial Compliance Date, the Parent REIT and the Borrower shall continue to deliver to the Administrative Agent duly completed Compliance Certificates, for informational purposes only, as and when required under ***Section 6.02(a)*** certifying as to the Borrower's calculations of the financial tests set forth in this ***Section 7.11***.

(ii) Immediately following the expiration of the Waiver Period, the financial covenants set forth in this ***Section 7.11*** (including the related defined terms) (other than the covenants set forth in ***clauses (d), (e), (f)*** and ***(i)*** thereof) shall be modified, solely for purposes of calculation of the financial covenants set forth in this ***Section 7.11*** and not for purposes of determining the Applicable Margin, as follows:

(A) in the event the Borrower elects to terminate the Waiver Period on the date occurring under ***clause (b)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the fiscal quarter ending June 30, ~~2021~~2022, the trailing quarter, annualized; (x) for the fiscal quarter ending September 30, ~~2021~~2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending December 31, ~~2021~~2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

(iii) From and after the Initial Compliance Date, the financial covenants set forth in ***Sections 7.11(d)*** and ***7.11(e)*** shall be modified as follows:

(A) in the event the Borrower elects to terminate the Waiver Period on the date occurring under ***clause (b)*** of the definition of "Waiver Period", the testing period for the covenants set forth in ***Sections 7.11(d)*** and ***7.11(e)*** shall be

measured as follows: (w) for the most-recent fiscal quarter ending on or immediately prior to the expiration of the Waiver Period, the trailing quarter, annualized; (x) for the two (2) most-recent fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing two (2) quarters, annualized; (y) for the three fiscal quarters ending on or immediately prior to the expiration of the Waiver Period, the trailing three (3) quarters, annualized; and (z) thereafter, the trailing four (4) quarters.

(B) in the event the Waiver Period ends on the date occurring under ***clause (a)*** of the definition of "Waiver Period", the testing period for the covenants set forth in this ***Section 7.11*** shall be measured as follows: (w) for the fiscal quarter ending March 31, 2022, the trailing quarter, annualized; (x) for the fiscal quarter ending June 30, 2022, the trailing two (2) quarters, annualized; (y) for the fiscal quarter ending September 30, 2022, the trailing three (3) quarters, annualized and (z) thereafter, the trailing four (4) quarters.

The financial covenants in this ***Section 7.11*** shall be tested (on a Pro Forma Basis) and certified to by the Borrower in connection with each Borrowing.

7.12 **Capital Expenditures**. Make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than normal replacements and maintenance which are properly charged to current operations and other reasonable and customary capital expenditures made in the ordinary course of the business of the Parent REIT and its Subsidiaries.

7.13 **Accounting Changes**. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year, except with the written consent of the Administrative Agent.

7.14 **Ownership of Subsidiaries; Certain Real Property Assets**

. Notwithstanding any other provisions of this Agreement to the contrary, (a) permit any Person (other than the Parent REIT, the Borrower, any other Loan Party or a private REIT) to own any Equity Interests of any Unencumbered Borrowing Base Entity, except to qualify directors where required by Applicable Laws, (b) permit any Loan Party that owns an Unencumbered Borrowing Base Property to issue or have outstanding any shares of preferred Equity Interests, (c) permit, create, incur, assume or suffer to exist any Lien on any Equity Interests owned by the Borrower or any Loan Party of (i) any Loan Party or (ii) any TRS that leases an Unencumbered Borrowing Base Property or is the direct or indirect parent of any such TRS, (d) permit any Intermediate REIT to directly own or acquire any Real Property assets; *provided that* this ***clause (d)*** of ***Section 7.14*** shall not prohibit any Intermediate REIT from owning or acquiring any Equity Interests in any Subsidiary that owns any Real Property assets, (e) permit the Borrower to own less than ninety-nine percent (99%) of the outstanding common Equity Interests in Pebblebrook Hotel Lessee, (f) permit the LaSalle Operating Partnership to own less than ninety-nine percent (99%) of the outstanding common Equity Interests in LaSalle Hotel Lessee, or (g) permit the Parent REIT to own Equity Interests in any Person other than the Borrower.

7.15 **Leases**. Permit any Loan Party to enter into, terminate, cancel, amend, restate, supplement or otherwise modify any Material Lease relating to any Unencumbered Borrowing Base Property; *provided that* (i) such Unencumbered Borrowing Base Property may be subject to an Eligible Ground Lease entered into in accordance with and subject to the requirements of this Agreement, (ii) the

applicable Unencumbered Borrowing Base Entity may lease such Unencumbered Borrowing Base Property owned (or ground leased) by it to a TRS pursuant to a form of Lease acceptable to the Administrative Agent, in its reasonable discretion, and (iii) the applicable Unencumbered Borrowing Base Entity or the applicable TRS (if any) may enter into, terminate, cancel, amend, restate, supplement or otherwise modify any Material Lease relating to such Unencumbered Borrowing Base Property (including any Lease between such Unencumbered Borrowing Base Entity and such TRS respecting any Unencumbered Borrowing Base Property) to the extent that the entry into, termination, cancellation, amendment, restatement, supplement or modification is not reasonably likely to, in the aggregate with any other then-existing conditions or circumstances, have a Material Adverse Effect.

7.16 **Sale Leasebacks**. Permit any Loan Party to enter into any Sale and Leaseback Transaction with respect to any Unencumbered Borrowing Base Property.

7.17 **Sanctions**. Directly or indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as a Lender, an Arranger, Administrative Agent, or otherwise) of Sanctions.

7.18 **ERISA**. Be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to *Section 4975* of the Code, (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (d) a "governmental plan" within the meaning of ERISA.

7.19 **Anti-Corruption Laws**. Directly or indirectly use the proceeds of any Loan for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions.

7.20 **Enhanced Negative Covenants**. Notwithstanding anything to the contrary contained in this Agreement, during the Waiver Period the Loan Parties shall not, nor shall they permit any other Consolidated Party (except where expressly limited to the Borrower or the Loan Parties, as applicable), directly or indirectly, to:

(a) make any Investments other than (i) Investments in one or more new Unencumbered Borrowing Base Properties (or in Equity Interests in Subsidiaries that own or will own new Unencumbered Borrowing Base Properties) solely with the proceeds of Excluded Net Proceeds or (ii) any other Investments otherwise permitted pursuant to ***Section 7.02*** not to exceed $100,000,000 in the aggregate;

(b) make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset other than (i) in connection with emergency repairs, life safety repairs or ordinary course maintenance repairs (ii) capital expenditures to complete ongoing renovations in an amount not to exceed $~~90,000,000~~155,000,000 in the aggregate during the period commencing with the Third Amendment Effective Date through the remainder of the Waiver Period;

(c) create, incur, assume or suffer to exist any Indebtedness not existing and permitted as of the First Amendment Effective Date other than (i) to the extent the proceeds of such Indebtedness are used to fully or partially refinance or replace Indebtedness existing and

permitted as of the First Amendment Effective Date ~~and pursuant to which the Borrower has made the mandatory prepayment required pursuant to **Section 2.03(b)**~~; *provided*, however, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(i)*** be earlier than the existing maturity date of the Indebtedness being refinanced or replaced; *provided* further, that any amounts in excess of the amounts used to fully or partially refinance or replace Indebtedness are otherwise permitted to be incurred pursuant to this ***Section 7.20(c)***, (ii) Secured Non-Recourse Debt not to exceed $250,000,000 in the aggregate and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.03(b)***; *provided*, *however*, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(ii)*** be earlier than one (1) year after the Maturity Date, or (iii) Indebtedness that is recourse to ~~a~~one or more Consolidated ~~Party not to exceed $250,000,000 in the aggregate~~Parties and pursuant to which the Borrower has made the mandatory prepayment required pursuant to ***Section 2.03(b)***; *provided*, *however*, that in no event shall the final stated maturity date of any Indebtedness permitted under this ***clause (c)(iii)*** (other than (A) increases of any Specified Debt pursuant to the terms thereof and (B) Indebtedness under a 364-day facility not to exceed $100,000,000) be earlier than one (1) year after the Maturity Date;

(d) make any Disposition other than Dispositions (i) permitted by ***Section 7.05(b)(i)***, ***(ii)***, ***(iii)*** and ***(iv)***, or (ii) to a Person that is not a Consolidated Party or a Related Party of any Consolidated Party, (A) for fair market value in an arms' length transaction, (B) in which the price for such asset shall be paid to a Consolidated Party solely in cash, and (C) pursuant to which the Borrower has made the mandatory prepayment, if any, required pursuant to ***Section 2.03(b)***;

(e) declare or make any Restricted Payments other than (i) Restricted Payments to the holders of the common Equity Interests in the Parent REIT of not more than $0.01 per share, (ii) Restricted Payments to the holders of the Equity Interests in the Parent REIT to the extent necessary to maintain the Parent REIT's status as a REIT, (iii) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Restricted Payments with respect to any preferred Equity Interests, (iv) Restricted Payments by Subsidiaries of the Borrower to Borrower and by Borrower to the Parent REIT the proceeds of which are used by the Parent REIT to make Restricted Payments permitted by ***clauses (i)*** through ***(iii)*** preceding and (v) the purchase or redemption by the Parent REIT of its preferred Equity Interests solely with Net Cash Proceeds from Permitted Preferred Issuances;

(f) voluntarily prepay the principal amount of (i) any Permitted Convertible Notes other than pursuant to a conversion thereof into Equity Interests of the Parent REIT or (ii) any Indebtedness incurred after the Third Amendment Effective Date; or

(g) create, incur, assume or suffer to exist any Lien upon any property, assets or revenues of any Consolidated Party, whether now owned or hereafter acquired, not existing and permitted as of the First Amendment Effective Date other than (i) Liens securing the Pari Passu Obligations on a pari passu basis subject to the terms of the Intercreditor Agreement, (ii) Liens permitted by ***Sections 7.01(d)***, ***(e)***, ***(f)***, ***(g)***, ***(h)***, ***(i)***, ***(j)*** and ***(n)***, (iii) Liens securing Indebtedness permitted under ***Section 7.20(c)(i)***; *provided that* (A) the amount secured or benefited thereby is not increased except as contemplated by ***Section 7.03(b)***, (B) the direct or any contingent obligor with respect thereto is not changed, (C) any renewal or extension of the obligations secured or benefited thereby is permitted by ***Section 7.03(b)***, and (D) to the extent such existing Indebtedness being refinanced or replaced is Secured Debt, incurred to refinance or replace

Secured Debt secured by the same property or assets, and (iv) Liens securing Indebtedness permitted under ***Section 7.20(c)(ii)***.

8. 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 three (3) days after the same becomes due, any interest on any Loan, or any fee due hereunder, or (iii) within five (5) days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants**. The Borrower fails to perform or observe any term, covenant or agreement contained in any of ***Section 6.03***, ***6.05(a)***, ***6.10***, ***6.11***, ***6.12***, ***6.15*** or ***Section 7*****,** or any Guarantor fails to perform or observe any term, covenant or agreement contained in ***Section 11*** hereof; or

(c) **Other Defaults**. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in ***subsection (a)*** or ***(b)*** above) contained in any Loan Document on its part to be performed or observed and such failure continues for (i) with respect to any failure to perform or observe ***Section 6.01*** or ***6.02***, five (5) days after such failure occurred; *provided that* if the auditor's opinion accompanying the audited financial statements for the fiscal year ended December 31, 2021 is subject to any "going concern" or like qualification or exception, then the Parent REIT shall have a period of forty-five (45) days from the delivery date of such statements for the auditor to reissue its opinion without any "going concern" or like qualification or exception and (ii) with respect to any failure to perform or observe any other covenant or agreement, thirty (30) days after the earlier of (A) Borrower's actual knowledge of such failure or (B) Borrower's receipt of notice as to such failure from the Administrative Agent or any Lender; or

(d) **Representations and Warranties**. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(e) **Cross-Default**. (i) Any Loan Party or any of its Subsidiaries (A) fails to make any payment when due after giving effect to any applicable grace period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid,

defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any of its Subsidiaries 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 of its Subsidiaries 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; or

(f) **Insolvency Proceedings, Etc.** Any Loan Party or any of its 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 or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment**. (i) Any Loan Party or any of its 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 Subsidiaries (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA**. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of the Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) the Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under *Section 4201* of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) **Invalidity of Loan Documents**. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability

of any provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind in writing any provision of any Loan Document; or

(k) **Change of Control**. There occurs any Change of Control; or

(l) **REIT or QRS Status**. The Parent REIT shall, for any reason, lose or fail to maintain its status as a REIT or the Borrower shall, for any reason, lose or fail to maintain its status as any of the following: a REIT, a partnership or a disregarded entity (in each case, for federal income tax purposes), a TRS or a QRS; or

(m) **Management and Franchise Agreements**. There occurs a monetary or material default under a management or franchise agreement with respect to an Unencumbered Borrowing Base Property (which material default shall include any default which would permit the manager or franchisor under any such management or franchise agreement to terminate such management or franchise agreement or would otherwise result in a material increase of the obligations of the Borrower or such Subsidiary of the Borrower that is a party to such management or franchise agreement) and such default is not remedied prior to the date which is the later of (i) the earlier of (A) if no other Default exists, sixty (60) days from the occurrence of the event or condition which caused, led to, or resulted in such default, or (B) the date that a Default (other than the subject Default relative to such management or franchise agreement) occurs and (ii) the last day of the cure period provided in such management or franchise agreement (as applicable); or

(n) **Collateral Documents**. Any Collateral Document shall for any reason fail to create a valid and perfected security interest in any portion of the Collateral purported to be covered thereby, with the priority required by the applicable Collateral Document, except as (i) permitted by the terms of any Loan Document or (ii) as a result of the release of such security interest in accordance with the terms of any Loan Document, it being understood and agreed that the failure of the Administrative Agent to maintain possession of any Collateral actually delivered to it or file any UCC (or equivalent) continuation statement shall not result in an Event of Default under this ***clause (n)***.

8.02 **Remedies Upon Event of Default**. If any Event of Default exists, 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 (any such action, an "***Acceleration***"):

(a) declare the commitment 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; and

(c) 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 actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans shall automatically terminate and 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 2.13***, 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 ***Section 3***) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender) and amounts payable under ***Section 3***), ratably among them in proportion to the respective amounts described in this ***clause Second*** payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, ratably among the 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 and Indebtedness of any Loan Party under Swap Contracts that are entered into by any Loan Party with any Lender or its Affiliate as a counterparty with respect to the Loans, ratably among the 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 Applicable Laws.

Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to the Obligations otherwise set forth in this ***Section 8.03***.

9. 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. The provisions of this ***Section 9*** are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

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, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower 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, and its duties hereunder shall be administrative in nature. 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 then exists;

(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, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief 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 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 by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing 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 ***Section 4*** 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), 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 ***Section 9*** 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. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents 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 in the selection of such sub-agents.

9.06 **Resignation or Removal of Administrative Agent**

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(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the approval of the Borrower (such approval not to be unreasonably withheld; *provided* that if a Default shall exist at the time, no approval of the Borrower shall be required), 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. 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 (or such earlier day as shall be agreed by the Required Lenders) (the "***Resignation Effective Date***"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided*

that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to ***clause (d)*** of the definition thereof or in the case of fraud, misappropriation of funds or the commission of illegal acts by the Administrative Agent or where the Administrative Agent has been grossly negligent in performing (or failing to perform) its obligations hereunder or under any other Loan Document in any material respect, the Required Lenders (excluding the vote of the Administrative Agent, in its capacity as a Lender, as more particularly set forth in the proviso to this sentence) may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, with the approval of the Borrower (such approval not to be unreasonably withheld; *provided* that if a Default shall exist at the time, no approval of the Borrower shall be required), appoint a successor; *provided, however*, that to the extent the Administrative Agent being replaced pursuant to this ***Section 9.06*** is also a Lender, such Person shall not be permitted to vote in connection with the removal of the Administrative Agent and appointment of a successor Administrative Agent pursuant to this paragraph of ***Section 9.06***. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days (or such earlier day as shall be agreed by the Required Lenders) (the "***Removal Effective Date***"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, 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, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. 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 removed) Administrative Agent (other than as provided in ***Section 3.01(g)*** and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed 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***). 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 or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and ***Section 10.04*** shall continue in effect for the benefit of such retiring or removed 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 (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (A) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (B) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

9.07 **Non-Reliance on Administrative Agent and Other Lenders**. Each Lender 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, no Arranger 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 proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan 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 2.07*** 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 2.07*** 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 to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

9.10 **Collateral and Guaranty Matters**. Each of the Lenders (including each Lender in its capacity as a potential Hedge Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion, to do or cause the following:

(a) to execute the Intercreditor Agreement on behalf of the Lenders;

(b) to release any Liens granted to the Administrative Agent by any Loan Party on any Collateral (i) upon the payment and satisfaction in full of all Obligations, (ii) upon any Disposition of such Collateral permitted hereunder, (iii) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to ***Section 8.02***, or (iv) upon the occurrence of a Collateral Release Date in accordance with the terms and conditions of ***Section 6.17***; and

(c) to release any Guarantor from its obligations under ***Section 11*** hereof if such Person ceases to be required to be a Guarantor pursuant to the terms hereof.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Collateral or to release any Guarantor from its obligations under ***Section 11*** hereof pursuant to this ***Section 9.10***. In each case as specified in this ***Section 9.10***, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as Borrower may reasonably request to evidence the release of such Collateral or such Guarantor from its obligations hereunder, in each case in accordance with the terms of the Loan Documents and this ***Section 9.10***.

10. MISCELLANEOUS

10.01 **Amendments, Etc**. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders 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) waive any condition set forth in ***Sections 4.01(a)***, ***(b)*** or ***(c)*** or, in the case of the initial Borrowing, ***Section 4.02***, without the written consent of each Lender;

(b) without limiting the generality of ***clause (a)*** above, waive any condition set forth in ***Section 4.02*** as to any Borrowing under a particular Facility without the written consent of the Required 2020 Term Lenders, Required 2021 Term Lenders, Required 2022 Term Lenders, Required 2023 Term Lenders, or the Required 2024 Term Lenders, as the case may be;

(c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to ***Section 8.02***) without the written consent of such Lender;

(d) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(e) reduce the principal of, or the rate of interest specified herein on, any Loan or any fees or other amounts payable hereunder or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Margin that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend the definition of "*Default Rate*" or to waive any obligation of the Borrower to pay interest at the Default Rate;

(f) change (i) ***Section 8.03*** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of ***Section 2.04(c)*** in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (A) if such Facility is the 2020 Term Facility, the Required 2020 Term Lenders, (B) if such Facility is the 2021 Term Facility, the Required 2021 Term Lenders, (C) if such Facility is the 2022 Term Facility, the Required 2022 Term Lenders, (D) if such Facility is the 2023 Term Facility, the Required 2023 Term Lenders, and (E) if such Facility is the 2024 Term Facility, the Required 2024 Term Lenders;

(g) change (i) any provision of this ***Section 10.01*** or the definition of "*Required 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 (other than definitions specified in ***clause (ii)*** of this ***Section 10.01(g)***), without the written consent of each Lender; or (ii) the definitions of "*Required 2020 Term Lenders*", "*Required 2021 Term Lenders*", "*Required 2022 Term Lenders*", "*Required 2023 Term Lenders*", or "*Required 2024 Term Lenders*" without the written consent of each Lender under the applicable Facility;

(h) release, without the written consent of each Lender, all or substantially all of the value of the guaranty under ***Section 11*** hereof, except to the extent the release of any Guarantor is permitted pursuant to ***Section 9.10*** (in which case such release may be made by the Administrative Agent acting alone); or

(i) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the 2020 Term Facility, the Required 2020 Term Lenders, (ii) if such Facility is the 2021 Term Facility, the Required 2021 Term Lenders, (iii) if such Facility is the 2022 Term Facility, the Required 2022 Term Lenders, (iv) if such Facility is the 2023 Term Facility, the Required 2023 Term Lenders, and (v) if such Facility is the 2024 Term Facility, the Required 2024 Term Lenders;

and, *provided further*, that (i) 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 (ii) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all

Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent and the Borrower (i) to add one or more additional term loan facilities to this Agreement subject to the limitations in ***Section 2.12*** 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, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

If any Lender is a Non-Consenting Lender, then the Borrower may replace such Non-Consenting Lender in accordance with ***Section 10.13***.

10.02 **Notices; Effectiveness; Electronic Communication.**

(a) **Notices Generally**. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in ***subsection (b)*** below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by 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 any 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(es), facsimile number(s), electronic mail address(es) or telephone number(s) 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).

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 ***subsection (b)*** below, shall be effective as provided in such ***subsection (b)***.

(b) **Electronic Communications**. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided that* the foregoing shall not apply to notices to any Lender pursuant to ***Section 2*** if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Section 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; *provided further* that Committed Loan Notices may be sent via e-mail.

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, email or other communication is not sent during the normal business hours of the recipient, such notice, email 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 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 or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender 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 the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number 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 Laws, 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 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 or electronic 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. 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; Enforcement**. 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 or under any other Loan Document 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, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Applicable Laws.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with ***Section 8.02*** for the benefit of the Credit Parties; *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) any Lender from exercising setoff rights in accordance with ***Section 10.08*** (subject to the terms of ***Section 2.11***), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided*, *further*, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to ***Section 8.02*** and (ii) in addition to the matters set forth in ***clauses (b)*** and ***(c)*** of the preceding proviso and subject to ***Section 2.11***, 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 shall pay, on the Closing Date and thereafter within five (5) Business Days after written demand, (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent or any Lender, 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***, or (B) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans. For the avoidance of doubt, this ***Section*** shall not provide any right to payment with respect to increases in taxes or costs and expenses related solely to such increases in taxes.

(b) **Indemnification by the Borrower**. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof) and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "***Indemnitee***") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in ***Section 3.01***), (ii) any Loan or 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 or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower 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 or any other Loan Party, and regardless of whether any Indemnitee is a party thereto**, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE**; *provided that* such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations

hereunder or under any other Loan Document, if the Borrower or such other Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of ***Section 3.01(c)***, this ***Section*** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by Lenders**. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under ***subsection (a)*** or ***(b)*** of this ***Section*** to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, 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 share of the Total Credit Exposure of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), *provided, further* 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 ***subsection (c)*** are subject to the provisions of ***Section 2.10(d)***.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by Applicable Laws, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, 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 referred to in ***subsection (b)*** above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments**. All amounts due under this ***Section*** shall be payable not later than ten (10) Business Days after demand therefor.

(f) **Survival**. The agreements in this ***Section*** and the indemnity provisions of ***Section 10.02(e)*** 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 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 Federal Funds 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 of a security interest subject to the restrictions of ***subsection (e)*** 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 assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); *provided that* any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts**.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and the Loans at the time owing to it or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in ***subsection (b)(i)(B)*** of this ***Section*** in the aggregate 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 Commitments (which for this purpose includes Loans outstanding thereunder) or, if the Commitments is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to

each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, unless each of the Administrative Agent and, so long as no Event of Default then exists, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(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 Commitments assigned, except that this ***clause (ii)*** shall not prohibit any Lender from assigning all or a portion of its rights and obligations under separate Facilities on a non-pro-rata basis;

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld) shall be required unless (1) an Event of Default exists at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided that* the 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 for assignments in respect of (1) any Commitment if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) **Assignment and Assumption**. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons**. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this ***clause (B)***, or (C) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) **Certain Additional Payments**. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative

Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the 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 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 Laws without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to ***subsection (c)*** of this ***Section***, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of ***Sections 3.01***, ***3.05***, ***3.06***, 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 a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this ***subsection*** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with ***subsection (d)*** of this ***Section***.

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

(d) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower 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 the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its 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. For the avoidance of doubt, each Lender shall be responsible for the indemnity under ***Section 10.04(c)*** without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided that* such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to ***Section 10.01*** that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of ***Sections 3.01***, ***3.05*** and ***3.06*** 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 ***clause (b)*** of this ***Section***; *provided* that such Participant (A) agrees to be subject to the provisions of ***Sections 3.07*** and ***10.13*** as if it were an assignee under ***paragraph (b)*** of this ***Section*** and (B) shall not be entitled to receive any greater payment under ***Section 3.01*** or ***3.05***, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of ***Section 3.07*** 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* that such Participant agrees to be subject to ***Section 2.11*** 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) **Certain Pledges**. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided that* no such pledge or assignment shall release such Lender

from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

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) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this ***Section***, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to ***Section 2.12(c)*** or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this ***Section*** or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, from and after the Closing Date, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors for league table credit or other similar use, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this ***Section***, "***Information***" means all information received from the 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 written 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*** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Borrower 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 Laws, including United States Federal and state securities laws.

10.08 **Right of Setoff**. If an Event of Default exists, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after written notice to the Administrative Agent, to the fullest extent permitted by Applicable Laws, 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 or any other Loan Party against any and all of the obligations of the Borrower or 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 or 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 2.13*** 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) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this ***Section*** are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective 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 Laws (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 Laws, (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 telecopy or other electronic imaging means 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 Borrowing, 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 the Borrower is entitled to replace a Lender pursuant to the provisions of ***Section 3.07***, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, ***Section 10.06***), all of its interests, rights (other than its existing rights to payments pursuant to ***Section 3.01*** and ***3.05***) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in ***Section 10.06(b)***;

(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 3.06***) 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 3.05*** or payments required to be made pursuant to ***Section 3.01***, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with Applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

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 (INCLUDING *SECTION 5-1401* AND *SECTION 5-1402* OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

(b) **SUBMISSION TO JURISDICTION**. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE CITY OF NEW YORK 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 COURTS. 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 APPLICABLE LAWS. 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**. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN ***PARAGRAPH (b)*** OF THIS ***SECTION***. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, 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 LAWS.

10.15 **Waiver of Jury Trial**

. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS

CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ***SECTION***.

10.16 **No Advisory or Fiduciary Responsibility**. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders, are arm's-length commercial transactions between the Borrower , each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the 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 of the Arrangers and each Lender 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, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, nor any Arranger nor any Lender has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, nor any Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by Applicable Laws, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 **Electronic Execution of Assignments and Certain Other Documents**. The words "execution," "signed," "signature" and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures 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 Laws, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; *provided that* notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

10.18 **USA PATRIOT Act; KYC Notice**. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "***Act***"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower in accordance with the Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act and the Beneficial Ownership Regulation.

10.19 **Entire Agreement**. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

10.20 **ERISA**. Each Lender as of the Closing Date represents and warrants as of the Closing Date to the Administrative Agent and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, for the benefit of the Borrower or any other Loan Party, that such Lender is not and will not be (a) an employee benefit plan subject to Title I of ERISA, (b) a plan or account subject to *Section 4975* of the Code, (c) an entity deemed to hold "plan assets" of any such plans or accounts for purposes of ERISA or the Code or (d) a "governmental plan" within the meaning of ERISA.

10.21 **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.

10.22 **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 10.22***, 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).

11. GUARANTY

11.01 The Guaranty.

(a) Each of the Guarantors hereby jointly and severally guarantees to the Administrative Agent and each of the holders of the Obligations, as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations (the "***Guaranteed Obligations***") in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof. The Guarantors hereby further agree that if any of the Guaranteed Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

(b) Notwithstanding any provision to the contrary contained herein, in any other of the Loan Documents or other documents relating to the Obligations, the obligations of each Guarantor under this Agreement and the other Loan Documents shall be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable state law.

11.02 **Obligations Unconditional**. The obligations of the Guarantors under ***Section 11.01*** are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, compromise, release, impairment or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by Applicable Laws, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this ***Section 11.02*** that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that such Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrower or any other Guarantor for amounts paid under this ***Section 11*** until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Applicable Laws, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to any Guarantor, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents, or other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under

any of the Loan Documents or other documents relating to the Guaranteed Obligations, or any other agreement or instrument referred to therein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Administrative Agent or any of the holders of the Guaranteed Obligations as security for any of the Guaranteed Obligations shall fail to attach or be perfected; or

(e) any of the Guaranteed Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest notice of acceptance of the guaranty given hereby and of Borrowings that may constitute obligations guaranteed hereby, notices of amendments, waivers and supplements to the Loan Documents and other documents relating to the Guaranteed Obligations, or the compromise, release or exchange of collateral or security, and all notices whatsoever, and any requirement that the Administrative Agent or any holder of the Guaranteed Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other documents relating to the Guaranteed Obligations or any other agreement or instrument referred to therein, or against any other Person under any other guarantee of, or security for, any of the Obligations.

11.03 **Reinstatement**. Neither the Guarantors' obligations hereunder nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by an impairment, modification, change, release or limitation of the liability of the Borrower, by reason of the Borrower's bankruptcy or insolvency or by reason of the invalidity or unenforceability of all or any portion of the Guaranteed Obligations. The obligations of the Guarantors under this ***Section 11*** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings pursuant to any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Administrative Agent and each holder of Guaranteed Obligations on demand for all reasonable out-of-pocket costs and expenses (including all reasonable fees, expenses and disbursements of any law firm or other outside counsel incurred by the Administrative Agent) incurred by the Administrative Agent or such holder of Guaranteed Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

11.04 **Certain Waivers**. Each Guarantor acknowledges and agrees that (a) the guaranty given hereby may be enforced without the necessity of resorting to or otherwise exhausting remedies in respect of any other security or collateral interests, and without the necessity at any time of having to take recourse against the Borrower hereunder or against any collateral securing the Guaranteed Obligations or otherwise, (b) it will not assert any right to require the action first be taken against the Borrower or any other Person (including any coguarantor) or pursuit of any other remedy or enforcement any other right and (c) nothing contained herein shall prevent or limit action being taken against the Borrower hereunder, under the other Loan Documents or the other documents and agreements relating to the Guaranteed Obligations or from foreclosing on any security or collateral interests relating hereto or thereto, or from

exercising any other rights or remedies available in respect thereof, if neither the Borrower nor the Guarantors shall timely perform their obligations, and the exercise of any such rights and completion of any such foreclosure proceedings shall not constitute a discharge of the Guarantors' obligations hereunder unless as a result thereof, the Guaranteed Obligations shall have been paid in full and the commitments relating thereto shall have expired or been terminated, it being the purpose and intent that the Guarantors' obligations hereunder be absolute, irrevocable, independent and unconditional under all circumstances.

11.05 **Remedies**. The Guarantors agree that, to the fullest extent permitted by Applicable Laws, as between the Guarantors, on the one hand, and the Administrative Agent and the holders of the Guaranteed Obligations, on the other hand, the Guaranteed Obligations may be declared to be forthwith due and payable as provided in ***Section 8.02*** (and shall be deemed to have become automatically due and payable in the circumstances provided in ***Section 8.02***) for purposes of ***Section 11.01***, notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Guaranteed Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Guaranteed Obligations being deemed to have become automatically due and payable), the Guaranteed Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of ***Section 11.01***.

11.06 **Rights of Contribution**. The Guarantors hereby agree as among themselves that, in connection with payments made hereunder, each Guarantor shall have a right of contribution from each other Guarantor in accordance with Applicable Laws. Such contribution rights shall be subordinate and subject in right of payment to the Guaranteed Obligations until such time as the Guaranteed Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated, and none of the Guarantors shall exercise any such contribution rights until the Guaranteed Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated.

11.07 **Guaranty of Payment; Continuing Guaranty**. The guarantee in this ***Section 11*** is a guaranty of payment and performance, and not merely of collection, and is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

11.08 **Keepwell**. At the time the Guaranteed Obligations of any Specified Loan Party become effective with respect to any Swap Obligation, each Loan Party that is a Qualified ECP Guarantor hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under this Agreement and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Section 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 shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

11.09 **Subordination**. If the Borrower or any other Loan Party is now or hereafter becomes indebted to one or more Guarantors including with respect to any Permitted Intercompany Mortgage (such indebtedness and all interest thereon and other obligations with respect thereto being referred to as

"***Affiliated Debt***"), then such Affiliated Debt shall be subordinate in all respects to the full payment and performance of the Obligations, and no Guarantor shall be entitled to enforce or receive payment with respect to any Affiliated Debt until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto have expired or been terminated; *provided* that, so long as no Event of Default has occurred and is continuing, a Guarantor may receive payments with respect to any Affiliated Debt including the payment in full of same. Each Guarantor agrees that any Liens, mortgages, deeds of trust, security interests, judgment liens, charges or other encumbrances upon the Borrower's or any other Loan Party's assets securing the payment of the Affiliated Debt shall be and remain subordinate and inferior to any Liens, security interests, judgment liens, charges or other encumbrances upon the Borrower's or any other Loan Party's assets securing the payment and performance of the Obligations. If an Event of Default exists, then, without the prior written consent of the Administrative Agent, no Guarantor shall exercise or enforce any creditor's rights of any nature against the Borrower or any other Loan Party to collect the Affiliated Debt (other than demand payment therefor) or enforce any such Liens, security interests, judgment liens, charges or other encumbrances. In the event of the receivership, bankruptcy, reorganization, arrangement, debtor's relief or other insolvency proceedings involving the Borrower or any applicable Loan Party as a debtor, the Administrative Agent has the right and authority, either in its own name or as attorney-in-fact for any applicable Guarantor, to file such proof of debt, claim, petition or other documents and to take such other steps as are necessary to prove its rights hereunder and receive directly from the receiver, trustee or other court custodian, payments, distributions or other dividends which would otherwise be payable upon the Affiliated Debt. Each Guarantor hereby assigns such payments, distributions and dividends to the Administrative Agent, and irrevocably appoints the Administrative Agent as its true and lawful attorney-in-fact (which appointment is coupled with an interest) with authority to make and file in the name of such Guarantor any proof of debt, amendment of proof of debt, claim, petition or other document in such proceedings and to receive payment of any sums becoming distributable on account of the Affiliated Debt, and to execute such other documents and to give acquittances therefor and to do and perform all such other acts and things for and on behalf of such Guarantor as may be reasonably necessary in the opinion of the Administrative Agent in order to have the Affiliated Debt allowed in any such proceeding and to receive payments, distributions or dividends of or on account of the Affiliated Debt.

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Signature Pages Follow.

LTIP CLASS B UNIT VESTING AGREEMENT

Under the Pebblebrook Hotel Trust
2009 Equity Incentive Plan, as amended and restated
(Officers and Employees)

Name of Grantee: _____ (the **"Grantee"**)
No. of LTIP Units: _____
Grant Date: _____
Final Acceptance Date: _____

Pursuant to the Pebblebrook Hotel Trust 2009 Equity Incentive Plan, as amended and restated (the "**Plan**"), and the Second Amended and Restated Agreement of Limited Partnership, dated December 13, 2013, as amended (the "**Partnership Agreement**"), of Pebblebrook Hotel, L.P., a Delaware limited partnership (the "**Partnership**"), Pebblebrook Hotel Trust, a Maryland real estate investment trust and the general partner of the Partnership (the "**Company**"), and for the provision of services to or for the benefit of the Partnership in a partner capacity or in anticipation of being a partner, hereby grants to the Grantee named above an Other Equity-Based Award (as defined in the Plan) (an "**Award**") in the form of, and by causing the Partnership to issue to the Grantee named above, a number of LTIP Class B Units (as defined in the Partnership Agreement) specified above having the rights, voting powers, restrictions, limitations as to distributions, qualifications and terms and conditions of redemption and conversion set forth herein and in the Partnership Agreement. Upon acceptance of this LTIP Class B Unit Vesting Agreement (this "**Agreement**"), the Grantee shall receive, effective as of the Grant Date, the number of LTIP Class B Units specified above, subject to the restrictions and conditions set forth herein and in the Partnership Agreement.

1. **Acceptance of Agreement**. The Grantee shall have no rights with respect to this Agreement unless he or she shall have accepted this Agreement prior to the close of business on the Final Acceptance Date specified above by signing and delivering to the Partnership a copy of this Agreement. Upon acceptance of this Agreement by the Grantee, the Partnership Agreement shall be amended to reflect the issuance to the Grantee of the LTIP Class B Units so accepted, effective as of the Grant Date. Thereupon, the Grantee shall have all the rights of a Limited Partner of the Partnership with respect to the number of LTIP Class B Units specified above, as set forth in the Partnership Agreement, subject, however, to the restrictions and conditions specified in Section 2 below.

2. **Restrictions and Conditions**.

(a) The records of the Partnership evidencing the LTIP Class B Units granted herein shall bear an appropriate legend, as determined by the Partnership in its sole discretion, to

the effect that such LTIP Class B Units are subject to restrictions as set forth herein and in the Partnership Agreement.

(b) LTIP Class B Units granted herein may not be sold, transferred, pledged, exchanged, hypothecated or otherwise disposed of by the Grantee prior to vesting.

(c) Subject to the provisions of Section 4, any LTIP Class B Units subject to this Award that have not become vested on or before the date that the Grantee's employment with the Company and its Affiliates terminates shall be forfeited as of the date that such employment terminates.

3. Vesting of LTIP Class B Units. The restrictions and conditions in Section 2 of this Agreement shall lapse with respect to the numbers of LTIP Class B Units specified below on the Vesting Dates specified below, so long as the Grantee remains an employee of the Company or an Affiliate (as defined in the Plan) from the Grant Date until the applicable Vesting Date.

Number of LTIP Class B Units	Vesting Date
	January 1, 2023
	January 1, 2024
	January 1, 2025
	January 1, 2026

Subsequent to each Vesting Date, the LTIP Class B Units on which all restrictions and conditions have lapsed shall no longer be deemed restricted.

4. Acceleration of Vesting in Special Circumstances. All restrictions on all LTIP Class B Units subject to this Award shall be deemed waived by the Committee (as defined in the Plan) and all LTIP Class B Units granted hereby shall automatically become fully vested on the date specified below if the Grantee remains in the continuous employ of the Company or an Affiliate from the Grant Date until such date:

(a) the date that the Grantee's employment with the Company and its Affiliates ends on account of the Grantee's termination of employment by the Company without Cause (as defined below);

(b) the date that the Grantee's employment with the Company and its Affiliates ends on account of the Grantee's death or total and permanent disability (as defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended (the "**Code**"));

(c) a Control Change Date (as defined in the Plan);

(d) the date of the acquittal described below, if the Grantee's employment with the Company and its Affiliates was ended on account of the Grantee's termination of

employment by the Company for Cause (as defined below) solely on the basis of the Grantee having been charged by the United States or a State or political subdivision thereof with conduct which is a felony under the laws of the United States or any State or political subdivision thereof and the Grantee is subsequently acquitted of the act or acts referred to in such charge; *i.e.*, to the effect that the Grantee shall be deemed for purposes of this Agreement to have been terminated without Cause if the Grantee is subsequently acquitted of a felony charge following termination of employment based on that charge notwithstanding that the LTIP Class B Units may have been previously forfeited due to the termination of the Grantee's employment for Cause based on such charge; or

(e) the date that the Grantee's employment with the Company and its Affiliates ends on account of the Grantee's termination of employment by the Grantee for Good Reason (as defined in, and in accordance with the terms of, that certain Change-in-Control Severance Agreement entered into as of [_____, 20__] by and between the Company and the Grantee).

For purposes of the Award, the term "**Cause**" means that the Board concludes, in good faith and after reasonable investigation, that (i) the Grantee has been charged by the United States or a State or political subdivision thereof with conduct which is a felony under the laws of the United States or any State or political subdivision thereof; (ii) the Grantee engaged in conduct relating to the Company constituting material breach of fiduciary duty, willful misconduct (including acts of employment discrimination or sexual harassment) or fraud; (iii) the Grantee breached the Grantee's obligations or covenants under Section 4 of the Grantee's Change in Control Severance Agreement in any material respect; or (iv) the Grantee materially failed to follow a proper directive of the Board within the scope of the Grantee's duties (which shall be capable of being performed by the Grantee with reasonable effort) after written notice from the Board specifying the performance required and the Grantee's failure to perform within thirty days after such notice. No act or failure to act on the Grantee's part shall be deemed "willful" unless done, or omitted to be done, by the Grantee not in good faith or if the result thereof would be unethical or illegal.

5. **Merger-Related Action**. In contemplation of and subject to the consummation of a consolidation or merger or sale of all or substantially all of the assets of the Company in which outstanding common shares are exchanged for securities, cash, or other property of an unrelated corporation or business entity or in the event of a liquidation of the Company (in each case, a "**Transaction**"), the Board of Trustees of the Company, or the board of trustees or directors of any corporation assuming the obligations of the Company (the "**Acquiror**"), may, in its discretion, take any one or more of the following actions, as to the outstanding LTIP Class B Units subject to this Award: (i) provide that such LTIP Class B Units shall be assumed or equivalent awards shall be substituted, by the acquiring or succeeding entity (or an affiliate thereof), and/or (ii) upon prior written notice to the LTIP Class B Unitholders (as defined in the Partnership Agreement) of not less than 30 days, provide that such LTIP Class B Units shall terminate immediately prior to the consummation of the Transaction. The right to take such actions (each, a "**Merger-Related Action**") shall be subject to the following limitations and qualifications:

(a) if all LTIP Class B Units awarded to the Grantee hereunder are eligible, as of the time of the Merger-Related Action, for conversion into Common Units (as defined and in accordance with the Partnership Agreement) and the Grantee is afforded the opportunity to effect such conversion and receive, (A) in consideration for the Common Units into which the Grantee's LTIP Class B Units shall have been converted, the same kind and amount of consideration as other holders of Common Units in connection with the Transaction, or (B) the kind and amount of consideration payable to holders of the number of common shares into which such Common Units could be exchanged (including the right to make elections as to the type of consideration), then Merger-Related Action of the kind specified in (i) or (ii) of the first paragraph of Section 5 above shall be permitted and available to the Company and the Acquiror;

(b) if some or all of the LTIP Class B Units awarded to the Grantee hereunder are not, as of the time of the Merger-Related Action, so eligible for conversion into Common Units (in accordance with the Partnership Agreement), and the acquiring or succeeding entity is itself, or has a subsidiary which is organized as a partnership or limited liability company (consisting of a so-called "UPREIT" or other structure substantially similar in purpose or effect to that of the Company and the Partnership), then Merger-Related Action of the kind specified in clause (i) of this Section 5 above must be taken by the Acquiror with respect to all LTIP Class B Units subject to this Award which are not so convertible at the time, whereby all such LTIP Class B Units covered by this Award shall be assumed by the acquiring or succeeding entity, or equivalent awards shall be substituted by the acquiring or succeeding entity, and the acquiring or succeeding entity shall preserve with respect to the assumed LTIP Class B Units or any securities to be substituted for such LTIP Class B Units, as far as reasonably possible under the circumstances, the distribution, special allocation, conversion and other rights set forth in the Partnership Agreement for the benefit of the LTIP Class B Unitholders; and

(c) if some or all of the LTIP Class B Units awarded to the Grantee hereunder are not, as of the time of the Merger-Related Action, so eligible for conversion into Common Units (in accordance with the Partnership Agreement), and after exercise of reasonable commercial efforts the Company or the Acquiror is unable to treat the LTIP Class B Units in accordance with Section 5(b), then Merger-Related Action of the kind specified in clause (ii) of this Section 5 above must be taken by the Company or the Acquiror, in which case such action shall be subject to a provision that the settlement of the terminated award of LTIP Class B Units which are not convertible into Common Units requires a payment of the same kind and amount of consideration payable in connection with the Transaction to a holder of the number of Common Units into which the LTIP Class B Units to be terminated could be converted or, if greater, the consideration payable to holders of the number of common shares into which such Common Units could be exchanged (including the right to make elections as to the type of consideration) if the Transaction were of a nature that permitted a revaluation of the Grantee's capital account balance under the terms of the Partnership Agreement, as determined by the Committee in good faith in accordance with the Plan.

6. Distributions. Distributions on the LTIP Class B Units shall be paid currently to the Grantee in accordance with the terms of the Partnership Agreement. The right to

distributions set forth in this Section 6 shall be deemed a Dividend Equivalent Right for purposes of the Plan.

7. Incorporation of Plan. Notwithstanding anything herein to the contrary, this Agreement shall be subject to and governed by all the terms and conditions of the Plan. Capitalized terms used in this Agreement shall have the meaning specified in the Plan, unless a different meaning is specified herein.

8. Covenants. The Grantee hereby covenants as follows:

(a) So long as the Grantee holds any LTIP Class B Units, the Grantee shall disclose to the Partnership in writing such information as may be reasonably requested with respect to ownership of LTIP Class B Units as the Partnership may deem reasonably necessary to ascertain and to establish compliance with provisions of the Code applicable to the Partnership or to comply with requirements of any other appropriate taxing authority.

(b) [reserved]

(c) The Grantee hereby agrees that it does not have the current intention to dispose of the LTIP Class B Units subject to this Award within two years of receipt of such LTIP Class B Units. The Partnership and the Grantee hereby agree to treat the Grantee as the owner of the LTIP Class B Units from the Grant Date. The Grantee hereby agrees to take into account the distributive share of Partnership income, gain, loss, deduction, and credit associated with the LTIP Class B Units in computing the Grantee's income tax liability for the entire period during which the Grantee has the LTIP Class B Units.

(d) The Grantee hereby recognizes that the IRS has proposed regulations under Sections 83 and 704 of the Code that may affect the proper treatment of the LTIP Class B Units for federal tax purposes. In the event that those proposed regulations are finalized, the Grantee hereby agrees to cooperate with the Partnership in amending this Agreement and the Partnership Agreement, and to take such other action as may be required, to conform to such regulations.

(e) The Grantee hereby recognizes that the federal tax consequences of owning and disposing of LTIP Class B Units could change in the future, either as a result of statutory changes or enactments or by regulation or administrative action or interpretations.

9. Transferability. This Agreement is personal to the Grantee, is non-assignable and is not transferable in any manner, by operation of law or otherwise, other than by will or the laws of descent and distribution, without the prior written consent of the Company.

10. Amendment. The Grantee acknowledges that the Plan may be amended or terminated in accordance with Article XV thereof and that this Agreement may be amended or canceled by the Committee, on behalf of the Partnership, for the purpose of satisfying changes in law or for any other lawful purpose, provided that no such action shall adversely affect the

Grantee's rights under this Agreement without the Grantee's written consent. The provisions of Section 5 of this Agreement applicable to the termination of the LTIP Class B Units covered by this Award in connection with a Transaction (as defined in Section 5 of this Agreement) shall apply, *mutatis mutandi*, to amendments, discontinuance or cancellation pursuant to this Section 10 or the Plan.

11. No Obligation to Continue Employment. Neither the Company nor any affiliate of the Company is obligated by or as a result of the Plan or this Agreement to continue the Grantee in employment and neither the Plan nor this Agreement shall interfere in any way with the right of the Company or any affiliate of the Company to terminate the employment of the Grantee at any time.

12. Notices. Notices hereunder shall be mailed or delivered to the Partnership at its principal place of business and shall be mailed or delivered to the Grantee at the address on file with the Partnership or, in either case, at such other address as one party may subsequently furnish to the other party in writing.

13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, applied without regard to conflict of law principles. The parties agree that any action or proceeding arising directly, indirectly or otherwise in connection with, out of , related to or from this Agreement, any breach hereof or any action covered hereby, shall be resolved within the State of Delaware and the parties hereto consent and submit to the jurisdiction of the federal and state courts located within the District of Delaware. The parties hereto further agree that any such action or proceeding brought by either party to enforce any right, assert any claim, obtain any relief whatsoever in connection with this Agreement shall be brought by such party exclusively in federal or state courts located within the District of Delaware.

[Remainder of page left blank intentionally]

The foregoing LTIP Class B Unit Vesting Agreement is hereby agreed to by the Company, the Partnership and the Grantee on the date shown below.

Date: March , 2021

PEBBLEBROOK HOTEL TRUST
a Maryland real estate investment trust

By: _____
Name: _____
Title:

PEBBLEBROOK HOTEL, L.P.
a Delaware limited partnership

By: **PEBBLEBROOK HOTEL TRUST,**
general partner

By: _____
Name: _____
Title:

_____
Grantee

Grantee's name and address:

_____

_____

_____

Exhibit 31.1

Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Jon E. Bortz, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Pebblebrook Hotel Trust;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of trustees (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 29, 2021

/s/ JON E. BORTZ

Jon E. Bortz

Chairman, President and Chief Executive Officer
(principal executive officer)

Exhibit 31.2

Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Raymond D. Martz, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Pebblebrook Hotel Trust;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of trustees (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 29, 2021

/s/ Raymond D. Martz

Raymond D. Martz

Executive Vice President, Chief Financial Officer, Treasurer and Secretary (principal financial officer and principal accounting officer)

Exhibit 32.1

Certification Pursuant To
18 U.S.C. Section 1350,
as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Pebblebrook Hotel Trust (the "Company") on Form 10-Q for the period ended March 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jon E. Bortz, Chairman, President and Chief Executive Officer, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 29, 2021

/s/ JON E. BORTZ

Jon E. Bortz

Chairman, President and Chief Executive Officer
(principal executive officer)

Exhibit 32.2

Certification Pursuant To
18 U.S.C. Section 1350,
as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Pebblebrook Hotel Trust (the "Company") on Form 10-Q for the period ended March 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Raymond D. Martz, Executive Vice President, Chief Financial Officer, Treasurer and Secretary, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 29, 2021

/s/ RAYMOND D. MARTZ

Raymond D. Martz

Executive Vice President, Chief Financial Officer, Treasurer and Secretary (principal financial officer and principal accounting officer)